

DOMESTIC VIOLENCE CASES IN LITTLETON MUNICIPAL COURT

Ethan Feldman, Presiding Judge

INTRODUCTION

The purpose of this paper is to explain how Domestic Violence cases wind up being filed in Littleton Municipal Court and how these cases proceed to adjudication after having been filed in Littleton Municipal Court. The various stages of these cases will be examined. The emphasis will be on cases which result in a plea of guilty. Prior to examining the stages, some introductory matters will give some context. Let me emphasize that when I refer to “offenses”, “violations”, “acts of domestic violence”, and “victims”, inherent in those references is the legal principle that accused persons are presumed to be innocent and that the burden of proof is upon the prosecution to prove charges beyond a reasonable doubt. I will further emphasize that partners of any gender or preference in an intimate relationship (as defined below) are susceptible to being charged in a domestic violence case.

First let me summarize the docket schedule in Littleton Municipal Court in order to understand some of the context in which domestic violence cases are heard in Littleton Municipal Court.

We hold Court every **Monday, Wednesday, and Thursday**. We start off the mornings of those days with prisoner advisements which are conducted by video link from the Arapahoe County Jail. On **Monday and Wednesday mornings**, after prisoner advisements, we proceed to pre-trial conferences which are essentially second or subsequent appearances during which the prosecutor attempts to work out appropriate case resolutions with the defense.

Thursday mornings, after prisoner advisements, are mainly devoted to compliance reviews during which there is a determination as to whether the defendants are complying with their terms of probation or other sentence. On domestic violence cases we will have a series of interim reviews throughout the period of probation in order to track compliance but also to ensure that the defendant has constant reminders that he /she is being tracked. Those present at the domestic violence review hearings will be the judge, prosecutor, probation officer, and defendant (along with the defendant’s attorney if so desired by the defendant). We also have compliance reviews in other types of cases but the reviews are less stringent in most other cases. For instance, in a Minor in Possession of Alcohol “(MIP)” case, there will be a review to see if the defendant has completed an alcohol class and community service. Once the defendant in an MIP case has completed those requirements we have no further interim reviews but we set the case for a final review one year after the plea of guilty in order to see if the defendant has committed any further offenses.

On **Thursday mornings**, we also hold probation violation proceedings in any case in which there is an alleged violation of any of the conditions of probation. These are mostly domestic violence cases. The goal in most probation violation cases, depending on the nature of the probation violation which is

alleged, is to coax the defendant into compliance with probation. The most common issue is failure to start or be consistent with attendance at domestic violence classes and/or drug/alcohol classes. In most of those situations, we will keep the probation violation proceeding open and increase the frequency of reviews. After all, the goal of probation is to modify the defendant's behavior and thinking process so that he/she will not re-offend and will lead a more productive life with healthier relationships. It should be emphasized that a defendant will face more serious and immediate consequences if the probation violation involves the commission of a new offense or if he/she simply thumbs his/her nose at the system.

On **Thursdays**, the prosecutor is present only on the **first and third Thursdays** of the month. For that reason, the reviews in the more serious cases such as domestic violence cases are scheduled only on those Thursdays. The less serious cases will be reviewed on the other Thursdays.

Each Monday afternoon and the first and third Thursday afternoons are when court trials are held. Again, the prosecutor is present on all Mondays but only on the first and third Thursdays.

Wednesday afternoons are strictly traffic ticket arraignments. We will generally have 50-80 citizens scheduled each Wednesday afternoon for first appearance on traffic tickets. Most of the tickets for those who actually appear are resolved right then and there. A few will ask for a trial and we schedule a bench trial about 45 days thereafter. A few cases (any case in which the charge carries a possible jail sentence) are eligible for a jury trial and if the defendant asks for a jury trial, one will be scheduled. Those defendants who do not appear on their traffic tickets are sent a 10 day warning letter after which a default conviction will be reported to the DMV.

We do not have **regularly** scheduled court on **Fridays**. There are two circumstances under which we will have court on Fridays. One is that jury trials are scheduled for Fridays but it is not often that a defendant requests a jury trial. The other is for video advisements. If a person is arrested on a Thursday afternoon or night, or if a person in custody was not medically or behaviorally cleared for video advisement on a Thursday, such person will be seen via video link on Friday morning. The prosecutor is usually not present for Friday videos. We average about 3 Fridays per month when we have video advisements. The Presiding Judge is on call for the Friday videos and typically learns whether there will be any by receiving an email from the jail at 7 a.m. on Friday.

The bottom line on scheduling of domestic violence advisements is that they are typically heard in the mornings on Monday, Wednesday, Thursday, and Friday.

DOMESTIC VIOLENCE GENERALLY

Prior to the 1980's, there was no domestic violence in our society. At least that's what one might have concluded by examining court records. Domestic violence was somewhat of a hush-hush matter that was not discussed in polite society. Awareness of the issue of domestic violence began to grow in the 1980's when there was a confluence of factors. One major factor was the Victim Rights movement. Another

was the larger role that women began to play in politics, journalism, and law enforcement. There were several high profile cases in which the grievous harm to a woman (and sometimes to a man) was open for examination. There were also some cases in which a victim took defensive action against the abuser but was initially charged with a crime. In Colorado, the legislature began to recognize that the criminal laws on the books were not adequate to address the dynamics of acts of domestic violence. The legislature also began to see the need for laws which would set specific standards for the treatment of domestic violence offenders. Now, domestic violence cases are handled with specific protocols in most State courts in Colorado and also in many municipal courts.

