

The Law Offices Of H. Michael Steinberg - Colorado Domestic Violence Defense Lawyer

Title 18. Criminal Code

Article 1. Provisions Applicable to Offenses Generally

Part 10. Orders and Proceedings Against Defendant

§ 18-1-1001. Protection order against defendant

(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), or in cases of stalking pursuant to section 18-3-602, 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 as a condition of any bond for the release of the defendant. The prosecuting attorney shall, in such domestic violence cases or stalking cases, 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), or in cases of stalking pursuant to section 18-3-602, 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.

(b) Upon issuance of an order pursuant to paragraph (a) of this subsection (9), the defendant shall relinquish any firearm or ammunition not more than twenty-four hours after being served with the order; except that a court may allow a defendant up to seventy-two hours to relinquish a firearm or up to five days to relinquish ammunition pursuant to this paragraph (b) if the defendant demonstrates to the satisfaction of the court that he or she is unable to comply within twenty-four hours. To satisfy this requirement, the defendant may:

(I) Sell or transfer possession of the firearm or ammunition to a federally licensed firearms dealer described in 18 U.S.C. sec. 923, as amended; except that this provision shall not be interpreted to require any federally licensed firearms dealer to purchase or accept possession of any firearm or ammunition;

(II) Arrange for the storage of the firearm or ammunition by a law enforcement agency; except that this provision shall not be interpreted to require any law enforcement agency to provide storage of firearms or ammunition for any person; or

(III) Sell or otherwise transfer the firearm or ammunition to a private party who may legally possess the firearm or ammunition; except that a defendant who sells or transfers a firearm pursuant to this subparagraph (III) shall satisfy all of the provisions of section 18-12-112, concerning private firearms transfers, including but not limited to the performance of a criminal background check of the transferee.

(c) If a defendant is unable to satisfy the provisions of paragraph (b) of this subsection (9) because he or she is incarcerated or otherwise held in the custody of a law enforcement agency, the court shall require the defendant to satisfy such provisions not more than twenty-four hours after his or her release from incarceration or custody or be held in contempt of court. Notwithstanding any provision of this paragraph (c), the court may, in its discretion, require the defendant to relinquish any firearm or ammunition in the defendant's immediate possession or control or subject to the defendant's immediate possession or control before the end of the defendant's incarceration. In such a case, a defendant's failure to relinquish a firearm or ammunition as required shall constitute contempt of court.

(d) A federally licensed firearms dealer who takes possession of a firearm or ammunition pursuant to this section shall issue a receipt to the defendant at the time of relinquishment. The

federally licensed firearms dealer shall not return the firearm or ammunition to the defendant unless the dealer:

(I) Contacts the bureau to request that a background check of the defendant be performed; and

(II) Obtains approval of the transfer from the bureau after the performance of the background check.

(e) A local law enforcement agency may elect to store firearms or ammunition for persons pursuant to this subsection (9). If an agency so elects:

(I) The agency may charge a fee for such storage, the amount of which shall not exceed the direct and indirect costs incurred by the agency in providing such storage;

(II) The agency may establish policies for disposal of abandoned or stolen firearms or ammunition; and

(III) The agency shall issue a receipt to each defendant at the time the defendant relinquishes possession of a firearm or ammunition.

(f) If a local law enforcement agency elects to store firearms or ammunition for a defendant pursuant to this subsection (9), the law enforcement agency shall not return the firearm or ammunition to the defendant unless the agency:

(I) Contacts the bureau to request that a background check of the defendant be performed; and

(II) Obtains approval of the transfer from the bureau after the performance of the background check.

(g)(I) A law enforcement agency that elects to store a firearm or ammunition for a defendant pursuant to this subsection (9) may elect to cease storing the firearm or ammunition. A law enforcement agency that elects to cease storing a firearm or ammunition for a defendant shall notify the defendant of such decision and request that the defendant immediately make arrangements for the transfer of the possession of the firearm or ammunition to the defendant or, if the defendant is prohibited from possessing a firearm, to another person who is legally permitted to possess a firearm.

(II) If a law enforcement agency elects to cease storing a firearm or ammunition for a person and notifies the defendant as described in subparagraph (I) of this paragraph (g), the law enforcement agency may dispose of the firearm or ammunition if the defendant fails to make arrangements for the transfer of the firearm or ammunition and complete said transfer within ninety days of receiving such notification.

(h) If a defendant sells or otherwise transfers a firearm or ammunition to a private party who may legally possess the firearm or ammunition, as described in subparagraph (III) of paragraph

(b) of this subsection (9), the defendant shall acquire:

(I) From the transferee, a written receipt acknowledging the transfer, which receipt shall be dated and signed by the defendant and the transferee; and

(II) From the licensed gun dealer who requests from the bureau a background check of the transferee, as described in section 18-12-112, a written statement of the results of the background check.

(i)(I) Not more than three business days after the relinquishment, the defendant shall file a copy of the receipt issued pursuant to paragraph (d), (e), or (h) of this subsection (9) and, if applicable, the written statement of the results of a background check performed on the defendant as described in subparagraph (II) of paragraph (h) of this subsection (9), with the court as proof of the relinquishment. If a defendant fails to timely file a receipt or written statement as described in this paragraph (i):

(A) The failure constitutes a violation of the protection order pursuant to section 18-6-803.5(1)(c); and

(B) The court shall issue a warrant for the defendant's arrest.

(II) In any subsequent prosecution for a violation of a protection order described in this paragraph (i), the court shall take judicial notice of the defendant's failure to file a receipt or written statement, which will constitute prima facie evidence of a violation of the protection order pursuant to section 18-6-803.5(1)(c), C.R.S., and testimony of the clerk of the court or his or her deputy is not required.

(j) Nothing in this subsection (9) shall be construed to limit a defendant's right to petition the court for dismissal of a protection order.

(k) A person subject to a mandatory protection order issued pursuant to this subsection (9) who possesses or attempts to purchase or receive a firearm or ammunition while the protection order is in effect violates the order pursuant to section 18-6-803.5(1)(c).

(l)(I) A law enforcement agency that elects in good faith to not store a firearm or ammunition for a defendant pursuant to sub-subparagraph (B) of subparagraph (III) of paragraph (b) of this subsection (9) shall not be held criminally or civilly liable for such election not to act.

(II) A law enforcement agency that returns possession of a firearm or ammunition to a defendant in good faith as permitted by paragraph (f) of this subsection (9) shall not be held criminally or civilly liable for such action.