

Domestic Violence

In the State of Florida

Beware

**Know Your Rights
Get a Lawyer**

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Introduction

You've been charged with domestic battery. The judge is threatening to sentence you to a jail term and/or put you on probation. What can you do? Where can you turn for help?

The most important thing you should know up front is that you do NOT have to plead guilty or no contest. But you DO need the help of an experienced lawyer to fight for you in court.

A conviction for domestic battery can have devastating consequences. Many potential employers will turn you away if it's revealed in your background check, and it will result in automatic termination from some kinds of jobs. It could keep you from getting into college or graduate school as well as certain professions. You will be forever "branded" as an abuser.

This Special Report is intended to be a general reference guide to help you understand the ins and outs of this crime in Florida. It's not intended to answer every single question you may have, and it's not intended to serve as legal advice in any particular case. Each case is different, and you should always make sure that you're represented by an experienced lawyer before you enter any plea to a domestic violence charge.

What is Domestic Battery?

Let's start with how the law defines battery. This is important because many people mistakenly believe that they can't be charged with this crime unless the victim suffered visible injuries.

"Battery" in Florida means actually and intentionally touching or striking another person against his or her will OR intentionally causing bodily harm to another person. So, for example, if you and your girlfriend get into an argument, and you slap her hand, you have committed a battery because you actually and intentionally struck her against her will. If you're joking around, and she pokes you in the side, she has committed a battery because she actually and intentionally touched you against your will. If your husband punches you in the face and gives you a black eye, he has committed a battery because he intentionally caused bodily harm to you. On the other hand, if you trip over a piece of furniture and bump into your boyfriend, you have not committed a battery because you did not touch or harm him intentionally—it was an accident.

In Florida, a battery is considered “domestic violence” if the crime results in physical injury of one family or household member by another family or household member. A family or household member is a spouse, a former spouse, a person related by blood or marriage, a person with whom you are living or have lived in the past in the same household as if a family, or a person with whom you have a child in common.

Domestic violence also includes the crimes of assault, aggravated assault, aggravated battery, sexual assault, sexual battery (rape), stalking, aggravated stalking, kidnapping, false imprisonment, or any other crime that results in physical injury or death of one family or household member by another. In this guide, the term “domestic battery” refers to a battery that is classified as domestic violence. This booklet will not cover all the other crimes that are included within the definition of domestic violence.

So what’s the difference between domestic battery and “regular” battery? In a word, sentencing. Battery is a first degree misdemeanor in Florida, meaning that it’s punishable by up to a year in jail. If you’re convicted of battery, the trial judge has the discretion to impose any sentence up to that maximum. But a conviction for domestic battery carries minimum mandatory penalties.

What is the Penalty for Domestic Battery?

If you are convicted of domestic violence, even if the court withholds adjudication, the judge is required to sentence you to probation for one year with the special condition that you attend a batterers’ intervention program (which could cost you up to \$1,200 or more). The program must be at least 29 weeks long, including 24 weekly classes. However, batterers’ intervention classes are intended only for people in intimate relationships, and the judge does not have to order the classes if the case does not involve an intimate relationship. For example, if your sibling is the victim, even if you live in the same household, you would not be sentenced to attend a batterers’ intervention program.

If you are adjudicated guilty of domestic violence and you intentionally caused bodily harm to the victim, the judge has to impose a sentence of at least five days in jail. The sentence is not mandatory if the court withholds adjudication of guilt.

If you are sentenced for domestic battery, you will have to pay court costs in the amount of \$635 (although this may vary by county), even if the court withholds adjudication.

If you already have a conviction for battery or aggravated battery on your record, another battery conviction is a third degree felony, punishable by up to five years in prison. This is true even if the court withheld adjudication in your prior case.

How Can I Fight a Domestic Battery Charge?

Over the years, I've heard many clients charged with domestic battery say, "There weren't any witnesses!" or "There's no evidence!" Well, the victim is a witness, and the testimony of a witness is evidence. But most domestic battery cases involve "he said, she said" situations—in other words, the person charged and the victim are the only two people who were there. Sometimes, there are other witnesses who saw what happened.