"Domestic Violence" cases, herein referred to as "DV" cases, arising in the City of Littleton can be filed in Littleton Municipal Court, Arapahoe County Court, or Arapahoe District Court. Since there are also some small parts of the City of Littleton located in Douglas and Jefferson County, cases arising in those sections of Littleton can be filed in Littleton Municipal Court or the County or District Courts of Douglas or Jefferson County. If a felony is charged, the case cannot be filed in the Municipal Court but rather will be filed in one of the District Courts, although the initial proceedings such as advisement in a felony case can be heard in a County Court. Non-felony cases will be filed and heard in either the Municipal Court or a County Court. The current practice for most of the non-felony cases arising in the City of Littleton, regardless of county, is that they are filed in the Municipal Court. This is a prosecutorial decision initially made by the police and then reviewed by the prosecutor. The focus of this paper will be those cases filed in the Littleton Municipal Court although I will certainly refer to laws and procedures that are common to DV cases no matter where they are filed.

It is important to note that there is actually no crime called "Domestic Violence" in Colorado State Law or in the Littleton Municipal Code ("LMC"). In fact, there is no reference to "domestic violence" within the LMC. However, State and municipal offenses can be labelled as crimes of domestic violence, which will then trigger numerous obligations on the part of police, prosecutors, probation officers, court clerks, and judges. How does a crime get the label of "domestic violence?" It is found in the key provision of State law applicable to DV cases, the actual definition of "Domestic Violence" found at CRS 18-6-800.3:

(1) "Domestic violence" means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. "Domestic violence" also includes any other crime against a person, or against property, including an animal, or any municipal ordinance violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

(2) "Intimate relationship" means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

For instance, a crime of assault defined by State law or by the LMC is not necessarily an act of DV. If two strangers get in a bar fight they can be charged with assault but it would not be a DV case. However, if a husband strikes his wife (we see cases both ways, it is important to note) and causes an injury, then it is almost certainly an assault as an act of domestic violence. The “almost” derives from the requirement that in order to be DV, the assault must have been “used as a method of coercion, control, punishment, intimidation, or revenge...” However, those are factors which are almost always inferable and provable from the evidence as a whole and the surrounding circumstances.

The importance of the above definition of DV in State law as it relates to municipal proceedings is that virtually every section of the Colorado Code of Criminal Procedure (Title 16 of CRS) and the Colorado Criminal Code (Title 18 of CRS) that mentions “domestic violence” is applicable to municipal courts since the definition of “domestic violence” specifically references “municipal ordinance violations”. This leads to some often complex interactions between State law and municipal procedures.

Hereafter are the stages of a DV case:

HOW DOES A DOMESTIC VIOLENCE CASE COMMENCE?

Obviously, the very beginning of the case is when an incident occurs and is brought to the attention of the police. There are four main ways in which police involvement begins. First, a police officer actually witnesses the incident or its aftermath. Second, a neighbor, passerby, friend, or family member witnesses the event, hears suspicious matters, or is made aware of facts which cause such person to call the police. Third, one of the parties to the event calls the police (usually the victim but sometimes the perpetrator will call) or will actually show up at the police station. Fourth, an injured victim will seek medical attention and a medical professional will, as required by law, call the police. There are certainly other scenarios in which the police become involved in a DV case but these are the main ones that will lead to a warrantless arrest.

(If the alleged perpetrator has left the scene and cannot be located, or if the report of a DV incident is made somewhat substantially after the event, a police officer has the option of preparing an affidavit of probable cause in support of a warrant request and presenting it to a judge. The judge will issue a warrant for the arrest of the alleged perpetrator if the judge agrees that probable cause to arrest is shown within the affidavit. The practice in Littleton is that most of the warrant requests are made during normal court hours. However, in more acute situations in which the alleged perpetrator has, for instance, fled or resides beyond the Littleton jurisdiction, and may be an imminent threat, the Presiding Judge will be contacted outside of business hours with the warrant request and a warrant will then be immediately issued).

Once a police officer becomes involved in a DV investigation, the officer engages in certain duties and obligations. I will elaborate on only a few of those since I do not presume to know everything that a police officer is trained to do in these types of investigations. However, I will set forth the relevant Colorado statute on the duties of a police officer in a DV case. Again, this is a State statute but it is

relevant to municipal ordinance violations because it explicitly deals with domestic violence offenses and municipal violations are within the purview of the definition of domestic violence.

§ 18-6-803.6. Duties of peace officers and prosecuting agencies - preservation of evidence

(1) When a peace officer determines that there is probable cause to believe that a crime or offense involving domestic violence, as defined in section 18-6-800.3(1), has been committed, the officer shall, without undue delay, arrest the person suspected of its commission pursuant to the provisions in subsection (2) of this section, if applicable, and charge the person with the appropriate crime or offense. Nothing in this subsection (1) shall be construed to require a peace officer to arrest both parties involved in an alleged act of domestic violence when both claim to have been victims of such domestic violence. Additionally, nothing in this subsection (1) shall be construed to require a peace officer to arrest either party involved in an alleged act of domestic violence when a peace officer determines there is no probable cause to believe that a crime or offense of domestic violence has been committed. The arrested person shall be removed from the scene of the arrest and shall be taken to the peace officer's station for booking, whereupon the arrested person may be held or released in accordance with the adopted bonding schedules for the jurisdiction in which the arrest is made.

(2) If a peace officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine if a crime has been committed by one or more persons. In determining whether a crime has been committed by one or more persons, the officer shall consider the following:

- (a) Any prior complaints of domestic violence;
- (b) The relative severity of the injuries inflicted on each person;
- (c) The likelihood of future injury to each person; and
- (d) The possibility that one of the persons acted in self-defense.

