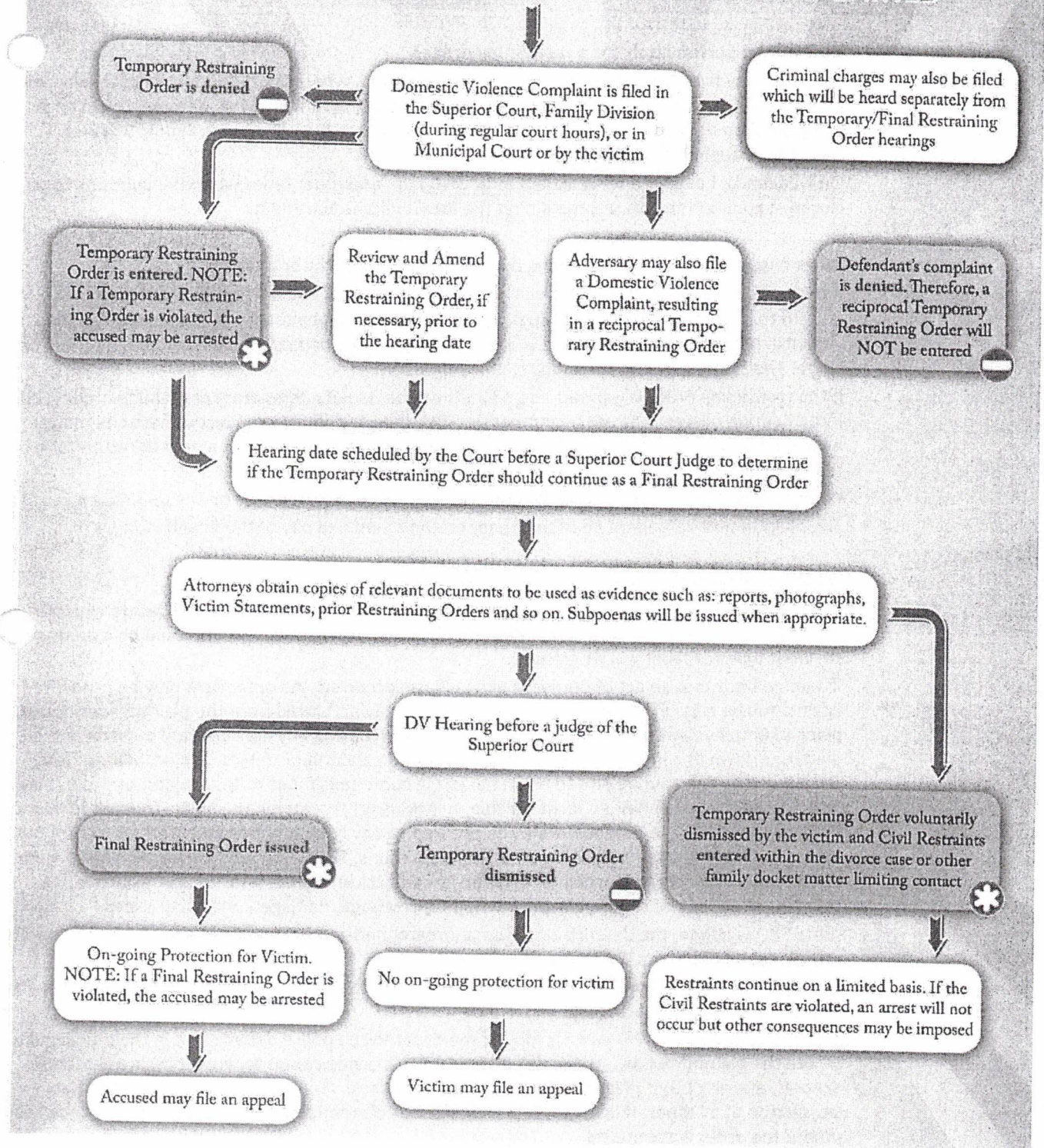


THE DOMESTIC VIOLENCE LEGAL PROCESS EXPLAINED



Module 4: Domestic Violence and the Law

The Prevention of Domestic Violence Act (PVDA)

