

FELONIES & MISDEMEANORS

Classification of criminal offenses

In Colorado, criminal offenses are divided into felonies, misdemeanors, and petty offenses. The classification depends on the severity of the offense and the possible penalty that it carries. Each main category is broken up further into classes—the lower the class number, the more serious the offense.

Felonies carry minimum penalties that include at least one year of incarceration at the department of corrections. In turn, minimum jail sentences for misdemeanors do not exceed six months; however, the most serious misdemeanors are punishable with up to 18 months of incarceration at the county jail. Finally, jail time for petty offenses does not exceed six months.

Initial court proceedings

If you have been summoned to appear in court on a charged offense, you must attend the scheduled hearing. If you fail to appear, the judge may issue a warrant for your arrest.

Criminal proceedings in District Court begin with what is called a first appearance. The purpose of this hearing is to inform you of your rights as a defendant. No plea is entered at this time.

For certain felonies, you may be entitled to a preliminary hearing. A preliminary hearing is a chance for you to challenge the allegations against you. The hearing is meant to determine whether probable cause exists to believe that you committed the charged offense. If probable cause does not exist, your case will be dismissed. A preliminary hearing is optional; either the defendant or the prosecutor may request it.

County and municipal court may follow a slightly different procedure. For instance, the judge may expect the defendant to enter a plea at the initial hearing. An experienced criminal defense attorney will be able to prepare a client thoroughly for any court appearance.

Discovery: gathering, exchanging, and evaluating evidence

Discovery is the process which allows each side to examine the other's evidence. Colorado criminal procedure requires the prosecution to make specific mandatory disclosures to the defense, which includes any police reports, witness statements, results of scientific tests, and expert opinions regarding the case. The defense may also request that the court order the prosecution to make additional, optional disclosures. For its part, the defense is obligated to provide certain information to the prosecution, e.g. the nature of defense or alibi, expert opinions about the case, and any medical or scientific reports to be used at trial.

An experienced criminal defense attorney is qualified to analyze and evaluate the evidence against the client and form an appropriate defense strategy. A defense strategy will include developing a theory of the case, filing pre-trial motions, conducting an independent examination and re-testing of the physical evidence, finding qualified expert witnesses to testify in your behalf, and gathering additional evidence to support the client's innocence.

A good defense strategy serves multiple purposes. It is certainly indispensable in preparation for trial. However, it should also allow the defendant to take full advantage of any mistakes, irregularities, or rights violations on the part of the government. Moreover, proper tactics force the prosecutor to work hard each step of the way, encouraging him or her to dismiss the charges or settle the case on the defendant's terms. It is important to keep in mind that trying the case is only an aspect of criminal defense, and one which can often be avoided with the help of a skilled attorney.

Entering a plea

Following the preliminary proceedings in a case, District Court will hold an arraignment. The purpose of an arraignment is to inform the defendant of the charges against him or her. This is the hearing when the defendant is required to enter a plea to each charge.

Depending on the nature of the charges, the defendant may have to enter the plea in person. In cases where arraignment may take place in the defendant's absence, the defense attorney may enter the plea on the client's behalf.

In county and municipal court, the defendant may be expected to enter a plea at the first scheduled hearing.

Preparing for trial

Following a "not guilty" plea, the court will allow time for discovery (the exchange of evidence), the gathering of evidence, filing pre-trial motions (requesting, for instance, that the court vindicate the defendant's rights violated by the government), trial preparation, and plea agreement negotiations. Many cases are resolved before trial as a result of the defense's diligent efforts and aggressive advocacy on the client's behalf.

If no resolution is reached, the case proceeds to pre-trial and trial. Pre-trial is meant to inform the court of the status of the case. The judge will take this opportunity to ascertain each side's readiness for trial, making sure that all the necessary preparation has taken place. At this time, the judge may also rule on any outstanding pre-trial motions.

A criminal trial is the defense's chance to present its case to a fact-finder, usually a jury, and argue the defendant's innocence. A seasoned criminal defense attorney is well-versed in trial tactics and can maximize the client's chances for a favorable verdict.