(3) (a) A peace officer is authorized to use every reasonable means to protect the alleged victim or the alleged victim's children to prevent further violence. Such peace officer may transport, or obtain transportation for, the alleged victim to shelter. Upon the request of the protected person, the peace officer may also transport the minor child of the protected person, who is not an emancipated minor, to the same shelter if such shelter is willing to accept the child, whether or not there is a custody order or an order for the care and control of the child or an order allocating parental responsibilities with respect to the child and whether or not the other parent objects. A peace officer who transports a minor child over the objection of the other parent shall not be held liable for any damages that may result from interference with the custody, parental responsibilities, care, and control of or access to a minor child in complying with this subsection (3).

(b) For purposes of this subsection (3), "shelter" means a battered women's shelter, a friend's or family member's home, or such other safe haven as may be designated by the protected person and which is within a reasonable distance from the location at which the peace officer found the victim.

(4) (a) The arresting agency shall make reasonable efforts to collect and preserve any pertinent evidence until the time of final disposition of the matter, including, but not limited to, the following:

- (I) Any dispatch tape recording relating to the event;
- (II) Any on-scene video or audio tape recordings;
- (III) Any medical records of treatment of the alleged victim or the defendant; and
- (IV) Any other relevant physical evidence or witness statements.

(b) However, in the absence of bad faith, any failure to collect or preserve any evidence listed in paragraph (a) of this subsection (4) shall not be grounds to dismiss the matter.

(4.5) When a peace officer responds to a call or is otherwise responding to a report about an alleged offense involving domestic violence, as defined in section 18-6-800.3(1), or other domestic dispute, the officer shall include in his or her written or oral report concerning such incident whether children may have seen or heard the alleged offense; except that, in the absence of bad faith, the failure of a peace officer to note that a child may have seen or heard the alleged offense shall not be grounds to dismiss the matter.

(5) A peace officer shall not be held civilly or criminally liable for acting pursuant to this section if the peace officer acts in good faith and without malice.

JUDICIAL PROCEEDINGS BEFORE COURT APPEARANCE

There are several matters of specific relevance to the municipal court within the above duties. I will discuss three in particular. First is a judicial determination of probable cause. Second is the preservation of evidence. Third is the matter of releasing the accused according to a bonding schedule.

Judicial determination of probable cause: Once an officer determines that there is probable cause to believe that a person has committed a crime that is an act of domestic violence, the officer must arrest the suspected perpetrator. The issue of probable cause to arrest is a matter that very quickly invokes judicial action. In 1991, the United States Supreme Court in a case called *County of Riverside v. McLaughlin* (500 U.S. 44) held that a person in custody on a **warrantless** arrest must have his/her case evaluated by a judge within 48 hours of arrest for the purpose of determining whether in fact there is probable to believe that such person has committed a criminal offense. If no such evaluation occurs or if a reviewing judge finds that there is no probable cause to believe an offense has been committed, then the accused must be released. This does not mean that charges cannot be brought. The practical effect

when probable cause is not shown within 48 hours of arrest is often that the accused will be released on his/her own recognizance or with a summons to appear. Charges can be filed on a later date when the accused appears in court.

The Littleton procedure is that following a warrantless arrest, the arresting officer will prepare a written statement of probable cause and the sergeant on duty will email it to the judge for review. If it is an arrest that occurs during the week no earlier than 48 hours before the next scheduled court video advisement session, the judge will review the matter in court within 48 hours of the arrest. However, if the arrest occurs at a time such that it is possible that an in court review might not occur within 48 hours of arrest, the judge will review the matter, make a finding, and email the finding back to the sergeant and also to the police records section and the court supervisor. As a practical matter, the judge will review all probable cause statements received over the weekend or on a holiday and the review will be completed on the weekend or holiday. If the review yields a finding that there is probable cause, then the accused will be seen by the judge by video link at the next scheduled court video advisement session. If probable cause is not found by the judge, the judge will notify the sergeant and the accused will be released on his/her own recognizance or a summons. However, if the finding of no probable cause is made well within 48 hours and the sergeant believes the deficiency can be cured within the 48 hour time limit, the release will be delayed. The general aspiration is that the probable cause review request will be sent to the judge at the earliest practical time and that the judge will make the review at the earliest practical time. During my tenure at Littleton Municipal Court, the sergeants have always sent the probable cause requests in a timely manner and they have been reviewed in a timely manner. On those occasions when the judge has not found probable cause, the sergeant has either cured the deficiency in a timely manner or has determined that a cure is not possible and has informed the judge in a timely manner, thus leading to the release of the arrested person as set forth above.

Attached to this paper is a redacted copy of an actual affidavit in support of warrantless arrest and the form that the judge signs in court, along with a sample of the email that the judge sends to the sergeant.

Preservation of evidence: The above statute mandates that the police have to make reasonable efforts to preserve the items listed in section 4(a) but also says that failure to preserve those items will not be grounds for dismissal if the police act in good faith. However, it is important to note that a failure to preserve such items may lead to a suppression of any ability to discuss those items in a trial, a factor which may well greatly weaken the prosecution case.