In 1991, the NJ Legislature found and declared that domestic violence is a serious crime and that thousands of persons in NJ were regularly beaten, tortured and in some cases killed by their spouses or cohabitants, and that a significant number of women were assaulted while pregnant. It also found that victims of domestic violence came from all social and economic backgrounds, that there is a positive correlation between spousal abuse and child abuse and that children, even if they are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. The Legislature further found that some of its most vulnerable citizens, the elderly and disabled, are victims of domestic violence as well. The Legislature also found that although many of the existing criminal statutes were applicable to acts of domestic violence, societal attitudes concerning domestic violence have affected the response of the law enforcement and judicial systems resulting that these acts received different treatment from similar crimes when they occur in a domestic violence. The Legislature additionally identified the training needs of police and judicial personnel in the procedure and enforcement of this act. PVDA provides for two forms of relief to a victim of domestic violence: Civil relief, which is in the form of obtaining a restraining order, and criminal relief, which allows a victim to file charges against the batterer.

The 19 Crimes of Domestic Violence

Victims of domestic violence may get help through the courts. For example, a victim who has been in a violent relationship and feels unsafe may be able to take steps to keep the abuser away by filing a restraining order. A judge may grant a restraining order if the victim proves that he or she has been subjected to one of following crimes set forth in the above PVDA and is in need of the protections of that order.

Harassment (N.J.S.A. 2C:33-4): In order to commit the crime of harassment, a person must intend to harass another person. An example of harassment is where someone communicates with you at inconvenient hours or uses rude and profane language. A person may harass you by using email, regular mail, phone calls, texting, face-to-face communications, or any other way that sends a message from the abuser to you. The communication must annoy or alarm you.

Assault (N.J.S.A. 2C:12-1): The most common example of an assault is when an abuser hits a victim. An abuser may harm a victim or try to harm a victim. The harm may be done with or without a deadly weapon. If an abuser threatens to harm you, this may also be considered an assault. For example, an abuser may knowingly have threatened you with a gun, whether or not it was loaded, and may not have cared that you could have been hurt. In any of these cases, an abuser may be guilty of assault.

Terroristic threats (N.J.S.A. 2C:12-3): An abuser who threatens to commit any violent crime with the purpose of terrorizing you may be guilty of terroristic threats. An abuser may also be guilty of terroristic threats if the abuser threatens to kill you or someone else and you believe that the abuser can and will do it. A conditional threat ("If you do X, then I will kill you.") may not meet the standard for a terroristic threat.

Criminal mischief (N.J.S.A. 2C:17-3): An abuser who breaks any of your belongings on purpose may be guilty of criminal mischief. The property that the abuser breaks must belong only to you. It cannot be property that you and the abuser own together. If an abuser tampers with your property in a way that puts you or your belongings in danger, the abuser may be guilty of criminal mischief. Common examples of criminal mischief include someone keying your car, punching a hole in the wall of your home, or breaking your cell phone.

Criminal restraint (N.J.S.A. 2C:13-2): An abuser who keeps you in a place that puts you at risk of serious bodily injury or keeps you somewhere and will not allow you to leave may be guilty of criminal restraint. For example, if you are locked in a room and the abuser begins attacking you, that is criminal restraint. Serious bodily injury means any injury that could be deadly or cause long-term disability. Criminal restraint may also exist if you are subjected to a life of servitude against your will.

False imprisonment (N.J.S.A. 2C:13-3): If an abuser is keeping you somewhere you do not want to be and will not let you go, the abuser may be guilty of false imprisonment. False imprisonment is different from criminal restraint in that false imprisonment does not require risk of serious bodily injury. For example, if a woman is restrained from leaving a particular area because of an abuser's actions but is not injured in any way, the abuser may be found guilty of false imprisonment, not criminal restraint.

Burglary (N.J.S.A. 2C:18-2): Burglary may be committed in two ways. If someone breaks into a house or other secured building and has the intent to commit a crime inside, that person's actions may be considered to be burglary. If a person secretly hides out in a house or other secured building without permission to be there with the intent to commit a crime inside that house or building, that person may have committed an act of burglary.

