

# WILENTZ

—ATTORNEYS AT LAW—

WILENTZ, GOLDMAN & SPITZER, P.A.

## Domestic Violence

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

Domestic violence is a pattern of abusive, controlling behavior that results in physical and/or mental harm to its victims and is also a serious wrongdoing against society and the victims, who come from all social and economic backgrounds. Children, even if they themselves are not physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. In addition, it is not uncommon for a spouse in a divorce action to pursue a restraining order to obtain sole possession of the marital residence or an advantage in a custody action.

In light of the significant consequences domestic violence has on those involved, we offer substantial experience in these delicate situations. If you are a victim of domestic violence or have been served with a restraining order as a purported aggressor, it is important to understand your rights and protect your legal interests. As skilled litigators, we have handled many domestic violence matters throughout New Jersey Courts. We are experienced in both seeking protection for victims of domestic violence as well as defending and protecting the interests of those individuals wrongfully charged with committing domestic violence.

We also have direct access to the Wilentz Criminal Law Team, as domestic violence matters often lead to simultaneous criminal actions brought by prosecutors in both local municipalities and the Superior Court.

### **New Jersey Domestic Violence Act**

The New Jersey Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 *et seq.*, protects victims of abusive “domestic” relations. Under the Act, a “victim” includes spouses, former spouses, household members, former household members, dating relationships and parties that have conceived a child together. In addition, the Act applies to anyone over the age of 18, or younger but has been emancipated, who has been abused by a current or former spouse or any other person with whom the victim currently or previously shared a household.

There are various acts that constitute domestic violence under the Domestic Violence Act and warrant the issue of a Restraining Order, as follows:

- Homicide
- Assault
- Terroristic Threats
- Kidnapping
- Criminal Restraint
- False Imprisonment
- Sexual Assault
- Criminal Sexual Assault
- Lewdness
- Criminal Mischief
- Burglary
- Criminal Trespass
- Harassment
- Stalking
- Criminal Coercion

- Robbery

The most common acts of domestic violence are harassment, assault and terroristic threats. Domestic violence also includes any other criminal behavior involving risk of death or grave bodily injury. The Act provides temporary emergency remedies, as well as long term remedies, to protect victims of domestic violence. As a result, a victim's understanding of his or her legal rights with regard to domestic violence may be different between obtaining the protection of a Restraining Order or continuing to suffer from an abuser and the cycle of violence.

Our New Jersey Courts have also recognized that the Domestic Violence Act is not a primer for social etiquette and should not be used as a sword to wield against every unpleasant encounter or annoying interaction that occurs between household members, spouses, parents or those who have a dating relationship.

### **How to Initiate Court Proceedings**

To initiate Court proceedings, the victim first files a complaint, specifying the parties involved, the act committed, any history of domestic violence, and the requested relief, which is usually an emergent, temporary restraining order ("TRO") against the wrongdoer (the "defendant"). The TRO and the complaint are sent to law enforcement to be served on the defendant. The defendant has the option of filing a cross-complaint for domestic violence against the other party. A final hearing on the TRO is to be scheduled within ten days of the filing of the initial complaint, during which the TRO remains in effect. At the final hearing, the Court will decide whether to grant a final restraining order ("FRO"). In doing so, the Court will consider, among other factors, the previous history of domestic violence between the parties; whether either party is at risk of imminent danger to his or her person or property; the parties' respective financial circumstances; and the custodial arrangement over any child between the parties or over children outside of the allegedly abusive relationship. Victims of domestic violence can also generally request financial support, temporary changes to custody/parenting time arrangements, and/or counsel fees.

**To speak with an attorney about your legal options, please call: 732-352-9871.**