Bond schedule: Littleton Municipal Court does have a bond schedule but a DV suspect will not have a bond set nor will the suspect be released until the suspect has been seen by a judge and served with or advised of a protection order, which is essentially a restraining order. The judge has the authority to deviate from the bond schedule after taking into account all relevant factors. Section 5 of Colorado statute CRS 18-1-1001, as *partially* set forth below, states that the procedures described in that section must be followed before the accused in a DV case may be released on bail. The protection orders referenced in that section are those to be used in all State cases, not just DV cases. DV cases, including

those in municipal courts, may have some additional protective language as set forth below in State statute CRS18-1-1001:

It should be noted that the Littleton Municipal Code in Section 1-6-17 mandates a restraining order against defendants. Since the State mandated protection order is more expansive than the one in LMC, the practice in Littleton Municipal Court is to follow the guidelines in the State statute. Those guidelines more than meet the requirements in LMC.

§ 18-1-1001. Protection order against defendant – definitions

(1) There is hereby created a mandatory protection order against any person charged with a violation of any of the provisions of this title, which order shall remain in effect from the time that the person is advised of his or her rights at arraignment or the person's first appearance before the court and informed of such order until final disposition of the action. Such order shall restrain the person charged from harassing, molesting, intimidating, retaliating against, or tampering with any witness to or victim of the acts charged. The protection order issued pursuant to this section shall be on a standardized form prescribed by the judicial department and a copy shall be provided to the protected parties.

(2) At the time of arraignment or the person's first appearance before the court, the court shall inform the defendant of the protection order effective pursuant to this section and shall inform the defendant that a violation of such order is punishable by contempt.

(3) Nothing in this section shall preclude the defendant from applying to the court at any time for modification or dismissal of the protection order issued pursuant to this section or the district attorney from applying to the court at any time for further orders, additional provisions under the protection order, or modification or dismissal of the same. The trial court shall retain jurisdiction to enforce, modify, or dismiss the protection order until final disposition of the action. Upon motion of the district attorney or on the court's own motion for the protection of the alleged victim or witness, the court may, in cases involving domestic violence as defined in section 18-6-800.3(1) and cases involving crimes listed in section 24-4.1-302, C.R.S., except those listed in paragraphs (cc.5) and (cc.6) of subsection (1) of that section, enter any of the following further orders against the defendant:

(a) An order to vacate or stay away from the home of the alleged victim or witness and to stay away from any other location where the victim or witness is likely to be found;

(b) An order to refrain from contact or direct or indirect communication with the alleged victim or witness;

(c) An order prohibiting possession or control of firearms or other weapons;

(d) An order prohibiting possession or consumption of alcohol or controlled substances; and

(e) Any other order the court deems appropriate to protect the safety of the alleged victim or witness.

(4) Any person failing to comply with a protection order issued pursuant to this section commits the crime of violation of a protection order and may be punished as provided in section 18-6-803.5.

(5) Before a defendant is released on bail pursuant to article 4 of title 16, C.R.S., the court shall, in cases involving domestic violence as defined in section 18-6-800.3(1), in cases of stalking pursuant to section 18-3-602, or in cases involving unlawful sexual behavior as defined in section 16-22-102(9), C.R.S., state the terms of the protection order issued pursuant to this section, including any additional provisions added pursuant to subsection (3) of this section, to the defendant on the record, and the court shall further require the defendant to acknowledge the protection order in court and in writing prior to release as a condition of any bond for the release of the defendant. The prosecuting attorney shall, in such domestic violence cases, stalking cases, or in cases involving unlawful sexual behavior as defined in section 16-22-102(9), C.R.S., notify the alleged victim, the complainant, and the protected person of the order if such persons are not present at the time the protection order is issued.

(6) The defendant or, in cases involving domestic violence as defined in section 18-6-800.3(1), in cases of stalking pursuant to section 18-3-602, or in cases involving unlawful sexual behavior as defined in section 16-22-102(9), C.R.S., the prosecuting attorney may request a hearing before the court to modify the terms of a protection order issued pursuant to this section. Upon such a request, the court shall set a hearing and the prosecuting attorney shall send notice of the hearing to the defendant and the alleged victim. At the hearing the court shall review the terms of the protection order and any further orders entered and shall consider the modifications, if any, requested by the defendant or the prosecuting attorney.

(7) The duties of peace officers enforcing orders issued pursuant to this section shall be in accordance with section 18-6-803.5 and any rules adopted by the Colorado supreme court pursuant to said section.

(8) For purposes of this section:

(a) "Court" means the trial court or a designee of the trial court.

(a.5) "Protection order" shall include a restraining order entered pursuant to this section prior to July 1, 2003.

(b) "Until final disposition of the action" means until the case is dismissed, until the defendant is acquitted, or until the defendant completes his or her sentence. Any defendant sentenced to probation is deemed to have completed his or her sentence upon discharge from probation. A defendant sentenced to incarceration is deemed to have completed his or her sentence upon release from incarceration and discharge from parole supervision.

(9)

(a) When the court subjects a defendant to a mandatory protection order that qualifies as an order described in 18 U.S.C. sec. 922 (g) (8), the court, as part of such order:

(I) Shall order the defendant to:

(A) Refrain from possessing or purchasing any firearm or ammunition for the duration of the order; and

(B) Relinquish, for the duration of the order, any firearm or ammunition in the defendant's immediate possession or control or subject to the defendant's immediate possession or control; and

(II) May require that before the defendant is released from custody on bond, the defendant shall relinquish, for the duration of the order, any firearm or ammunition in the defendant's immediate possession or control or subject to the defendant's immediate possession or control.

COURT PROCEEDINGS

The above discussion about the Mandatory Protection Order was relevant to the notion of a bonding schedule. It is also vitally relevant to the court proceedings in a DV case. This naturally leads to a general and a specific discussion of those court proceedings.

