

LEGISLATIVE COMMITTEE MINUTES

HB612

Bill as Introduced

HB 612-FN - AS INTRODUCED

2015 SESSION

15-0813

04/05

HOUSE BILL **612-FN**

AN-ACT establishing a penalty for falsifying information to obtain a protective order.

SPONSORS: Rep. Estevez, Hills 37; Rep. Manning, Rock 8

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill establishes a criminal penalty for falsifying information to obtain a restraining order or a protective order.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT establishing a penalty for falsifying information to obtain a protective order.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Falsification in Official Matters; Frivolous Restraining Orders. Amend^cRSA 641
2 by inserting after section 4 the following new section:

3 641:4-a Frivolous Restraining Orders. Any person who knowingly gives or causes to be given
4 false information to any judge or law enforcement officer for the purpose of obtaining a restraining
5 order, protective order, or other court-ordered injunctive relief shall be guilty of a class B felony.

6 2 Effective Date. This act shall take effect January 1, 2016.

HB 612-FN - AS INTRODUCED

LBAO
15-0813
01/26/15

HB 612-FN - FISCAL NOTE

AN ACT establishing a penalty for falsifying information to obtain a protective order.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, and Department of Justice state this bill, as introduced, may increase state and county expenditures by an indeterminable amount in FY 2016 and each year thereafter. There will be no fiscal impact on local expenditures or state, county, and local revenue.

The New Hampshire Association of Counties was contacted on December 31, 2014 for a fiscal note worksheet, which the Association has not provided as of January 26, 2015. We are not able to determine if this bill will have a fiscal impact on county expenditures at this time.

The Department of Corrections was contacted on December 31, 2014 for a fiscal note worksheet, which the Association has not provided as of January 26, 2015. We are not able to determine if this bill will have a fiscal impact on the Department's expenditures at this time.

METHODOLOGY:

The Judicial Branch states this bill would add RSA 641:4-a to make it a class B felony to give or cause to be given to a judge or police officer false information for the purpose of obtaining a restraining order, protective order, or other court-ordered injunctive relief. The Branch has no information to estimate how many new felonies will be brought but does have information on the average cost of processing a routine criminal case, which is how this new penalty would be classified (see table below).

The Judicial Council states this bill may result in individuals that are charged with making a false claim under RSA 641:4-a, seeking the services of the indigent defense delivery system. See table below for cost information.

The Department of Justice states the offense contained in this bill is typically prosecuted by county attorneys. The Department might be marginally impacted by appeals resulting from this bill but anticipates it could manage any resulting fiscal impact with its budget.

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Though the Legislative Budget Assistant Office is still awaiting information from the Department of Corrections and New Hampshire Association of Counties, it has received information from the Department and Association providing the average cost to incarcerate an individual in a state and county correctional facility. See table below.

	FY 2016	FY 2017
<u>Judicial Branch*</u>		
Routine Criminal Felony Case	\$438	\$453
Appeals	Varies	Varies
*It should be noted average case cost estimates for FY 2016 and FY 2017 are based on data that is more than nine years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		
<u>Judicial Council#</u>		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney -- Felony	\$756/Case	\$756/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Services other than Counsel	Indeterminable	Indeterminable
#It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
<u>Department of Corrections</u>		
FY 2014 Average Cost of Incarcerating an Individual	\$33,540	\$33,540
FY 2014 Average Cost of Supervising an Individual on Parole/Probation	\$535	\$535
<u>NH Association of Counties</u>		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Cost of Incarcerating an Individual	\$35,000	\$35,000

Speakers

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 612-FN

BILL TITLE: establishing a penalty for falsifying information to obtain a protective order.

DATE: 2/5/15

LOB ROOM: 204

Time Public Hearing Called to Order:

1:00 pm

Time Adjourned:

2:18 pm

(please circle if present)

Committee Members: :Reps. Tholl, Welch, Fields, Fesh, Marston, Burt, S. Sweeney, Barnes, Comeau, Fisher, Martin, Pantelakos, Berube, Robertson, Cushing, Hirsch, O'Hearne, Mangipudi and DiSesa.