Right to a jury trial

A criminal case will generally be tried to a jury; however, there is some variation depending on the charged offense. A defendant facing felony charges has the right to be tried by a jury of twelve. However, if the charged offense is a misdemeanor, the defendant is entitled to a jury of six. Finally, a defendant accused of a class 1 or 2 petty offense may have the case tried to a jury composed of three to six people, but he or she must make a timely request and pay the corresponding fee.

If the prosecution agrees, the defendant may also waive the right to a trial by jury. In that case, the judge would serve as the fact-finder and decide the case.

Plea agreements

A plea agreement is an understanding between the defense and the prosecution regarding the resolution of a case. It is meant to serve as a compromise that is acceptable to both the defendant and the prosecutor, depending on the strengths and weaknesses of each position. A plea agreement allows both sides to avoid the uncertainty, delay, and expense associated with going to trial.

The burden of proof in a criminal case is high—the prosecution has to prove guilt beyond a reasonable doubt. This standard applies to all the elements of the charged offense. Therefore, the prosecutor may decide that a trial would be too risky. In such a case, the prosecutor may agree to reduce the punishment or offer a deferred sentence in exchange for a guilty plea. As another possibility, the prosecutor may offer to dismiss the more serious charges if the defendant pleads guilty to a lesser offense. Such options may be attractive to a defendant depending on the strength of the defense's case. While the defense need only cast "reasonable doubt" on one element of the offense, a trial is inherently unpredictable and may not be advisable depending on the circumstances.

Since a guilty plea may operate in much the same way as a conviction, the defendant should be made aware of the possible negative ramifications of entering a plea agreement.

An experienced criminal defense attorney is invaluable in negotiating a plea agreement and ensuring that the outcome of the process is not skewed unfairly toward the prosecution. Familiarity with prosecutorial tactics is crucial in order to effectively represent the defendant's interests and obtain the most advantageous resolution of the case.

Deferred sentence

A plea agreement may involve a deferred sentence. A deferred sentence means that the defendant enters a guilty plea and waives his or her right to trial; however, the imposition of the sentence is postponed for a certain period of time, assuming that the defendant complies with the imposed conditions. Typical conditions include having no future criminal violations and, depending on the nature of the charges, completing a class on substance abuse, domestic violence, or anger management.

If a defendant fails to comply with the imposed conditions, the court will enter a conviction on the charges and impose a sentence. If the defendant successfully complies with the imposed conditions for the entire deferment period, the court will withdraw the guilty plea and dismiss the charges. However, the history of the case may still appear on the defendant's criminal record.

DUI & DWAI

Legal alcohol limit in Colorado

The legal alcohol limit is based on the blood alcohol content (BAC), which is the concentration of alcohol in a person's blood. Colorado has a strict statutory scheme that governs drunk-driving. Pursuant to Colorado Revised Statutes § 42-4-1301, a person may be charged with a DUI (Driving under the influence), a DUI per se, or a DWAI (Driving while ability impaired).

A DUI per se means that a person drove a vehicle with a BAC of 0.08 or more. In turn, a DUI means that a person drove a vehicle after consuming alcohol, drugs, or a combination thereof which rendered him or her substantially incapable to operate a vehicle safely. A DWAI means that a person drove a vehicle after consuming alcohol, drugs, or a combination thereof which affected him or her to a slightest degree and rendered him or her less able than an ordinary person to operate a vehicle safely.

The law establishes several presumptions with respect to different BAC levels. If a person's BAC was 0.05 or less, the law presumes that he or she was not affected by the alcohol consumed. If a person's BAC was in excess of 0.05 but less than 0.08, the law presumes that his or her ability to operate a vehicle was impaired. If a person's BAC was 0.08 or more, the law presumes that he or she was under the influence of alcohol.

Rights and obligations when stopped by law enforcement personnel on a DUI suspicion

An officer who investigates a possible DUI violation is likely to inquire about your activities before being pulled over as well as your alcohol and/or drug consumption in the hours prior to the stop. You may decline to answer these or any other questions.

The stopping officer may also ask you to perform roadside maneuvers or field sobriety tests. The performance of these maneuvers is voluntary, and you may decline to do so. However, your refusal may be brought up at trial by the prosecution. At the same time, an unsatisfactory performance of the maneuvers would serve as evidence of impairment, even if the chemical testing does not reveal an above-limit BAC.