A domestic violence case in Littleton Municipal Court officially commences when a police officer files a summons and complaint with the Municipal Court clerk's office. This can be accomplished by the hand delivery of a summons and complaint or by e-filing. The defendant will have already been served with a copy of the summons and complaint at the time of arrest or jail booking. The exception to this will be if the police officer is seeking a probable cause warrant for the arrest of the defendant. In that case, the summons and complaint will still be filed with the court but obviously the defendant will not be served until he/she has been arrested.

As noted previously, after arrest the defendant will be held without bond until he/she appears before the Court. This appearance will be on the next regularly scheduled court docket day at 9:00 a.m. and will take place by video link with the Arapahoe County Jail (If the defendant has been arrested for an offense which occurred in the Douglas or Jefferson County sections of the City of Littleton, there are many variables as to how the defendant will be seen by the court but that is so rare that it will not be addressed in this paper).

The first step in the video advisement is that the jail will send an email at 7:00 a.m. to the court clerk, the judge, the prosecutor, and the Littleton Police Department ("LPD") victim advocate. That email will list

all of the Littleton Municipal prisoners, D.V. or otherwise, who will be appearing via the video link at 9:00 a.m. By 7:00 a.m., those recipients will have received some information about the case including the affidavit of probable cause which has been previously discussed. A representative from the clerk's office will go to the records department at LPD and a file will be initiated at the court. In the meanwhile, the person listed as the victim will have started to meet with the victim advocate. The arresting officer in most cases will have served the victim with a Notice to Appear so that the victim will be present at the defendant's video advisement. The victim will appear at the Courthouse and the defendant will be appearing by the video link. Victims sometimes choose not to appear but even then, in most cases, the victim advocate will have received some information to relay to the court when the advisement process commences.

At or about 9:00 a.m. , the court clerk will open the video link with the jail. The video monitor on the court's end is in the courtroom on the main floor. That is the only monitor we have for a link to the jail. By the time the link is opened by the clerk, the defendants will have viewed a pre-recorded video advisement of rights, a video in which the Presiding Judge presents the advisement. The defendants will have also been given a written advisement of the same rights and a copy of that with the defendant's signature will have been emailed to the court clerk. If a defendant refuses to sign, which is his/her right, such refusal will be noted on the written advisement by the deputy sheriff in the video room at the jail.

The next step is a conference between each defendant and the prosecutor via the video link. The purpose of that conference is to see if there is a possible resolution of the case. This conference procedure is not limited to DV cases-all in custody defendants are afforded the opportunity to have a conference with the prosecutor. The prosecutor commences the process by explaining to the defendants that she is the prosecutor and is not representing the defendants. She tells them that they are not required to speak with her and that they have the right to have an attorney and that they can skip speaking with her and proceed directly to speaking with the judge. The discussion with the prosecutor is not on the record, the judge is not present, and the public is excluded. The reason for that procedure is that if a defendant is **not** in custody, the conference between the defendant and the prosecutor is also not on the record, the judge is not present, and the public is excluded. All of those factors allow for the prosecutor and the defendant to speak more candidly and statements made by the defendant cannot be used against him/her under most circumstances (if a defendant makes a threat during the conference, for example, that threat may constitute a separate crime and is not protected by the off the record nature of the conference). **It should be noted that HB 16-1309 essentially mandates that every in custody defendant is entitled to have court appointed counsel, if he she wishes, at each and every stage of the proceedings, including this initial advisement procedure. However, this bill does not take effect until May, 2017.** The court administration officials, the judge, and the city attorney will be studying the impact of this new law and will be bringing up the matter with City Council.

Once the prosecutor concludes the discussions with the in custody defendants, the judge will go onto the bench, the record will be turned on, and the courtroom will be opened up to the public. As each case is called, the judge will readvise each defendant of his/her rights and will give a specific explanation of the individual charges against each defendant and the possible penalties for the charges. The judge will individually inquire of each defendant whether the defendant understands his/her rights, the nature of the charges, and the possible penalties. At this point, the judge will ask the prosecutor or the victim advocate whether the victim is present and wishes to address the court on the issues of the protection order and the amount and type of bond. Even if the victim is not present, the prosecutor or victim advocate will have received some input on those issues. The victim or the prosecutor or victim advocate will address those issues. The defendant will be able to hear, via the link, what is being said. The defendant will also have the opportunity to address those issues, although the defendant will be reminded that he/she is now being recorded and that at this point anything said by the defendant can be used against the defendant in subsequent proceedings. The judge will then enter a protection order with the specific provisions as are deemed appropriate in each individual case. The judge will advise the defendant that the protection order is a condition of bond and that if the defendant violates any conditions of the protection order, bond could be revoked, resulting in the defendant being placed back in custody, new charges could be filed against the defendant, the defendant could be held in contempt, probation could be revoked if the defendant is granted probation, or all of those consequences could be suffered by the defendant. The judge will emphasize to the defendant that firearm possession or access are strictly prohibited. Usually the victim is able to give to the court some accurate information about the presence of firearms in the residence.

The usual terms of the protection order are set forth in the sample attached to this paper. The terms that have the most potential to be contentious involve the defendant moving out of the victim's home and having no contact with the victim. Sometimes the victims are very relieved to have those provisions but often the victims object, contending that they need various degrees of contact with the defendant. The judge has to carefully weigh many factors in deciding whether to honor the request for contact. These factors may include the degree of violence or threat alleged (judges general believe that any violence or threat is serious), prior history of violence or threats, whether a victim is asking for contact because of fear of what could happen if he/she does not go along with the defendant's request, whether there are children involved in the relationship, and a host of other intangibles. One very important factor is whether the event took place in public and/or involved members of the public. The judge must assess whether a lack of a no contact order will lead to another breach of the peace that could endanger members of the public. Additionally, the judge must consider whether another incident would lead to increased danger to the police. It is generally accepted that responding to domestic violence calls is one of the riskiest activities for police.