Bill Sponsors: Rep. Estevez, Hills 37; Rep. Manning, Rock 8

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Estevez – this is a special sponsoring – supports – This bill is for a constituent. A protective order being falsifying statement. No penalty for lying. Statement sent to judge without hearing all sides of issues. Some testimony read in a folder. 2nd amendment you lose your right to have any firearms. Person can take as many restraining orders. Always allows person to lie. Restraining order – protective means to protect any person. Restraining orders out of control also drastic punishment. Abuse of statues taking place. Judge automatically upholds restraining orders. Restraining order requires person to leave home, some states not sponsored. 60% of people should not have actually had a restraining order. Custody of children, stalking complaint if get other boyfriend or girlfriend. Address immigration issue also with someone out of state or country.

Rep. Pantelakos – did I hear you say you would believe you have to go to court for restraining order?

Estevez – yes – not required being in court

Rep. DiSesa – why is this reference different then law now.

Rep. Estevez – this would help make this stronger as act of legislature to update more laws.

Rep. DiSesa – rape charge, false statements, are prosecuted up to courts.

Rep. Mangipudi - last yr we passed a law on domestic violence. 202 vote on domestic violence

Estevez – those that commit violence, responsibility to protect the false statements.

Rep. Robertson – over the yrs, if person got a restraining order, I don't see harm to him if wife didn't get order

Rep. Estevez – you are in a minority of people,

Rep. O'Hearne – what states this in the articles you have presented to committee.

Rep. Estevez – yes other

Rep. O'Hearne – NH 14 days

Rep. Estevez – ex parte doesn't have effect 3 – 4 days.

Rep. Hirsch – 641:2 false swearing, rape, restraining, misdemeanor. Class B penalty on your bill. Over 40 years.

Rep. Estevez – this would be a lie on a document.

Rep. Hirsch – would you make any false statement a felony

Rep. Estevez – yes

Rep. DiSesa – you are saying people are making false statement. Would I see evidence this is a serious problem.

Rep. Estevez – wish I had more evidence.

Rep. Pantelakos – on penalty receptive to felony

Rep. Tholl – being in law enforcement for 40 yrs would you believe many are not served.

Joel Weinreb – was a police officer, man or woman, made restraining order, false statement.

Women made perjury. 6 month in jail because 12 restraining reports, falsified.

Rep. Comeau – was other person prosecuted

Joel W. – no

Rep. Tholl – what state was this

Joel W. - Massachusetts

*Paula Wall – crisis center of central NH – opposed

Andrea Schwoerer – restraining order issued, tried to reason 2 letters not answered. Ligation, ex-husband = filed restraining order Jan. 23, restraining order denied. 1 ½ hr. trial. Someone who falsify should have stronger penalty. Judge Garfinkle, she said judge was fair helped her. I need my protection on false testimony.

Mary Krveger, NH Legal assistance, opposed – We already have enough laws now that cover domestic violence. Many barrier, physical abuse, biological abuse. This does singles out single person victim would fear this bill would have abuser or victim not want to come forward. This doesn't need this law. Abusers can cause more events. RSA 173: B adopted balance this ex-parte petition, victim knows first. Defendant can request 3-5 day request this can be stopped. Court can temporarily remove fire arms, can request warrant to search. our court system quite capable of sorting issues.

Rep. DiSesa = your cases you know how many cases have you represented.

Krveger - Approximately 70, 1 lied, maybe handful of cases, maybe 1 out of 70.

Rep. Mangipudi – is this constitutional issues?

Krveger – 21% more invent issues. Family law cases, doesn't know how many view thing with reality, culture believes 1-3 women have domestic violence.

Rep. Cushing – do you know anyone harmed and recovery damages.

Krveger – I don't know

Rep. Tholl – did person have cases in different court.

Krveger – you can go to superior court different circumstances.