Many people also mistakenly believe that they can't be charged with domestic battery if the victim does not want to press charges. The State of Florida (through the State Attorney's Office) prosecutes crimes, and the victim's opinion about the prosecution is immaterial from a legal standpoint.

In Jacksonville, if the victim wants the State Attorney's Office to drop the charges, he or she will be required to attend a class on domestic violence before meeting with a victim's advocate to complete an affidavit stating the facts of the case and the reason for the drop request. Many cases are dropped without a drop affidavit. However, it's quite common for the prosecutor to file charges even if the victim does not want to prosecute.

But being charged is not the same thing as being convicted. The State has the burden of proof in a criminal case, and that's proof beyond a reasonable doubt. Depending on the facts of your particular case, you can raise a number of defenses to a domestic battery charge.

Frequently Asked Questions

These are some typical questions people have in domestic battery cases:

- What if the victim says it was an accident?
- What if the victim is my spouse, and we intend to stay married?
- What if the victim is my boyfriend/girlfriend, and we intend to stay together?
- What if the victim says it didn't happen?
- What if the victim told the police it happened, but now he says it didn't happen?
- What if the victim told the prosecutor it happened, but now she says it didn't happen?
- What if the victim made a written statement, but now she has changed her testimony?
- What if the victim says it didn't happen and another witness also says it didn't happen?
- What if the victim says it didn't happen, one witness says it didn't happen, and another witness says it did happen?
- What if the victim says it happened, but another witness says it didn't happen?
- What if the victim was intoxicated or high on drugs?
- What if I was intoxicated or high on drugs?
- What if we were both intoxicated or high on drugs?
- What if the victim has a motive to lie?
- What if the other witnesses have motives to lie?
- What if the victim says the police officer did not record her statements accurately?
- What if the police officer did not record my statements accurately?
- What if there is no physical evidence?
- What if there is physical evidence?
- What if the victim went to the doctor or hospital?

As you can imagine, the answers to these questions are critical in determining how strong or weak the State's case against you is. Each case is unique, so it's impossible to cover every possible scenario here. But I can illustrate what might happen with some typical examples.

Typical Cases

Many people charged with domestic violence are absolutely innocent of the charges. Victims, both male and female, often have motives to lie in these cases. Sometimes victims make up accusations in

the middle of heated arguments. Sometimes victims lie in order to seek revenge for an affair. Sometimes people are in the middle of a divorce, and one spouse makes up a story in order to gain an advantage in the custody battle. Sometimes victims fall or bump into something during a dispute and blame it on the other person, then think better of it later. These types of things should be highlighted by your lawyer at trial through cross-examination and testimony of defense witnesses.

If the victim was drunk when the incident happened, the reliability of her testimony is suspect. The State may drop the charges if there is no other evidence. If you were drunk when it happened, the victim may not want to press charges because your actions were out of character. If you were both drinking, then neither side's version of the events may be believable. The jury could easily find the reasonable doubt to support an acquittal.

Police officers sometimes misconstrue or misunderstand what people say while they're investigating a domestic violence call, and therefore their testimony is different than the testimony of the witnesses. When the police ask victims or witnesses to write statements, sometimes they don't record the events accurately—they may forget to include important details, or they may just make a mistake. The result is conflicting testimony at trial that can give rise to a reasonable doubt, leading the jury to a not guilty verdict.

If the victim's credibility is questionable, and there are no visible injuries, it's much more difficult for the State to convince a jury to convict. On the other hand, if the victim has noticeable injuries, the State has a stronger case.