The judge will often find a middle ground which will allow text or email contact regarding children or finances. The court will constantly re-evaluate the conditions of the protection order as the case moves through the court system and may increase or decrease the amount of contact allowed, most frequently depending on the counseling progress of the defendant. It is important to note that the court has no

authority to order a victim to do anything. A protection order by law will expire when the case is closed, meaning that probation has expired, a jail sentence has been served (without the defendant remaining on probation), the defendant is found not guilty at trial, or the case is dismissed.

The issue of bond will then be discussed. The judge must set the amount and type of bond that will be appropriate in each individual case. The judge starts the evaluation by reference to the bond schedule for various types of offense but will often deviate from that based on the severity of the allegations, the defendant's ties to the community, the defendant's employment status, the defendant's prior criminal history if any, and any other factor raised by the prosecution or defendant. Once bond is set, the judge will ask the defendant if it is anticipated that he/she will bond out. The reason for this is that if the defendant says that he/she cannot post bond, the judge will set the case for a second appearance on the next date the court is scheduled to be in session and the judge will appoint an attorney to appear with the defendant at that next session if the defendant wishes to have an attorney. If the defendant is confident that bond can be posted, the judge will continue the case to a time when the defendant can hire an attorney or apply for court-appointed counsel. In all cases, once bond has been set the judge will remind the defendant of the strict enforcement of the protection order.

Of course, the issues of bond will be a non-issue if the prosecutor and the defendant have reached a resolution (plea bargain) during the initial conference via video. If an agreement is reached, it must be approved by the judge. If the agreement is approved, then the defendant will be pleading guilty to an offense with a stipulated penalty. The judge will carefully advise the defendant of his/ her constitutional rights before accepting a plea of guilty. The defendant is never required to plead guilty and is always entitled to a reasonable continuance to hire an attorney or obtain a court appointed attorney. The judge must be sure that the defendant is voluntarily giving up those rights in this case. If the judge does not believe that a plea of guilty is being entered voluntarily, the judge will not accept the plea of guilty and will instead appoint counsel or otherwise address the reasons that the plea is deemed involuntary. The judge always has the option of setting the case for trial. If the judge accepts the plea of guilty, the court will proceed to sentencing. In most cases involving defendants with no previous DV convictions and no significant aggravating factors, the defendant will receive a suspended jail sentence and be placed on one year of supervised probation on the following conditions:

1. Commit no further offenses
2. Obey the protection order
3. Undergo a domestic violence evaluation performed by a certified evaluator
4. Do the domestic violence counseling program recommended by the evaluator
5. Undergo a drug and alcohol evaluation if appropriate
6. Do the drug/alcohol counseling program as recommended
7. Refrain from possessing or consuming alcohol and non-medicinal drugs
8. Do not use marijuana, even if defendant has a medical marijuana license
9. Pay restitution, if applicable
10. Report to the probation officer as directed by the probation officer

11. Follow all lawful directives ordered by the probation officer
12. Appear in court for all scheduled reviews and for any other appearances ordered by probation
13. Pay court costs and supervision fees

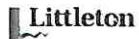
If the defendant is alleged to have violated any of these conditions of probation, a Violation of Probation complaint (VOP") will be filed by the probation officer or the prosecutor. The defendant will be ordered into court (and may be arrested if he/she does not come to court as ordered). He /she will be served with a copy of the VOP and advised of his/her rights and the possible penalties. Those rights include the right to have an attorney and to have a hearing at which the prosecutor must prove the allegations. A frequent outcome of a VOP proceeding is, as previously noted, that additional reviews will be set to see if the defendant come into compliance. If the violation alleged in the VOP is egregious, a hearing will be held and if the judge finds a violation has indeed occurred, a serious sanction such as imposition of a previously suspended jail sentence will be entered.

The goal in probation causes, as previously noted, is to turn the defendant into a law abiding citizen who is capable of healthy relationships. Sometimes a defendant finds success and sometimes they utterly fail. If they successfully comply with all terms of probation, probation will be terminated and the case closed at the end of the probation period. Underlying all of this, however, is the constant theme of promoting public safety.

There are of course some cases in which a defendant has a prior record for domestic violence, or has a generally bad criminal record, or the facts of the case are particularly troubling. In those cases, it may be that the defendant will not be granted probation but will instead be sentenced to jail upon a plea of guilty. Again, let me emphasize that no one will be allowed to enter a guilty plea and be sentenced to probation or jail without having first been given a full advisement of rights and possible consequences.

FINAL THOUGHT

We must not forget, of course, that an accused person is presumed to be innocent, has the right to plead not guilty, has the right to an attorney, including court appointed counsel, has the right to a jury trial or a trial to a judge sitting without a jury, and has numerous other rights. If a trial is held, the prosecutor has the burden of proving guilt beyond a reasonable doubt. If a defendant is found guilty of committing a crime involving domestic violence, he/she is subject to the same penalties and procedures as if he/she had entered a plea of guilty. If City Council wishes to have more detail about trial procedures, I will be happy to provide it.



Counties of Arapahoe, Douglas, and Jefferson
State of Colorado

Summons No. [REDACTED]
LPD Case # [REDACTED]

DETERMINATION OF PROBABLE CAUSE
(COMPLETED BY ARRESTING AUTHORITY.)