Respectfully submitted,


Rep. Dennis Fields, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

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CARA

SPONSOR Rep ESTEVEZ = support BILL = THIS IS A SPECIAL SPONSORING HILLS 37

THIS BILL FOR A CONSTITUENT'S PROTECTIVE ORDER BEING FALSIFYING STATEMENT NO PENALTY FOR LYING STATEMENT SENT TO JUDGE WITHOUT HEARING ALL SIDES OF ISSUES SOME TESTIMONY READ IN FOLDER

AND AMENDMENT YOU LOSE YOUR RIGHT TO HAVE ANY FIRE ARMS. PERSON CAN TAKE AS MANY RESTRAINING ORDERS. ALWAYS ALLOW PERSON TO LIE

RESTRAINING ORDER = PROTECTIVE MEANS TO PROTECT ANY PERSON SPONSOR READ HIS HAND OUTS, WRITEN OUT SEE FOLDER RESTRAINING ORDERS OUT OF CONTROL

ALSO DROSTIC PUNISHMENT, ABUSE OF STATUES TAKING PLACE

JUDGE AUTOMATICALLY UP HOLDS RESTRAINING ORDERS

RESTRAINING - REQUIRE PERSON LEAVE HOME, SOME STATES NOT SPANLED, OVER

60% OF 2.2 PEOPLE NOT ACTUALLY SHOULD NOT OF
HAD A RESTRAINING ORDER.
CUSTODY OF CHILDREN.
STALKING, COMPLAINTIFF GET OTHER BOY FRIEND
OR GIRL FRIEND
ADDRESS. IMMIGRATION ISSUE ALSO
SOMEONE OUT OF STATE OR OUT OF STATE

Q. Rep. PATEL HAS = DID I HEAR YOU SAY
WOULD YOU BELIEVE YOU HAVE TO GO TO COURT
FOR A RESTRAINING ORDER.

A. YES ESTEVEZ = NOT REQUIRED TO BE IN COURT,

Q Rep = DISESA = WHY IS THIS REFERENCE DIFFERENT
THAN LAW NOW.

A. ESTEVEZ = THIS WOULD HELP MAKE THIS STRONGER,
BY ACT OF LEGISLATURE TO UPDATE MORE LAWS,

Q Rep = DISESA 642: A = RAPE CHARGE, FALSE STATEMENTS
ARE PROSECUTED UP TO COURT.

Q Rep: MANIPULATE = WE LAST YR PASSED LAW ON DOMESTIC
VIOLENCE, 2Q2 VOTE ON DOMESTIC VIOLENCE.

A ESTEVEZ = THOSE THAT COMMIT VIOLENCE, RESPONSIBILITY
TO PROTECT THE FALSE STATEMENTS.

Q Rep = ROBERTSON = OVER THE YRS, IF PERSON GET A RESTRAINING
I DON'T SECURE TO HIM IF WIFE DIDN'T GET ORDER.

A. ESTEVEZ = YOU ARE IN A MINORITY OF PEOPLE,

Q Rep O'HERNE = WHAT STATES THIS ARTICLES YOU
PRESENTED TO COMMITTEE

A. Rep ESTEVEZ = YES OTHER

Q Rep O'HERNE = NIH 140995

A. ESTEVEZ = EX PARTE DOESN'T HAVE EFFECT 3-4 DAYS

Q Rep. HIRSCH = 641: 2 FALSE SWEARINGS, RAPE, RESTRAINING
MISDEAMOR. CLASS B PENALTY ON YOUR BILL

Rep. ESTEVEZ = THIS WOULD BE A LIE ON A DOCUMENT.

Q Rep HIRSCH = WOULD YOU MAKE ANY FALSE STATEMENT
IN FOLONY

A. Rep ESTEVEZ = YES

CRIMINAL JUSTICE - PUBLIC SAFETY COMMITTEE

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Q Rep DISESA = you are saying people are making FALSE STATEMENTS, would it be evidence this IS A SERIOUS PROBLEM?