Pursuant to Colorado's Express Consent Law, when you drive a car in Colorado you are presumed to consent to having your BAC determined by either a blood or breath test. If the law enforcement officer

has probable cause to believe that you are driving while your ability to operate your vehicle is impaired by alcohol and/or drugs, you are required to complete a blood or breath test.

A breath test can be performed at the police station. A blood sample, on the other hand, needs to be collected by a certified phlebotomist, which entails transporting the person to an appropriate location for the test. Either type of testing needs to be administered within two hours of driving.

If you refuse to complete a blood or breath test, your license may be suspended for 12 months.

Preparing a defense

Every person has the right to inspect the police reports, chemical testing results, and related documentation in the possession of the District Attorney's Office. However, these documents, known as discovery, are not provided automatically. Therefore, it is important to request them from the DA's Office. If you retain counsel, your attorney will assist in this process.

A careful examination of the DA's discovery is indispensable. It helps to determine what grounds for dismissal or defenses may apply in a particular case. An attorney presented with the discovery packet can evaluate the officer's justification for the stop and arrest, confirm the timing and reliability of any chemical testing, and assess compliance with various state regulations and operational procedures such as the proper calibration of the testing equipment and the possession of required certifications. Such information is not only useful in the context of any criminal proceedings but also in the preparation for a hearing at the Division of Motor Vehicles (DMV) regarding your driver's license.

Effect on the arrested person's driver's license

Being charged with a drunk-driving offense may affect your driving privilege. Suspension or revocation of a driver's license is an administrative penalty that is separate from any criminal punishment following a DUI or DWAI conviction. The Colorado Department of Revenue, Division of Motor Vehicles (DMV), handles all matters pertaining to your driver's license.

Pursuant to Colorado Revised Statutes § 42-2-126, driving with a BAC of 0.08 or more will result in a revocation of one's driver's license. For offenses committed before January 1, 2009, the revocation period is three months for a first violation and one year in case of a second or subsequent violation. For offenses committed on or after January 1, 2009, the revocation period is nine months for a first offense, one year for a second offense, and two years for a third or subsequent offense. The revocation period for refusal to take a chemical test is one year for a first violation, two years for a second violation, and three years for a third or subsequent violation.

The revocation is effective seven days after you receive a Notice of Revocation, unless you submit a timely request for a hearing at the DMV. You are likely to receive the notice on the day of the arrest if you take a breath test or refuse to submit to chemical testing of your BAC. If you select a blood test, the notice will come to you at a later date due to the time needed to obtain the test results.

Even if the case against you is dismissed at the DMV hearing or your license is not subject to revocation, you may still lose your driver's license based on the outcome of the criminal proceedings against you. A DUI conviction is a 12-point offense that results in a mandatory surrender of a person's license pursuant to Colorado Revised Statutes § 42-2-129. On the other hand, a DWAI conviction is an 8-point offense. Depending on the person's driving record, this may be enough for a point-based suspension of driving privilege pursuant to Colorado Revised Statutes § 42-2-127.

An experienced Colorado Springs criminal defense attorney can explain the impact that a DUI arrest may have on your driver's license.

Difference between a revocation and a suspension of a driver's license

A driver's license may be suspended or revoked, depending on the situation. A revocation is a more severe measure than a suspension. A chemical test result showing a BAC of 0.08 or more, multiple drunk- or drugged-driving convictions, or the refusal to take a chemical test are among the circumstances that subject someone to a revocation.

While a suspended license is temporarily invalidated, a revoked license is void and may not be reissued. A revoked license may be reinstated, but doing so requires passing the written and driving exams.

Importance of a DMV hearing

You have the right to present your version of events and argue against any action on your driver's license at a hearing before a Department of Revenue hearing officer. Therefore, as the first order of business following an arrest, you should request a hearing at the Colorado Department of Revenue's Division of Motor Vehicles (DMV).