Many times, people find themselves charged with domestic violence simply because a highly-charged situation escalates, the police are called, and the officer feels compelled to make an arrest, even against the wishes of everyone involved. Sometimes people call the police expecting the officer to tell the other person to calm down or leave for the night, and instead the other person goes to jail. Even if a technical battery occurred, neither party feels the situation is serious enough to warrant criminal charges

For example, let's say a husband and wife, happily married for 20 years, are joking around while having a few drinks on a Saturday afternoon. The husband playfully smacks the wife's upper arm. She doesn't think anything of it at the time, but the joking around eventually turns into an argument. She asks the husband to leave. He

refuses, so she calls the police, hoping an officer will be able to convince him to spend the night at his friend's house so they can cool off. When the officer asks her what happened, she tells him about the whole afternoon's events. The next thing she knows, the husband is spending the night in jail, and she is trying to figure out how to come up with the money for the bond. Most people would probably agree that these events don't justify giving the husband a permanent criminal record for domestic violence, even if a technical violation of the law occurred.

How Can a Lawyer Help Me?

Your lawyer is your advocate. After thoroughly investigating your case, including interviewing all the witnesses, your lawyer should talk to the State Attorney, pointing out all the weaknesses in the case. Having the charges dropped before trial is the best possible outcome for you.

Some other factors the State will consider in determining whether to drop the charge before trial include the relationship between the parties (married, boyfriend/girlfriend, living together or not, children in the home or not), whether there were any children present during the incident, whether the police have been called to the home before, whether you've been charged with domestic violence before (on this victim or any other), whether the victim has dropped charges before, whether the victim has made false accusations before, whether there were any injuries or damage to property, whether an injunction has been issued between the parties, and your prior criminal record.

If the prosecutor won't drop the charges, you can challenge the State's case by demanding a jury trial (which is your right under the U.S. Constitution). The prosecutor will evaluate the case to determine whether there is enough evidence to proceed to trial, taking into consideration all the possible scenarios outlined above as well as whatever other factors may be important in your particular situation. If the case is weak, and the State Attorney does not believe there is enough evidence to prove the charge beyond a reasonable doubt, the charge is usually dropped.

If the State does pursue prosecution, then it's the jury's job to determine what the evidence shows. In many cases, it's simply a matter of deciding which side is telling the truth. Here again, it's

your lawyer's job to show the jury all the reasons for a reasonable doubt. Your lawyer should cross-examine the witnesses called by the State, pointing out inconsistencies, contradictions, motives to lie, etc.

Your lawyer should also subpoena any witnesses who would give favorable testimony for you. Finally, you should consult with your lawyer before making the important decision of whether you want to testify in your own behalf. If, after hearing all the evidence, the jury believes there is a reasonable doubt, the verdict will be not guilty.

In my closing argument, I always talk to the jurors about what I consider to be one of the most critical jury instructions in every criminal case. In defining reasonable doubt, the instruction explains that a reasonable doubt can come from the evidence, a lack of evidence, OR a conflict in the evidence. This is critical because domestic violence cases often are full of conflicts, and many times there is very little evidence aside from the testimony of one witness.

On the other hand, you might not want to take your case all the way to a jury trial. In that event, your lawyer should help you negotiate a plea deal. This might involve a plea to a lesser or different charge (e.g., fighting, breach of peace, or disorderly intoxication), a withhold of adjudication instead of a conviction, a different term of probation, or a different amount of jail time, all depending on the individual circumstances of your case.

Conclusion

No two battery cases are exactly alike. That's why you should discuss the facts of your case with an experienced lawyer before deciding how to plead to a domestic violence charge. The stakes are high, and you need someone on your side who can guide you through the complicated and often unfriendly criminal justice system.

Can I Talk to You About My Case?

If you would like to set up a free consultation about your domestic violence case, just call Sullivan & Hepler at (904)384-8808. You can also send me an e-mail to ruthann@sullivanandhepler.com.

Notes: _____

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Ruth Ann Hepler grew up in Panama City, Florida. She graduated from the University of Missouri in 1988 with a degree in journalism. She got her law degree from the University of Florida in 1991 and joined the Jacksonville Public Defender's Office in 1992. She opened her own private practice in 1999 and returned to the Public

Defender's Office to work part-time in 2003. In 2008, she joined Michael P. Sullivan full-time in his practice. She and her husband Carey have three daughters, Janie, Patti and Sally.

The firm is now called Sullivan & Hepler, Attorneys at Law. The firm practices in the areas of criminal defense, Social Security disability, workers' compensation, and veterans' compensation claims.

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