

## Domestic Battery Charge

### BOND AND THE 48 HOUR HOLD

The Porter County Courts have established a standing court order which requires a 48 hour hold for anyone charged with domestic battery. This means that you may spend a minimum of 48 hours in custody prior to being able to post bond.

### CRIMINAL PENALTIES

A conviction for a Class A Misdemeanor is as follows:

**IC 35-50-3-2.** Class A Misdemeanor – A person who commits a Class A Misdemeanor shall be imprisoned for a fixed term of not more than 1 year; in addition (s)he may be fined not more than (\$5,000 dollars).

Penalties for a Class C Misdemeanor is as follows:

**IC 35-50-3-4.** Class C Misdemeanor – A person who commits a Class C Misdemeanor shall be imprisoned for a fixed term of not more than (60) days; in addition (s)he may be fined not more than (\$500 dollars).

Penalties for a Level 6 Felony is as follows:

**IC 35-50-2-7.** Level 6 Felony – A person who commits a Level 6 Felony shall be imprisoned for a fixed term of between (6) months and (2 ½) years, with the advisory sentence being (1) year. In addition the person may not be fined more than (\$10,000 dollars).

Penalties for a Level 5 Felony is as follows:

**IC-35-50-2-6.** Level 5 Felony – A person who commits a Level 5 felony shall be imprisoned for a fixed term of between (1) and (6) years with the advisory sentence being (3) years. In addition, the person may be fined not more than (\$10,000 dollars).

### PROSECUTOR CONTROL

The Porter County Prosecutor controls these charges against you. The victim cannot decide that he/she does not wish to pursue the criminal charges against you. That is in the sole discretion of the Prosecutor's office.

### NO CONTACT ORDER

It is likely that a No Contact order had been entered against you. This means that you are to have no contact whatsoever with the victim, so long as this order is in effect. If you are married to the victim and have children this will preclude you from continuing to reside together and possibly having any contact with your children. If the victim chooses to have the No Contact Order lifted, Rhame, Elwood & McClure can assist he/she in doing so. There is a formal process which must be followed for this to occur.

### FELONY CONVICTION

If you are convicted of a misdemeanor domestic battery you must be aware that if you are charged again, it will be charged as a felony. It is vital that you defend the first charge of domestic battery vigorously. Rhame, Elwood & McClure can assist you in doing so. Prosecutor's offices take domestic battery very seriously. They will fight vigorously for a conviction. With Rhame, Elwood & McClure's experience, and the procedures we employ, it is possible that we can avoid a conviction of domestic battery for you.

### **DOMESTIC VIOLENCE DETERMINATION**

The Indiana Courts have been required to make Violence Determination when there is a Domestic Battery Conviction. The following is a copy of the form in which the court signs:

#### **DOMESTIC VIOLENCE DETERMINATION**

The Court, in accordance with I.C. 35-38-1-7.7, having heard evidence at trial, or based on a factual basis provided as a party of guilty pleas in this case now finds that the Defendant has committed a crime of domestic violence, as defined by I.C.35-41-1-6.3. The Defendant has been advised that upon conviction he/she shall lose the right to possess a firearm. Possession of a firearm or ammunition may constitute a separate crime, parenting time with a minor child may be restricted, and other legal penalties may be applicable and should be discussed with his/her attorney.

"Crime of domestic violence," as defined by I.C. 35-41-1-6.3 means an offense or the attempt to commit an offense that:

- (1.) Has an element the:
  - a. Use of physical force
  - b. Threatened us of a deadly weapon; and
- (2.) Is committed against a:
  - a. Current or former spouse, parent, or guardian of the defendant;
  - b. Person with whom the defendant shared a child in common;
  - c. Person who was cohabiting with or had cohabited with the defendant as a spouse, parent or guardian; or
  - d. Person who was or had been similarly situated to a spouse, parent, or guardian of the defendant

The Defendant was represented by counsel or made a valid waiver of counsel. The Defendant was advised of his/her right to a jury trial and either received a jury trial or knowingly waived that right.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Judge**

As you can see, a domestic violation determination significantly restricts your rights. It can impact your ability to possess a firearm and visit with your minor children. It is critical that you hire a competent attorney to try and avoid this conviction.