While you have a right to a hearing, it is not automatic. You must request a hearing within seven days of receiving a Notice of Revocation. Otherwise, you waive your right to a hearing. Therefore, make sure to contact the DMV promptly, as this is an opportunity to reduce the impact of the DUI arrest on your ability to drive.

Moreover, requesting a DMV hearing allows you to keep your driving privilege until the time of the hearing; otherwise, you will automatically lose it seven days after receiving the Notice of Revocation.

The mechanics of a DMV hearing

The DMV hearing is an administrative proceeding regarding your driving privilege. It takes place before a hearing officer at the designated DMV branch. You have the right to be represented by an attorney at the hearing. The hearing officer will take testimony from the law enforcement officer who arrested you. You or your attorney may then ask questions of the officer. You may also testify, but you are not required to do so. In addition, you may call witnesses to testify on your behalf; however, you have to subpoena them sufficiently in advance.

Upon the completion of all testimony, the hearing officer will make his or her findings based on the introduced evidence. He or she will decide what will happen with your license. If your driving privilege is affected by the DUI arrest, you may request that the hearing officer consider granting you a restricted driver's license, also known as a probationary license or a red license. Depending on the circumstances, such an option may or may not be available.

A restricted driver's license (red license)

A restricted license, also known as a probationary or red license, is an alternative to the usual revocation. When available, this option shortens the revocation period, which is then followed by a longer period while the person's license is subject to restrictions that the hearing officer deems reasonable and necessary.

A restricted license may permit a person to drive for reasons of employment, education, health, as well as driving-, alcohol-, or drug-related coursework. The total amount of time that a person's driving privilege is affected may be longer, but the restriction is not as drastic as a revocation. However, a restricted license is subject to cancellation for any violation of its terms.

The hearing officer may consider a request to be issued a probationary driver's license immediately after him or her ruling to restrict your driving privilege. There are several considerations that the hearing officer may take into account in deciding whether a probationary license may be appropriate and what the type of restrictions should be imposed. The hearing officer may examine your needs and reasons for driving,

other transportation options available to you, and your driving record. It may also be helpful if you are able to demonstrate your enrollment and/or attendance of a traffic safety school.

An experienced Colorado Springs criminal defense attorney can determine whether you may be eligible for a probationary license and argue your case to the DMV Hearing Officer.

Defending against the loss of driving privileges

The purpose of a DMV hearing is to ensure that certain procedural safe-guards have been observed in your case. A person's license may not be taken away if due process considerations were not respected or if the evidence against you is insufficient or unreliable. If the case is dismissed at the hearing, your license will be reinstated. It is important to note that dismissals are unusual.

The following are grounds for dismissing the DMV case:

- (1) The DMV hearing must occur within sixty (60) days of your request for a hearing. In exceptional cases, the hearing may be held beyond the sixty days. However, most cases will be dismissed if the hearing is not held within sixty days of your request.
- (2) The hearing officer finds that the arresting officer did not have reasonable grounds/suspicion to stop you, and/or the arresting officer did not have probable cause to request a blood or breath test.
- (3) The arresting officer did not complete the BAC test (breath or blood) within two hours of your driving/arrest.

An experienced Colorado Springs criminal defense attorney can determine which defenses might be applicable in your case.

Ignition interlock device

Pursuant to Colorado Revised Statutes § 42-2-132.5, a person who has multiple alcohol-related driving offenses or drove with a BAC of 0.17 or more will be required to have an ignition interlock device installed in the vehicle as a condition of reinstating his or her driver's license. An interlock device interferes with the driver's ability to start the vehicle until he or she passes a breathalyzer test. Moreover, at random times after the vehicle is started, the interlock device will require retesting.

Persons under 21 years of age

The law has some special provisions for persons who are under 21 years of age. For instance, you may be charged even if your BAC is below the impairment level of 0.05 but above 0.02. As another example, different penalties may apply to persons under 21. Therefore, it is important to check how your age may affect any proceedings against you.

Commercial drivers

There are some special provisions that apply to persons with a commercial driver's license. For instance, pursuant to Colorado Revised Statutes § 42-2-126, a person's commercial driving privilege is subject to revocation for driving a commercial vehicle with a BAC of 0.04 or more. Additional considerations may also apply to commercial drivers transporting hazardous materials or those under 21 years of age. Of concern may also be the possible effect of any alcohol- or drug-related charges on a commercial driver's employment. Therefore, it is important to check how your status as a commercial driver may affect your case.

