

THE HONEST GUIDE TO SURVIVING A VIRGINIA DOMESTIC ASSAULT CHARGE

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Foreword

Domestic assault and battery is one of the most common criminal charges in Virginia. Back when we were public defenders, it was common for us to have dozens of domestic assault cases on a single docket. From handling hundreds of these cases, we know that most people charged are not the caricature “wife beater.” Most of these cases are simply arguments that spiraled out of control. We know that being charged is incredibly stressful and that it’s hard to find honest information online. Our motivation for writing this guide is to provide you the no-nonsense real truth about getting through a domestic assault and battery charge.

The Basics

Domestic assault and battery is covered by Virginia state code Section 18.2-57.2, which states that any person who commits assault and battery against a member of their own family or household is guilty of a Class 1 misdemeanor. Some people think of domestic assault as assault between husbands and wives, but the legal definition is much broader. Ex-spouses, Parents, Children, Step-parents, Step-children, Siblings, Grandparents, In-laws who live in the same home; People who have children together, and people who live together in a romantic relationship are all covered under the domestic assault law. First time offense domestic assault and battery is a class 1 misdemeanor meaning that the punishment can be up to 12 months in jail and/or a fine of \$2,500.

How Is Domestic Assault Different Than Regular Assault?

The first difference between normal assault and battery and domestic assault is that the case will be heard in juvenile and domestic relations court rather than general district court. The juvenile and domestic relations court is a separate court in every

city that deals with juvenile charges and charges involving family members.

The second big difference is that a domestic assault can be charged as a Class 6 felony if someone has had two prior convictions for domestic assault within the past 20 years. There is no similar felony for regular assault and battery.

A third major difference is that Virginia law under state code Section 18.2-57.3 allows first offense domestic assault charges to be dismissed even if the evidence is sufficient to prove guilt. These are called deferred findings. We'll get into those more later.

A fourth difference is that unlike regular assault, domestic assault and battery requires an actual physical touching. So for instance, if someone brandishes a knife or swings a bat, but no contact is made, it can't be prosecuted as domestic assault and battery.

First Steps

Bond Hearings:

When you're arrested for domestic assault, you're going to be taken before the magistrate who will make an initial bond determination. The magistrate will also typically issue an emergency protective order (EPO) which states that there can be no contact between the parties for 72 hours. There are a lot of factors that go into the magistrate's bond determination. Factors

like a history of arrests for domestic assault, high levels of intoxication, whether there were serious injuries, and the presence of guns or weapons in the home are just some of the factors that a magistrate will consider.

If you're denied bond by the magistrate, the next step is to have a bond hearing in the Juvenile and Domestic Relations Court. A judge at a bond hearing is going to be looking at: your prior record, the nature of the allegation, your history of appearing in court, and whether you have a stable place to live. One of the major factors that often comes up at bond hearings for domestic assault is presenting a game plan for the people involved to have separate places to live.

The bottom-line is that a judge is looking at two major factors: 1.) Whether there is probable cause to believe that there is any danger if you're released and 2.) Whether there is probable cause to believe that you present a flight risk.

Appeal Bond Hearings

If you're denied bond in the Juvenile and Domestic Relations Court, you are entitled to appeal to the Circuit Court where another bond hearing will take place in front of a different judge. The Circuit Court bond hearing is the last bond hearing that you're entitled to by law. If you're denied bond in Circuit Court, there are ways to request a reconsideration of your bond status, but it's going to require a "material change in circumstances." That means

things like new favorable evidence, the prosecution continuing the case over your objection, or witnesses changing their stories. The Circuit Court bond hearing should be regarded as your last realistic shot to be released while the case is pending.

Arraignment

The first scheduled court date is usually going to be an arraignment (sometimes called first appearance or determination of counsel). Many people panic because they believe this is the trial date. The arraignment is simply the court telling you: 1. What you are charged with, 2. Asking what you plan to do for legal representation, and 3. Scheduling the actual trial date.

You do not enter a plea at the arraignment. There are no witnesses and no evidence presented against you. If you hire an attorney before the arraignment, most cities will not require you to appear at the arraignment. If you can't afford to hire a lawyer, you can see if you qualify for court appointed counsel.

Getting Discovery (The Evidence)

The first thing your attorney will do is file a motion for discovery. That requires the prosecution to send over information about the evidence against you. In most cities, the police have a standardized report that they fill out in domestic assault cases. The report can include all of the following information:

- All parties present at the time of offense

- The emotional state of the parties present
- Notations of any drug or alcohol use by either party
- Photos or written descriptions of any injuries
- The statements made by all parties
- Any body camera footage from the officers

Be prepared that the court system moves at a snail's pace. You should expect it to take at least a month if not significantly longer before your attorney receives the evidence. When your attorney does receive the discovery, he/she will contact you. Any reputable attorney is going to want to review all the evidence with you and discuss all the possible defenses and all of your possible options well before your actual trial date.

Can The “Victim” Drop The Charge?