Criminal sexual contact (N.J.S.A. 2C:14-1, 2C:14-3): A person who uses force or coercion (such as bullying or threatening violence) to have sexual contact with another person may be guilty of criminal sexual contact. Without freely given consent to the sexual activity, the contact may be considered to be by force or coercion. Criminal sexual contact may also include situations where the abuser physically overpowers the victim. Sexual contact is defined as intentionally touching the victim's thigh, groin, buttocks, or breast without the victim's consent. The abuser must be doing this for personal sexual pleasure or to humiliate or degrade the victim.

Sexual assault (N.J.S.A. 2C:14-1, 2C:14-2): Sexual assault is any instance where an abuser uses force or coercion to sexually penetrate another person. Force or coercion may mean a time where the victim does not provide freely given consent to the sexual activity but may also include the abuser physically overpowering the victim. Sexual penetration means vaginal sex, anal sex, oral sex, or putting fingers or objects into the vagina or anus. It does not matter if the penetration was done by the abuser personally or if the abuser ordered the victim to commit the penetration.

Kidnapping (N.J.S.A. 2C:13-1): Kidnapping is when an abuser takes a victim from where he or she is presently located to another location. To commit a kidnapping, it must be done by force, threat, or deception. Kidnapping may be defined as the act of an abuser confining a victim as a hostage or for ransom. Kidnapping may also be defined as when an abuser keeps a victim somewhere for a long time to hurt or scare the victim.

Stalking (N.J.S.A. 2C:12-10, 2C:12-10.1): A person is a stalker if that person, more than once, stares at another person for a long time, follows someone or sends other people to follow someone, interferes with the belongings of another person, harasses another person, or sends threats in any way to another person. The stalker must have done any of these actions with purpose or must have known that it was likely to make the victim feel scared or uncomfortable. A stalker may also stalk another person in order to scare you. If an abuser is convicted of stalking in criminal court, the victim may receive a separate criminal restraining order. Parents may file a complaint for a restraining order based on stalking on behalf of their children.

Lewdness (N.J.S.A. 2C:14-4): Lewdness is when a person does something “flagrantly lewd and offensive” in front of another person who would not want to see the offensive act. A common example of this is a person who exposes his or her private parts for their own gratification to a non-consenting person.

Criminal trespass (N.J.S.A. 2C:18-3): If someone enters or hides out in a house or other building and does not have permission to be there, that person may be guilty of criminal trespass. The person must also know that he or she needed permission or did not have permission to be there. Some places will not allow people to enter. There might be a guard keeping people out of a building or part of a building, a sign telling people not to enter, or a fence or locked door blocking people from entering. If a person ignores restrictions such as signs, locked doors, fences, or a security guard and enters anyway, that person may be guilty of criminal trespass. There are times when people do not expect to have anyone watching them, such as when they are sleeping or in the bathroom. If someone is peeking in through windows to watch another person in a home and the person being watched did not reasonably expect to be watched, the person peeking may also be guilty of criminal trespass.

Homicide (N.J.S.A. 2C:11-1 to 2C:11-4): Homicide is the crime of one person causing the death of another person. Homicide will not be part of a final restraining order hearing.

Criminal coercion (N.J.S.A. 2C:13-5): A person is guilty of this crime if he or she restricts another person’s freedom of action such as exposing secrets that would expose a victim to hatred or ridicule.

Robbery (N.J.S.A. 2C:15-1): The offense of robbery can be a first degree or second degree charge, defined as the commission of a theft through force or threat of force.

Cyber-Harassment (N.J.S.A. 2C:33-4.1): A person commits the crime of cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another

Contempt of a domestic violence order (subsection b. of N.J.S.2C:29-9)

Any other crime involving risk of death or serious bodily injury to a person protected under the "Prevention of Domestic Violence Act" (C.2C:25-17 et a1.) This constitutes a crime or offense, and a catch-all provision for any other crime involving risk of death or serious bodily injury to a person protected under the Domestic Violence Act.