

## *Information on...*

### **DOMESTIC VIOLENCE CIVIL AND CRIMINAL CASES**

#### **Civil vs. Criminal—What’s the Difference?**

The State of New Hampshire has several laws to help prevent domestic violence and hold perpetrators accountable for their actions. The laws fall into two categories, civil and criminal. Domestic violence protective order cases are civil court actions when a “plaintiff” asks for protection from the “defendant.” A criminal court action is brought by “the state” (police department, county attorney, Attorney General’s Office) against someone who is believed to have committed a crime. Technically, a crime is committed against the state, rather than against an individual. Civil and criminal actions may be filed out of the same incident and do not need to be filed simultaneously.

#### **Domestic Violence Protective Orders (Civil)**

Protective orders are designed to help victims who are in present and immediate danger of abuse from a spouse, former spouse, dating partner, ex-dating partner, or a family or household member. They offer some of the following protections:

##### **Protective Orders:**

- ❖ Stop the defendant from contacting and abusing the plaintiff and family members.
- ❖ Keep the defendant away from where the plaintiff lives or works.

##### **Other Orders:**

- ❖ Stop the defendant from taking or destroying any property the plaintiff owns or jointly owns with the defendant.
- ❖ Stop the defendant from having or buying guns or other weapons.
- ❖ Give the plaintiff temporary custody of the children.

#### **Bail Orders (Criminal)**

If the state charges someone with a domestic violence-related crime, bail will be imposed. The court puts bail orders in place as a way to make sure someone who has been arrested will appear in court to answer to the charges brought by the state and to protect public safety. Bail orders also put conditions on an alleged abuser’s behavior during the time the case is waiting to be heard in court. Bail conditions may include the following:

- ❖ Stop the defendant from having contact with the alleged victim.
- ❖ Require the defendant to check in with a probation officer on a regular schedule.
- ❖ Stop the defendant from drinking alcohol and/or taking illegal drugs.

This Information Sheet is provided by  
*The Greenbook Project*, Grant No. 2001-WE-VX-K002, US Dept. of Justice

## Common Questions and Answers

### **Is a domestic violence protective order necessary if bail conditions are in place?**

While it may appear that bail conditions and protective orders provide the same protections for victims, they do not. Bail conditions address the defendant's behavior while protective orders offer extensive safety provisions for the plaintiff and the plaintiff's family. Protective orders also address other matters such as temporary decisions about visitation and custody. Also, the bail orders last only until the trial. Civil protective orders typically last for one year. Civil protective orders are also enforceable anywhere in the United States and its territories. Because civil and criminal cases are separate from each other, it is important to note that the withdrawal by a plaintiff or dismissal by a court of a civil protective order has no bearing on bail conditions. A plaintiff may decide he/she no longer wants a protective order, but only the court can decide if bail conditions are still required.

### **What happens if the defendant violates the bail conditions?**

Violations of bail conditions should be brought to the immediate attention of law enforcement. Depending on the circumstances, bail may be revoked by the court, meaning the defendant will be held in jail until the court reviews the case.

### **What role does a victim have in a criminal case?**

Victims of crime are considered to be witnesses in criminal cases and will likely be asked to testify at the trial. The choice as to whether a victim testifies is made by the prosecutor. In New Hampshire, the Victims' Bill of Rights provides crime victims with the right to be informed about the criminal justice process and how it progresses, the right to talk to the prosecution about what the victim would like to have happen, and the right to appear or make a written statement at the defendant's sentencing hearing.

### **What goes on the defendant's record?**

Domestic violence protective orders are civil orders and therefore they are not considered to be part of a defendant's criminal record. Still, civil protective orders are "registered," meaning they go into a national computer database so that law enforcement all over the country will know a plaintiff is supposed to be protected. Civil protective orders are also given to the local police department. Any violation of the protective orders, however, is considered to be a crime. Charges may include the violation of the orders as well as any new crimes stemming from the violation. If charges are brought forward by a prosecutor, the case will go through the criminal court process, which could result in a conviction. The conviction will appear on the defendant's criminal record.

### **Are the defendant's guns and/or weapons taken away in civil protective order and criminal cases?**

There are several state and federal laws that determine whether a defendant in a civil or criminal domestic violence case can have firearms and/or deadly weapons. In general, both types of court actions affect the defendant's ability to possess or acquire firearms and/or deadly weapons. The court may order the defendant to hand over his or her firearms and/or deadly weapons when it issues a temporary protective order. If a final order is issued, the defendant *must* give up any firearms and/or deadly weapons. In criminal cases, bail conditions can prevent a defendant from possessing guns and/or weapons. Under certain circumstances, a defendant found guilty of a domestic violence-related crime will be prohibited from ever owning or possessing firearms.