A Rep ESTEVEZ = WIGHT HAD MORE EVIDENCE

Q Rep PATELHAS = ON PERALITY REC-PTIVE TO FELONY

A Rep ESTEVEZ =

Q Rep THOLT = BEING IN LAW ENFORCEMENT FOR

14 YRS would you believe many are NOT SERVED

CARD 2

JUL WEINREB = WAS A OFFICER POLICE MAN, HUMAN, I MADE RESTRAINING ORDER, FALSE STATEMENTS, WOMAN MADE PERJURY, 6 MONTHS IN JAIL BECAUSE RE RESTRAINING REPORTS, FALSIFIED

Q Rep COMEDI = WAS OTHER PERSON PROSECUTIVE

A WEINREB = NO

Q Rep THOLT = WHAT STATE WAS THIS

A WEINREB = MASSACHUSETTS

CARD 3

PAULA WALL = CRISIS CENTER OF CENTRAL MASS
WANTED TESTIMONY, OPAPOSED

CARD 4

ANDRO SCHUBERT = RESTRAINING ORDER ISSUED,

TRIED TO REASON 2 LETTERS NOT ANSWERED.

HEATHMAN, EX HUSBAND = FILED RESTRAINING ORDER

JAN 23, RESTRAINING ORDER DENIED

1 1/2 HR. TRIP ~~TO~~ SOMEONE WHO FALSIFY SHOULD HAVE STRONG PERALITY, JUDGE GABRIELLE, SHE SAID JUDGE WAS FAIR HELPER HERE I NEED MY PROTECTION ON FALSE TESTIMONY. OVER →

Page 4

CARD 5 Mary Kveger = Will legal assistance, opposed bill.

We already have enough laws now that cover domestic violence, many barriers, physical abuse, financial abuse, ~~and~~ ^{this does} singles out single person victim would fear this bill would have abuser on victim not want to come forward this doesn't need this law abusers, can cause more events.

USA 1731B adopted balance this ex parte petition, victim knows first defendant can request 3-5 day request this can be stopped court to temporarily remove fire arms, can request warrant to search.

our court system quite capable of sorting issues,

Q. rise 50 = your cases you know how many cases have you represented, approximately 90

A. ~~the lawyer~~ I live, maybe handful of cases, maybe 1 out of 70.

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Q. Mr. Cushman = do you know anyone harmed and recovery damages

A. Kveger = I don't know.

Q. Mr. Thell = did person have ~~cases~~ ^{cases in} different courts

A. Kveger = you can go to superior court different circumstances.

Testimony



Supporting those affected by domestic and sexual violence

**Testimony of Paula Kelley-Wall, of the Crisis Center of Central New Hampshire,
on behalf of the New Hampshire Coalition Against Domestic and Sexual Violence
In OPPOSITION to HB 612, establishing a penalty for falsifying information to
obtain a protective order.**

Good afternoon Chairman Tholl and Members of the House Criminal Justice and Public Safety Committee:

For the record, my name is Paula Kelley-Wall, and I am the Program Director of the Crisis Center of Central New Hampshire. I am here today on behalf of the New Hampshire Coalition Against Domestic and Sexual Violence. The Coalition is a statewide network of 14 independent member programs that provide services to victims of domestic violence, sexual assault, child abuse, and stalking. In 2013 the Coalition's 14 member programs served 15,007 victims of abuse in the State of New Hampshire.

I am here to speak in opposition to HB 612. Under current statute, it is currently a misdemeanor to make a false report to law enforcement. Making it a Class B felony to falsely report in order to obtain a protective order would be inconsistent with other crimes in NH's Criminal Code and would more harshly penalize victims of domestic violence than anyone else making a false statement to law enforcement. The policy implications of passing this bill would be the codified presumption that victims of domestic violence make false allegations at a higher rate than other civil litigants, with no basis in empirical evidence that this is the case. There is however, extensive literature supporting that batterers often use the legal system as a further method of power and control over their victims. To that end, it is abusers who are much more likely to generate false claims to law enforcement.

It is important to note that it is not uncommon for a victim to recant. This certainly does not mean that a crime of domestic violence did not occur. Victims of domestic violence learn to do what they need to do in order to keep themselves and their children safe. A victim may reach out to the criminal justice system for assistance during a time of crisis, then withdraw a protective order or fail to testify against the abuser out of fear of retribution. Considering that 50% of all of the homicides in NH are the direct result of domestic violence, a victim's fear of retribution is one that is very real.