ARRESTEE [REDACTED] DOB [REDACTED]
ADDRESS [REDACTED] SS # (DET#) [REDACTED]
LITTLETON, CO 80120 DATE OF ARREST 05/11/2016
TIME OF ARREST [REDACTED]

Arresting Agency: **Littleton Police Department**

Phone 303 794-1551

Arrested for HARASSMENT (DV)

6-4-77 (1)(A)
Littleton Municipal Code

Littleton Municipal Code

Littleton Municipal Code

The above arrestee is ordered to report to court as directed by the appropriate law enforcement authorities on:

Date 05/29/2016 Time 0900 am/pm

Court Location: Littleton Municipal Court
2069 W Littleton Blvd.
Littleton, Co 80120
303-795-3837

(TO BE COMPLETED BY JUDGE)

PROBABLE CAUSE DETERMINATION

On this date, the court has reviewed the relevant information pertaining to the arrest of the above arrestee and has determined:



Probable cause to believe that this arrestee has committed a crime does exist and there is reason to detain said arrestee pending posting of bond or further court proceedings.



Probable cause to believe that this arrestee has committed a crime has not been shown and the arrestee is ordered released pending further court proceedings. The arrestee shall, however, appear before the court as directed above.

BY THE COURT

Littleton Municipal Court Judge

[REDACTED]
Date

[REDACTED] /pm
Time

Original: Littleton Municipal Court's File
Yellow Copy: Littleton Police Department's Copy
Pink Copy: Detention Authority's Copy
Gold Copy: Arrestee's Copy

LPD 105 (Rev. 7/02)



Counties of Arapahoe, Douglas, and Jefferson
State of Colorado

Summons No. [REDACTED]

LPD Case # [REDACTED]

AFFIDAVIT IN SUPPORT OF WARRANTLESS ARREST RESULTING IN DETENTION

[REDACTED] Arrestee (Last, First, Middle) [REDACTED] DOB [REDACTED]

Littleton Police Dept.
Arresting Agency

303-794-1551
Phone

05/16/2016
Date of Arrest

[REDACTED]
Time of Arrest

Charge(s):

1. 6-4-22(G)(H) HARASSMENT-STRIKES-SHOVES-KICKS OR TOUCHES A PERSON NO BOND
Littleton Municipal Code Bond
2. _____
Littleton Municipal Code Bond
3. _____
Littleton Municipal Code Bond

ANNE LARSON affiant, a police officer with the City of Littleton, upon oath, states that there exists probable cause for the warrantless arrest of the above named arrestee for the charges stated above. The affiant further states that the facts below are true to the best of his/her knowledge and belief and are based on the affiant's personal knowledge and/or interviews with witnesses and fellow peace officers and/or review of official law enforcement reports.

1. The crime alleged occurred on MAY, 2016 at _____, City of Littleton, State of Colorado.
2. The arrestee was arrested at 2105 hrs. on the _____ day of MAY, 2016, without and arrest warrant having been previously issued.
3. The facts in support of the probable cause for the warrantless arrest of the above named arrestee are as follows:

ON MAY 2016 AT APPROXIMATELY _____ HOURS I WAS DISPATCHED TO _____ ST, LITTLETON ARAPAHOE COUNTY COLO. REGARDING A DISTURBANCE. I CONTACTED THE VICTIM IDENTIFIED BY COLORADO DRIVER'S LICENSE AS _____ WHO INFORMED ME THAT HER HUSBAND LATELY IDENTIFIED BY HIS COLORADO DRIVER'S LICENSE AS _____ BEGAN YELLING AT _____ DURING AN ARGUMENT. THROUGHOUT THE ARGUMENT _____ STATED THAT _____ TOOK HER PHONE IN ORDER TO PREVENT HER FROM

☒ Reports and additional pages stapled to this affidavit are incorporated into this affidavit.

I hereby swear or affirm, under penalty of perjury, that the above stated facts were relayed to me or that I have personal knowledge of the facts stated above.

[Signature] 201509
Affiant's Signature

[Signature] Supervisor's Initials

Original: Littleton Municipal Court's File
Yellow Copy: Littleton Police Department's Copy
Pink Copy: Detention Authority's Copy
Gold Copy: Arrestee's Copy

LPD 104 (7/02)

Littleton

Counties of Arapahoe, Douglas, and Jefferson
State of Colorado

Summons No. [REDACTED]

LPD Case # [REDACTED]

AFFIDAVIT IN SUPPORT OF WARRANTLESS ARREST RESULTING IN DETENTION

Arrestee (Last, First, Middle) [REDACTED]

DOB [REDACTED]

Littleton Police Dept.
Arresting Agency

303-794-1551
Phone

05/05/2016
Date of Arrest

[REDACTED]
Time of Arrest

Charge(s):

1. C-4-22(1)(A) HARASSMENT
Littleton Municipal Code

NO BOND
Bond

2. [REDACTED]
Littleton Municipal Code

Bond

3. [REDACTED]
Littleton Municipal Code

Bond

ANNE LARSON

affiant, a police officer with the City of Littleton, upon oath, states that there exists probable cause for the warrantless arrest of the above named arrestee for the charges stated above. The affiant further states that the facts below are true to the best of his/her knowledge and belief and are based on the affiant's personal knowledge and/or interviews with witnesses and fellow peace officers and/or review of official law enforcement reports.