Driving under the influence of drugs (DUID)

Both drunk- and drugged-driving are governed by Colorado Revised Statutes § 42-4-1301, and both behaviors subject the driver to criminal charges. However, there are some significant differences between the two. Given the large number of controlled substances that may affect a person's ability to drive, there

is no DUID per se that would correspond to a DUI per se when a person's BAC is 0.08 or more. It would be impracticable to establish a predetermined scheme of intoxication levels requiring restriction of a person's driver's license. Therefore, being charged with a drugged-driving offense does not have as immediate an effect on someone's driver's license as alcohol-related charges. The DMV generally becomes involved in a drugged-driving case only after a conviction in District Court. The driver is then evaluated for a points-based action on his or her driver's license.

DOMESTIC VIOLENCE

Definition

Under Colorado law, domestic violence refers to any act or threatened act of violence against a person who has been or is involved in an intimate relationship with the actor. An intimate relationship can exist between spouses, former spouses, unmarried couples who live or have lived together, or parents of a child.

Restraining orders

Domestic violence is a common reason for obtaining a civil protection order, also known as a restraining order. Unlike a criminal prosecution brought by the government, protective order proceedings are civil. They are initiated by the party who requests the court's protection. Therefore, criminal charges and protective order proceedings are separate. A person may face allegations of domestic violence in either or both of these contexts. An experienced criminal defense attorney will be knowledgeable about defending a client on any criminal charges as well as defending against the entry of a restraining order.

Effect of a conviction on weapons permits and working with firearms

In 1996, the Lautenberg Amendment was added to the Gun Control Act of 1968 and codified as 18 U.S.C. § 922(g)(9). It restricts the access to firearms or ammunition of any person convicted of a misdemeanor crime of domestic violence, whether in state or federal court. The law not only covers possession and the ability to carry a weapon, but also the shipping or transport of firearms or ammunition in interstate commerce.

The Lautenberg Amendment means that a domestic violence conviction can have especially grave consequences for members of the Armed Forces, those who work in law enforcement, and hunters. An experienced criminal defense attorney can help a person charged with a crime of domestic violence evaluate the potential impact of the criminal proceedings on his or her professional or personal use of a firearm.

Since the Lautenberg Amendment is only triggered by domestic violence convictions, it does not apply to cases that involve only restraining order proceedings and do not have a criminal component. In those situations, the Brady Bill applies and can have the same effect on a person's ability to lawfully possess a weapon.

RESTRAINING ORDERS

Definition

A civil protection order, also known as a restraining or protective order, is a legal document that prevents the restrained person from engaging in certain actions so as to protect the person for whose benefit the order is issued from imminent danger to life or health.

A typical protection order may prohibit the restrained person from contacting the protected person, going to certain places, or establish a “buffer-zone” around the protected person. Depending on the circumstances, other persons, such as the protected party’s children, may also be included in the protection order.

A civil protection order may be temporary or permanent. While a TRO expires at a specified time, a Permanent Protection Order (PRO) continues in place unless dismissed.

Application and use of a protection order

A protection order may be appropriate in a variety of situations. In accordance with Colorado Revised Statutes § 13-14-102, a civil protection order is meant to prevent: (1) assaults and threatened bodily harm; (2) domestic abuse; (3) abuse of the elderly or at-risk adults; and (4) stalking.

Domestic abuse involves an actual or threatened act of violence against a relative or someone with whom the actor is sharing or had once shared a home or an intimate relationship. The provision regarding abuse of the elderly offers protection to anyone 60 years or older, while “at-risk” means someone unable to take care of his or her needs and/or communicate them.

Stalking may entail making a credible threat followed by repeated behavior or communications in connection with the threat. However, an express threat is not necessary; all that is needed to show stalking is repeated behavior or communications that would cause a reasonable person to suffer serious emotional distress and actually has that effect on the victim.

