

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Criminal v. Civil Domestic Violence Charges in New Mexico

Many times clients are confused on the difference between a criminal domestic violence action and a civil domestic violence action. There are many distinctions between the two, too many to enumerate them all here. In short, however, each is extremely serious and should be treated as such.

A criminal domestic violence action usually begins with a criminal complaint alleging battery on a household member or assault on a household member. In Albuquerque, these are filed in Metropolitan Court. In other areas, including Rio Rancho and Sandoval County, they are filed in magistrate court. In cases involving serious injury or deadly weapons, the cases will be filed as felony domestic violence and the case will eventually be transferred to District Court.

A civil domestic violence action begins with a Petition for Order of Protection Against Domestic Abuse. In most areas of New Mexico including Albuquerque, Rio Rancho and Santa Fe, these cases are heard by a domestic violence hearing officer. These are not criminal in nature. As such, the standard of proof is not as rigorous as in a criminal proceeding and sometimes it seems that the hearing officers are predisposed to make a finding of domestic violence despite the evidence. On the other hand, a finding of domestic violence in a civil hearing will not result in criminal penalties such as probation or jail time.

In both the criminal and civil domestic violence actions, the alleged perpetrator of domestic violence will be ordered to have no contact with the alleged victim. In a criminal case, the "no contact" provision will be in the Order Setting Conditions of Release. In the civil action, a Temporary Order of Protection is issued upon filing the Petition for Order of Protection from Domestic Abuse. This Temporary Order will remain in effect until the hearing which usually is set within 10 days of service of the Order on the Respondent (alleged perpetrator). If there is a finding of domestic violence at the hearing on the Petition for Order of Protection, the Order of Protection will be extended for 6 months. It may be extended an additional 6 months for good cause on a Motion to Extend Order of Protection.

In both the civil and criminal cases, a violation of the "no-contact" provisions have very serious consequences. Violations of these Orders is a crime. In fact, violation can be charged as a felony in the criminal case with very serious penal consequences. In the criminal case, the defendant will be arrested and the judge may order the

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defendant held in custody until the trial date. In addition, the defendant will likely face new charges including possible felony domestic violence. In the civil case, a violation of the no-contact order can and typically does result in a finding of contempt for which the Respondent can be taken into custody often times for 10 days, though the judge can order a longer time period.

In addition to the distinctions above, the jurisdiction of the court over matters related to the parties is very different. The family court domestic violence officer can address who stays in the home, generally the alleged victim. The domestic violence hearing officer can also address temporary child custody and time-sharing, and child support. The criminal court cannot address these issues as its jurisdiction is limited to criminal prosecution. However, the no-contact order in the Order Setting Conditions of Release often has the effect of awarding the home to the alleged victim.

It is important that you understand the difference in these two proceedings if you have been accused of domestic violence. Though the criminal case may appear much more serious, the reality is that the civil case has much broader consequences addressing **property rights**, **child custody** and **child support**. And of course, a finding of domestic violence in the family court has most of the same negative consequences of a criminal conviction such as **immigration consequences**, **employment consequences** and **gun ownership** to name a few.

In short, in either case, you should contact an attorney immediately upon learning of allegations of domestic violence. The possible consequences are too severe to take these matters lightly.

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