1. The crime alleged occurred on MAY [REDACTED], 2016 at [REDACTED], City of Littleton, State of Colorado.
2. The arrestee was arrested at 2105 hrs. on the [REDACTED] day of MAY, 2016, without and arrest warrant having been previously issued.
3. The facts in support of the probable cause for the warrantless arrest of the above named arrestee are as follows:

CALLING LITTLETON POLICE FOR ASSISTANCE. [REDACTED] THEN ADVISED THAT [REDACTED] PUSHED DOWN SEVERAL TIMES AS SHE WAS ATTEMPTING TO LEAVE THE RESIDENCE. ONCE [REDACTED] EXITED THE RESIDENCE, [REDACTED] FOLLOWED HER TO HER VEHICLE AND ATTEMPTED TO PULL [REDACTED] OUT OF THE DRIVER'S SEAT BY HER ARMS. [REDACTED] ADMITTED TO INTERFERING WITH [REDACTED] AS SHE ATTEMPTED TO LEAVE THE RESIDENCE, BY TAKING HER PHONE AND ATTEMPTING TO GET HER OUT OF THE CAR. THE REPORTING PARTY IS A NEIGHBOR, IDENTIFIED AS [REDACTED] WITNESSED [REDACTED] TRY TO PULL [REDACTED] OF THE VEHICLE. [REDACTED] WAS A GOLF CLUB WHICH HE KEEPS IN A CLOSET LOCATED IN THE BASEMENT OF THE RESIDENCE.

☐ Reports and additional pages stapled to this affidavit are incorporated into this affidavit.

I hereby swear or affirm, under penalty of perjury, that the above stated facts were relayed to me or that I have personal knowledge of the facts stated above.

Affiant's Signature

201509

☒ NO

Supervisor's Initials

Original: Littleton Municipal Court's File
Yellow Copy: Littleton Police Department's Copy
Pink Copy: Detention Authority's Copy
Gold Copy: Arrestee's Copy

LPD 104 (7/07)

8/1/2016

City of Littleton Mail



Ethan Feldman

RE:

Ethan Feldman

To: Shawn Carlson

Cc: Rachel Black

LPD Records

Sun, Jun 6, 2016 at 8:47 PM

Tricia McCarthy

The Court has reviewed the statement of probable cause as to arrestee [REDACTED]. The Court finds that there is probable cause to believe that said arrestee has committed the offense of harassment 6-4-22 as an act of domestic violence. The Court orders that said arrestee is to be held without bond until he is brought before the Court on 6/6/2016 at 0900.

Judge Ethan Feldman
Presiding Judge
Littleton Municipal Court

On Sun, Jun 6, 2016 at 5:37 AM, Shawn Carlson wrote:
Judge Feldman,

Please review the attached probable cause paperwork for the arrest of [REDACTED] the charge of Harassment - 6-4-22 LMC, (Domestic Violence)

--

Shawn Carlson
Sergeant
Littleton Police Department

2255 W. Berry Avenue
Littleton, Colorado 80120
303-794-1551 (Dispatch)
www.littletongov.org
Twitter | Facebook | YouTube



Sender and receiver should be mindful that all my incoming and outgoing emails may be subject to the Colorado Open Records Act, S 24-72-100.1, et seq.

--

Ethan Feldman
Presiding Judge
Littleton Municipal Court
2069 West Littleton Blvd.
Littleton, CO 80120
(303) 795-3837



<https://mail.google.com/mail/u/0/?ui=2&ik=d8344fe05&view=pt&search=sent&msg=15547a8323d8176a&siml=15547a8323d8176a>

1/2

Municipal Court, City of Littleton, Arapahoe/Douglas/Jefferson County, State of Colorado Court Address: 2069 W. Littleton Boulevard Littleton, CO 80120	Summons No.: OCA No:
Plaintiff: City of Littleton Vs. Defendant:	
MUNICIPAL PROTECTION ORDER	

To: _____ Defendant's Sex: Male Female

Race: _____ D.O.B. _____ Ht: _____ Wt: _____

The Court finds it is appropriate to issue this protection order pursuant to LMC, that is has had jurisdiction over the parties and the subject matter, that the Defendant was personally served and given reasonable notice and opportunity to be heard. Sufficient cause exists for the issuance of a protection order.

_____ The Court finds that the Defendant is/was an intimate partner, as that term is used under 18 USC Section 922(d)(8) and (g)(8) of the Brady Handgun Violence Protection Act.

Therefore, it is ordered that you, the Defendant:

- _____ 1. Shall not harass, injure, molest, intimidate, threaten, retaliate against, or tamper with any witness to or victim of the acts you are charged with committing.
- _____ 2. Shall vacate the home of the victim(s) and stay away from any other location where the victim(s) or witness(es) is/are likely to be found.
- _____ 3. Shall refrain from contacting or directly or indirectly communicating with the victim(s) or witness(es).
- _____ 4. Shall not possess or control a firearm or other weapon.
- _____ 5. Shall not possess or consume alcoholic beverages, marijuana or controlled substances.
- _____ 6. Is further ordered that:

The names, date of birth, sex and race of the protected persons are:

This order remains in effect until final disposition or further order of the Court.

Date: _____
Judge

By signing, I acknowledge receipt of this Order.

Date: _____
Defendant

I certify that this is a true and complete copy of the original order.

Date: _____
Court Room Staff

Please note:

1. This order will remain in effect until the case is dismissed or the Defendant completes his/her sentence. Any Defendant sentenced to probation shall be deemed to have completed his/her sentence upon discharge from probation.
2. Each party or victim may apply at any time for modification or dismissal of this protection order. ***Only the Court can change this Order.***
3. If you violate this Order, even if the victim or witness has given you permission, you can be arrested and prosecuted.

WHITE-COURT YELLOW-DEFENDANT PINK-CITY ATTORNEY GOLD-VICTIM