Enforcing compliance with a protection order

The protected person can call the police or sheriff’s office if the restrained person attempts to disobey or has disobeyed a restraining order. A violation of a protection order constitutes contempt of court or a criminal offense pursuant to Colorado Revised Statutes § 18-6-803.5. The initiation of a contempt or criminal action subjects the restrained person to various penalties, including a possible jail sentence.

An experienced Colorado attorney can assist you in enforcing compliance with a protection order, prosecuting a violation of a restraining order, or in defending a contempt or criminal action against you.

Obtaining a Temporary Protection Order

In recognition of the gravity of domestic violence and other types of abuse, Colorado has established a simplified process for obtaining a civil protection order. Civil protection orders are governed by Colorado Revised Statutes § 13-14-102. Once a person files a petition with the County Court, the hearing on the matter will be held on the same day, at which time the judge will decide whether to grant the petitioner temporary protection.

The hearing is ex parte, which means that the other side is absent and lacks notice of the proceedings. There are typically many people seeking a protection order at the same time, and the judge will call each case one by one. An attorney may accompany his or her client at the hearing, and represented parties generally have their cases called first. The judge will ask about the basis for seeking a protection order. The petitioner may answer the court’s inquiries personally or may have the attorney speak in his or her behalf.

Once the court enters a TRO, proper service on the restrained party is required. The service may be accomplished through the sheriff’s office or a private process server.

What to show at the hearing

The judge presiding over the initial hearing will issue a TRO if he or she finds that the petitioner’s life or health is in imminent danger. In order to determine the presence of imminent danger, the judge will consider when the most recent incident of abuse or threat of harm occurred. However, the timing of is just

one consideration, and the judge would be loath to deny someone's petition just because time has passed between the alleged abuse or threat and the filing for a TRO. In making the decision, the judge would also likely consider the severity of the abuse or the threatened harm. In addition, the judge may inquire into the history of abuse or threats in order to gain a broader understanding of the situation.

Typically, statements made by the party seeking protection or explanations given by the person's attorney are sufficient for the court to make the requisite findings. In general, no additional evidence is needed.

The burden of proof that the court will apply to make a decision in any protection order proceeding is preponderance of the evidence. This means that the judge must be convinced that the petitioner's version of the events is more likely to be true than not true. More often than not, judges are inclined to grant the petitioner temporary protection even in "close call" cases, given that a more detailed "show cause" hearing is forthcoming.

An experienced Colorado attorney can refine your presentation to the court, by including precise allegations in the petition and explaining them to the judge.

Making a protection order permanent

The law provides for making a Temporary Protection Order permanent. At the time of granting a TRO, the court will set a date for a "show cause" hearing, when the court will decide whether to make the order permanent. The protection afforded by the TRO will expire at the time of that hearing.

Attendance at the "show cause" hearing is of utmost importance. If the protected party does not attend, the court may dismiss the TRO. On the other hand, if the restrained party does not appear, the court will enter a permanent protection order.

If the restrained party attends, the protected party must be prepared to argue his or her case to the court. The person seeking a permanent protection order must show that the restrained party has committed the alleged acts and will continue to commit such acts unless restrained. If the judge makes the required findings, he or she will make the existing TRO permanent or may enter a PRO with different provisions, depending on the circumstances.

As with a TRO, the standard of proof is preponderance of the evidence, except that the hearing is not ex parte. You must be prepared for a contested hearing. At the hearing, each party has the right to present witnesses to testify in support of his or her position. However, witnesses may have to be subpoenaed in advance of the court date.

It is important to note that in situations involving allegations of violence or abuse, facing the other party may prove extremely emotional and unnerving. Those entering the courtroom should try to anticipate these issues and prepare themselves accordingly. Enlisting the support of friends and family members and/or retaining counsel are advisable. An experienced Colorado attorney can prepare you for the "show cause" hearing and make a persuasive argument to the court in your behalf.

Defending the entry of a protection order

The restrained person's copy of the TRO will include the allegations against him/her and the date of the hearing when the court will decide whether to make the protection permanent.

It is essential that the restrained party attend the "show cause" hearing. Otherwise, the court will enter a Permanent Protection Order (PRO) against the restrained person by default. Therefore, it is imperative you come to the hearing prepared to argue why the order should not be made permanent.

