



***WHAT YOU NEED TO KNOW IF YOU HAVE
BEEN CHARGED WITH A DOMESTIC
ASSAULT***

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Authors note: This Article is targeted mainly toward non-lawyers. Those who suddenly find themselves or someone close to them accused of Domestic Violence. As the contents of this article are based almost entirely upon my personal experience and opinions developed from nearly **30 years of criminal trial experience as a prosecutor and defense attorney including at least two hundred criminal jury trials** the use of legal and research citations will be omitted. My research is my personal professional experience. The purpose of this article is to provide individuals accused of domestic assault with basic practical legal information and a framework for things to consider as they begin the process of deciding how to defend themselves. However, such individuals should always keep in mind that every case has unique and challenging facts that may call for different considerations or actions from those discussed in this article. Anyone accused of a crime should follow the advise of an attorney experienced and knowledgeable in the defense of these cases and who is familiar with the specific facts of the individual's case.

What is a Domestic Assault.

Misdemeanor assault in Tennessee is 1) the intentional or reckless injuring of another or, 2) intentionally putting another in fear of imminent bodily harm, or 3) intentionally causing offensive or provocative physical contact. Felony assault in Tennessee comprises the same elements as misdemeanor assault but adds the requirement of serious injury or display of a deadly weapon.

In Tennessee a domestic assault is simply committing an assault against a person who is or was a family member such as spouse, parent, adult child, other related family member by blood or adoption or marriage, or someone you have dated, or someone you have lived with.

Potential Punishment

A misdemeanor domestic assault carries the potential punishment of up to 11 months and 29 days in the county jail. A felony assault carries a possible 3 - 15 year sentence in state prison depending upon prior convictions. First offenders who are convicted of domestic violence whether a misdemeanor or felony are likely to receive probation.



Be aware that any conviction for a domestic assault even if it is only a misdemeanor domestic assault causes a person to lose their right to possess a firearm.

Why Domestic Abuse Cases are a Problem in the Criminal Justice System

Domestic abuse is a political criminal justice issue. Forty years ago the criminal justice system paid little attention to violence within the home and many true victims suffered in silence with no opportunity for justice. When advocates demanded change and demanded that domestic violence offenders be arrested, tried, and convicted the criminal justice system responded. This pressure to enforce the law against domestic violence offenders resulted in a great deal of political pressure and public scrutiny upon the police, courts, and prosecutors to “get tough” on domestic violence. As often happens in many social and political movements the pendulum swung but it swung to far and we now see many people wrongfully arrested and charged with domestic violence. Now the criminal justice system is often more worried about being perceived as being tough on domestic violence crime than it is about being fair to the accused.

Many police departments have a policy that on any domestic violence call someone must be arrested - regardless of the evidence or lack of evidence. Therefore, a lot of innocent people are arrested and hauled into court. No police officer, no prosecutor, an no judge wants to be the person who did not make an arrest or who dismissed a case to then have the accused later seriously injure or even murder their spouse or family member. The news stories blaming that officer or prosecutor or judge can end a career. Therefore, you can be certain that the people working in the system in order to protect their own careers and own interests will often insist on pursuing cases even where the evidence does not support the allegation.

Therefore, if you or your lawyer does not know how to navigate this very unfair system it can be very difficult to obtain a fair result.



How We Defend Domestic Violence Cases

One of the benefits to having a reputation for fighting is that prosecutors know that we have no problems going all the way and taking a case to jury trial when necessary. If a client has been wrongfully accused or wrongfully arrested and we do not believe the State can prove its case we always stand ready and able to vindicate our client thru the jury trial process. Usually it does not take that long for us to prove the State cannot win and for the case to be dismissed.

If there is significant evidence of guilt or if the client simply decides they do not want to take the case to trial even if they did not commit the offense we nevertheless are often able to negotiate a dismissal. This is often done by negotiating some type of diversionary program such as counseling or anger management class, or community service.

The ability to negotiate a favorable result in cases where there is evidence of guilt or the client does not want to take the case to trial depends upon:

1. Prior criminal record or prior allegations of domestic abuse even if the cases were dismissed.
2. Seriousness of the allegation. Was anyone actually injured or was the threat of harm extremely dangerous such as use of a deadly weapon or choking.
3. The cooperation or lack of cooperation with the authorities by the alleged victim.

Expungement

If your case is dismissed either due to lack of evidence or due to a negotiated sentence that allowed dismissal after completion of conditions it is important to have all records of the case expunged (erased). Even if your case is dismissed expungement does not happen automatically and you need to know that you must file papers to initiate the expungement process. There are two tiers to expungement. 1. Public court records and 2. non-public arrest records. To expunge court records you must make that request to the court. To expunge arrest records you must make that request separately to the F.B.I. We of course handle all of this for our clients. Make sure that your lawyer initiates expungement with the court and with the F.B.I. so that you do not lose out on a job or other opportunity because someone does a background check and discovers that you were arrested for a violent offense.

Conclusion

Due to the political nature of domestic violence cases in the criminal justice system the police, prosecutors, and judges apply extra scrutiny to these cases. It can therefore be much more difficult to achieve a good result for the accused in a domestic violence case even if that person is innocent. Having a lawyer with the experience to navigate the system and who has the willingness to fight as well as the reputation of a fighter is extremely important to win back your reputation and your freedom.



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