

Restraining Orders — The Facts

GETTING A RESTRAINING ORDER FOR DOMESTIC ABUSE

- In principle, anyone can get a temporary restraining order against an intimate partner at any time, for any reason.
In practice, such orders are given almost exclusively to women.
- If your female partner, her relatives, doctor, social worker, victim's advocate, etc., accuse you of domestic or emotional abuse, or even the potential for abuse or emotional harm, you will be served with a temporary restraining order to stay away from her, her children, and her home.
What you may have mistakenly thought was your home and kids.
- **Proof is *not* required and hearsay is admissible when seeking a restraining order.** The order is issued *ex parte* (without the other party present).
Preferably, from her standpoint, with no prior warning whatsoever, and no chance for you to defend yourself.
- **Perjury and subornation of perjury are standard practice and the court hearing is perfunctory.**
If a woman has trouble filling out the request form she will be given assistance by victim's advocates and shelter workers and told what she must say and help filling out the form for the restraining order.
- If the restrained party violates the order either accidentally, deliberately, or even if she stalks him, he will be jailed immediately and held in contempt of court.
Since the order is a civil contempt matter there is no right to a jury trial and judges may order any punishment they wish. Typical sentences include 36 weeks DV classes and 3 to 6 months in jail.

WHAT HAPPENS UNDER AN *EX PARTE* CIVIL RESTRAINING ORDER

- Once she gets the restraining order you will be escorted from your home by police officers with no prior notice, often in the middle of the night, with little more than the clothes you are wearing, or what you can pack in five minutes.
- In the company of a police officer you may visit your home once after the order is served to collect any "*undisputed*" items you might claim.
Usually such accompanied visits are limited to one hour and the police are there to protect her, not you.
- Typically you will not be able to see or talk to your kids.
The order usually spells out the terms of any visitation or contact rights you have with any children in the relationship, usually none initially even if the children are yours and not hers. You must *scrupulously* obey the terms of the order, i.e., no telephone calls, no visiting at school, no birthday cards or gifts to the kids, nothing!
- A hearing must be held within fourteen days as to whether the temporary order should be made permanent.
It likely **will** be made permanent (*as in the rest of your life*) unless you have a competent and experienced attorney. Even then you have a good chance of losing as the hearing will be brief and perfunctory. Your side of the story won't be heard unless you have a good lawyer, so don't treat this casually.
- If the judge does not grant her a permanent restraining order, be sure the temporary order has been removed from the Colorado Bureau of Investigation (CBI) database as well.
That often requires a separate court order or you can contact the CBI and file a request to have it removed.
You can, and will be arrested if the restraining order remains in the CBI database even though the court has lifted the order.
As a safety measure you should have a gun dealer run a check on you after the order is dismissed to be absolutely sure your name has been removed from all databases.
Remember, you are guilty until you prove your innocence.

WHAT YOU MUST DO

- **Stay away!**
If you violate, or she contrives to have you violate the terms of the restraining order you will likely find yourself in jail. A not so funny joke is that cell phones were invented to allow women to report restraining order violations. *Believe it!*
- **Get a good criminal defense attorney!**
In life, and in America, you get what you pay for.
- **Read the laws yourself!**
Do not assume your attorney is going to do everything for you. Do your homework. Look for loop holes or advantages in the wording of the law. Read the statute(s) you are charged under 20+ times if you have to. Men often get lazy, or are in shock, during the time before they have to go to the permanent orders hearing but the sentence you face is for life with little possibility of parole.

- **Objective evidence wins court cases.**

Phone records, answering machine tapes, e-mails, pictures, etc., are all basic to winning your freedom. Collect them if you can, identify date and time, and go over your evidence with your attorney. Make sure any evidence you have is admissible and has been discovered to the opposing party prior to your hearing.

- **Get rid of any guns or ammunition you may have.**

From the time the restraining order is imposed until it is cleared from all databases it is a violation of **Federal** law 18 U.S.C. § 922(g)(8), a.k.a. the Lautenberg Amendment, to purchase, acquire, or be in possession of firearms, ammunition, or other dangerous weapons, e.g., swords, grenades, explosives, etc. *This is a federal felony with a mandatory minimum of 5 years in prison if convicted.*

Collectors items are held to be in this category as well. "In possession" generally means in the same room as, or in close proximity to. If you are visiting a friend and they have a gun collection, you can be held to be in violation and could be sentenced to five years (minimum) in prison.

If you have a gun collection, swords, etc., the Bureau of Alcohol, Firearms, and Tobacco (BATF) approved method of storage is with an attorney, with the police or sheriff, or with an approved firearms dealer. Have a friend or relative collect them for you and remove them to an approved storage location until after you are sure the restraining order has been lifted *and* your name removed from the state and federal databases. That will usually require a separate motion to the court or personally carrying a certified copy of the court order of dismissal to a Colorado Bureau of Investigation office.

- **Always carry a copy of the restraining order with you to show police if you are stopped.**

The order will have specific terms you must meet and sometimes you can avoid arrest by presenting the officers the specific terms of the order and showing them you have not violated any of the restrictions.

WHAT YOU MUST NOT DO

- **Do not make any contact with her.** No contact means "**no contact**" by you.

Even accidental contact in a grocery store or mall can get you arrested. If your kids call you that is a violation of the restraining order. If you accidentally hit the autodialer on your cell phone and it dials your home number, that is a violation and you can go to jail. Men have had their cell phones in their pocket and it has dialed home. Jail him! Your computer may get infected with a virus or a worm and send her an email. That is a violation of the restraining order and has resulted in arrest. Being on the same road with her is also grounds for arrest.

- **Do not make any direct or indirect contact** with her friends, relatives, employer(s), or other associates or third-parties.

That will be more than an inconvenience should you work at or near the same location, and you can expect to lose your job in such circumstances, or go to jail for violating the order.

In many cases you can expect her to attempt to arrange for you to violate the order so she can have you jailed.

They may have been "*your*" friends or associates before but after a restraining order is issued any female friends are hers. You will go to jail if you contact them. Only your attorney should make any necessary contacts.

If an acquaintance mentions to her that "*Joe said...*" that is indirect contact and could get you arrested as well.

- **Restraining orders only work one way.** *You are restrained.* She can, and will do anything she wants.

If she calls you and you talk to her that is a violation of the restraining order and you can be jailed.

If she comes over and tries to crawl in bed with you (this actually happens), whether you cooperate or not, you have violated the restraining order.

If she sends you an email or fax you are in violation of the restraining order if you make any response at all. However, such communications from her might make good evidence against her if the matter comes to trial or hearing. So save them with date and time of receipt noted.

The most common version of stalking reported to the Equal Justice Foundation is a woman who takes out a restraining order against a man and then stalks him with cell phone in hand. When she finds him, she calls the police, who then arrest the man for violating the restraining order.

OTHER CONDITIONS

- Violation of a restraining order costs the great majority of men we hear from their jobs.

A permanent restraining order against you may result in the loss of your job, for example if you use a weapon or explosives in your work.

- You will almost certainly be left confused with few answers to your questions.

A good attorney will take care of the legal issues in court. But you will probably never get the answers as to why she did the things she did and told the lies she told. **Accept it and forget it!**

Equal Justice Foundation – Web site www.ejff.org

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For additional information see Domestic Violence Against Men in Colorado at domen.org