In order for the court to convert a TRO into a PRO, the person making the request must show that the allegations against the restrained party are more likely true than not true and that the restrained party will continue to commit such acts unless permanently restrained. In an effort to convince the court otherwise,

the restrained party may take the stand or call witnesses to testify on his or her behalf. The witnesses may have to be subpoenaed in advance of the court date.

Postponing the court hearing

Postponing a court hearing is called a continuance. A party who is unprepared or unable to present his or her position to the court at the scheduled time may request a continuance. A continuance means that the court will set a new hearing date at a more convenient time. This may be done in advance by motion or when the court calls the case at the original designated time.

If the other side objects to the request for a continuance, the judge must schedule the new hearing within 14 days. If both parties agree to continue the case, the hearing may be scheduled up to 120 days into the future. The protection of the temporary order will last until the new court date.

Dismissal of a Permanent Protection Order

The protected party may request dismissal of a permanent protection order at any time. The restrained party, on the other hand, must wait 4 years from the issuance of the order, its modification, or the disposition of any other motion on the matter. Additionally, the restrained party is ineligible to request dismissal if he or she has been subsequently convicted of a felony or a misdemeanor involving domestic violence.

In order for the court to consider dismissing a PRO, the restrained person must complete a fingerprint-based criminal history check within 90 days of filing the motion. The court will grant the motion to dismiss only upon finding that the PRO is no longer necessary.

Modification of a Permanent Protection Order

Either side may request that the court modify the PRO. The other party must be served personally with a copy of the motion. The court will grant the motion if it finds that the requested modification is appropriate. A modification may limit, expand, or simply change the restrictions delineated by the existing order's provisions. Modification may be used to update the information contained in the order—providing the protected person's current residential or workplace address or adding another location that you have come to frequent. If warranted, the court may also modify the order to include additional protected persons.

The protected party may request the modification of a PRO at any time. The restrained party must keep in mind that the same time limitations and conditions apply to his or her motion to modify as to a motion to dismiss.

Effect on ability to carry a firearm

The impact of a restraining order on the restrained party's ability to carry a firearm is frequently of concern. In certain cases, the person's employment may be affected.

The Brady Bill, codified under 18 U.S.C. § 922, makes it illegal to receive, possess, or transport any firearm or ammunition while being subject to a qualifying protection order. A protection order triggers the Brady Bill restrictions if the issuing court observed certain due process safeguards and made specific findings that the restrained person represents a credible threat to the safety of an intimate partner or child or expressly prohibited the use, attempted use, or threatened use of physical force against the protected party.

The Brady Bill provides for an "official use" exemption. The exemption applies to government employees, including law enforcement and military personnel. It allows such persons to possess and use firearms as part of the performance of their official duties, even if they are restrained by a qualifying protection order.

Whereas, the Lautenberg Amendment, codified as 18 U.S.C. § 922(g)(9), restricts the access to firearms or ammunition of any person convicted of any state or federal misdemeanor crime of domestic violence. Therefore, while the issuance of a protection order may not trigger the application of the amendment, a violation of a protection order will.

SEALING RECORDS

The process designed to protect criminal defendants from the lingering impact of a criminal record is called sealing. Criminal background checks are increasingly common for employment, education, housing, or security clearance purposes. Therefore, many clients decide to seal their records when such an option is available. A sealed arrest or conviction will not show up when someone runs a criminal background check.

Sealing is not automatic. In fact, sealing is not part of the original case brought by the prosecution. It requires initiation of a new civil proceeding, which is accomplished by filing a petition to seal. Colorado has a statutory scheme that sets out all of the applicable standards and requirements. Whether the record of an arrest or conviction can be sealed depends on the type of offense charged. Long waiting periods apply to certain types of offenses, and some records may not be sealed. Moreover, the District Attorney's Office may object to the sealing on statutory or public policy grounds. The assistance of an experienced criminal defense attorney will help to maximize your chances for a successful sealing.

For more information, contact Colorado Springs criminal law attorneys at Anderson & Travis L.L.C.

Phone: 719.520.5011

Email: info@andersonandtravis.com

Website www.andersonandtravis.com