This is the most common question that we get in domestic assault cases. In many cases, the “victim” just wants the case to go away. In fact, it's very common for “victims” to come to consultations with our clients to ask us what they need to do to get the charges dropped.

The answer isn't always simple. The prosecution (called Commonwealth's Attorneys in Virginia) controls the final decision and not the victim. Different prosecutor's offices have different policies. In some cities, prosecutors will drop charges on the

victim's request fairly easily. In other cities, prosecutors will insist on taking cases to trial no matter what.

If a prosecutor is refusing to drop a charge that a victim wants dropped, it may be appropriate for them to hire their own lawyer. We've been involved in several cases where we assisted victims to assert their 5th Amendment rights so that they were not forced to testify.

Common Defenses

This is why you need a lawyer. We could devote a separate 100 page book simply to discuss defenses. Our very abbreviated list would include:

- Challenging inconsistencies in the victim's story
- Presenting self defense evidence
- Presenting testimony of the third parties who saw or heard what happened
- Presenting evidence that the victim has been violent in the past

The bottom line is that every case is different. Your lawyer should be able to go through the evidence with you to figure out the best defense angle for your case.

Deferred Findings

A very common plea offer in domestic assault cases is a deferred finding under Virginia Code 18.2-57.3. A deferred finding in a domestic assault case involves continuing the case for two years. The court can also order conditions like completing anger management, alcohol/drug treatment, and completion of mental health treatment. If you stay out of trouble for two years and do whatever else the court has ordered then the case is dismissed.

Deferred findings can be a good option in certain cases. That being said, our experience is that far too many people rush into accepting deferred findings. The truth that some lawyers won't tell you is that, in many cases, you can plead not guilty and have a trial and still get the deferred finding if you lose. If you're going to get the same sentence anyway, you might as well take a shot. You never know what might happen. We've won cases that we never expected to win before the trial started.

Will My Gun Rights Be Affected?

If someone has been convicted of a felony, they cannot purchase or possess a firearm unless they have had their rights restored by a court. But what about people convicted of misdemeanor domestic violence or someone who is under a deferred finding? Can they possess a firearm? This is a common question and one that is very tricky to answer. There is no Virginia law that says that a

misdemeanor domestic violence conviction prohibits firearms possession. But Federal law is a different ballgame. 18 U.S. Code § 922 prevents a person convicted of any misdemeanor crime of domestic violence from purchasing a firearm. The same code prohibits possession or transportation in interstate or foreign commerce, but does not exclude mere possession. In other words, the law is all over the place. We've had a number of clients over the years who got into hot water when trying to purchase guns when they failed to disclose prior domestic assault convictions. If gun rights are a concern for you, you need to make sure to bring it up with your attorney who can guide you accordingly.

If The Charge Is Dropped or Dismissed, Can I Get It Wiped Off My Record?

We deal with this all the time. The good news is that if your domestic assault charge has been dropped or dismissed, you likely qualify to get it expunged from your record. That means that all official records of your arrest will be destroyed. That can be important to avoid future issues with background checks, employment, and security clearances.

Felony Strangulation Charges

We often see strangulation charged along with domestic assault and battery. The strangulation law went into effect in 2012.

Virginia Code 18.2-51.6 makes it a class 6 felony to without consent impede the blood circulation or respiration of another person by knowingly, intentionally, and unlawfully applying pressure to the neck of such person resulting in a wounding or bodily injury. A class 6 felony is punishable by up to 5 years in prison and/or up to a \$2500 fine.

Along with all the same defenses that apply in domestic assault cases, some of the possible defenses in a strangulation case can involve challenging the following:

- The knowing and intentional element: We've had cases where evidence showed marks or bruising to the neck but we were able to convince the court that the injuries were the result of a chaotic fight rather than any deliberate attempt to strangle.
- The impeding the circulation or respiration element: The strangulation law requires more than just an injury to the neck, it also requires that blood or circulation be cut off. We've had cases where victims acknowledged that they couldn't recall having difficulty breathing.

Strangulation charges raise the stakes in a major way because you're looking at being a convicted felon for life if you're convicted. A felony conviction is a permanent mark on a person's record that labels them as dangerous and untrustworthy. Some of the most obvious and immediate consequences of a felony conviction in Virginia are: 1.) losing your right to vote, 2.) losing your right to possess a firearm, and 3.) facing deportation if you're not an American citizen. Obviously, this needs to be taken very seriously. A strangulation charge gives the prosecution more leverage and can change the strategy involved in your case.

CONCLUSION

Being charged with a domestic assault is incredibly stressful and embarrassing. You should know that you're not alone. It is one of the most common charges in Virginia. The police are trained to be extremely cautious on domestic calls and to err on the side of arresting someone. We see people from all walks of life including doctors, lawyers, teachers, and even police officers themselves get charged with domestic assault and battery. No matter what your case involves, we can help you. If you're charged in Virginia Beach or anywhere else in the Hampton Roads area, feel free to give us a call. We give free consultations, and we're

always 100% honest, even when it means that we end up turning away business.