The American Bar Association (ABA) has published a study that debunks the claim that victims obtain protective orders in order to gain a legal advantage in divorce or parenting cases. The ABA cites there is actually no effect on custody outcomes in cases where there are allegations of abuse against fathers. In fact, abusers are more likely to



CRISIS CENTER of Central New Hampshire

Supporting those affected by domestic and sexual violence

seek sole custody of their children over the non-abusive parent, and are successful in doing so 70% of the time.

Before a final domestic violence protective order can be granted, the court must first find that an act of abuse, as defined in our criminal code, has been committed against the plaintiff AND further find that the defendant poses a credible threat to the victim's safety. The burden of proof in these cases is on the petitioner—not the defendant. These cases are highly scrutinized in court, and it is in fact difficult to obtain a protective order in NH. In 2013, only 42% of all domestic violence petitions scheduled for a final hearing resulted in the court granting a final protective order for one year. Less than half of these petitions being granted speak to a careful review of all facts, circumstances, and credibility of both parties. These orders are not handed out easily or indiscriminately. This of course does not mean that only 42% of all petitions are false. Rather, over the past several years there has been case law that has made it far more difficult for pro se litigants to prove that a crime occurred and that they are in fact in immediate danger. It is not uncommon for an unrepresented victim, who has visible injuries, to have a protective order denied. Again, this does not necessarily mean that abuse did not occur. I'd like to bring your attention to a recent case that you may recall seeing in the news – in January of 2014, Stanislav Osherov, a 23-year-old-man from Massachusetts was convicted of kidnapping his ex-girlfriend at gunpoint, taking her to a Motel 6 in Nashua, where he kept her hostage in a hotel room and repeatedly sexually assaulted during a 13-hour standoff with police. What you may not know is that the victim, Mr. Osherov's ex-girlfriend and mother to the couple's 2-year-old son, had petitioned for a protective order against Osherov three days before he kidnapped her, and that the protective order had been denied. As you can see, protective orders are NOT easy to obtain, even in instances where there is very real threat of danger.

In summary - it is already a misdemeanor to falsify information to law enforcement in all case. Ironically, if this bill were to pass there would be a higher penalty for those who allegedly falsify information in protective order cases than for the majority of those who allegedly commit domestic violence. For these reasons, the Coalition asks that you vote ITL on HB612.

1

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It is important to note that it is not uncommon for a victim to recant. This certainly does not mean that a crime of domestic violence did not occur. Victims of domestic violence learn to do what they need to do in order to keep themselves and their children safe. A victim may reach out to the criminal justice system for assistance during a time of crisis, then withdraw a protective order or fail to testify against the abuser out of fear of retribution. Considering that 50% of all of the homicides in NH are the direct result of domestic violence, a victim's fear of retribution is one that is very real.

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seek sole custody of their children over the non-abusive parent, and are successful in doing so 70% of the time.

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SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

Civil Rights Violations

Despite their widespread use, many believe *ex parte* orders violate essential elements of due process, including advance notice of the proposed action, the right to face your accuser, and the opportunity to refute the allegation. Nonetheless, *ex parte* orders have been deemed legally acceptable because they are issued on a temporary basis under civil law, and proponents argue the respondent is entitled to full due process protections during the final hearing.

But in practice, the respondent may not enjoy full due process protections at the final hearing. In many cases, a restraining order becomes the legal equivalent of the old joke, "So when did you stop beating your wife?":

- The claimant may have had weeks to prepare for the case, and may be receiving free legal help. In contrast, the respondent has only a few days to find a lawyer and develop a legal strategy.
- The respondent has limited access to evidence in the family home that may be essential to proving his or her innocence.
- If the respondent has limited financial resources, he or she may be forced to undertake more difficult *pro se* defense.

As one attorney notes, "the mere allegation of domestic abuse...may shift the burden of proof to the defendant."⁵ In some cases the judge asks, "Well, why *shouldn't* I enter this order against your client?"

This is the court transcript from a hearing in which the respondent's attorney requested the court to vacate (i.e., remove) the order:⁶

Attorney to his respondent-client: "Can you please state your name and your address for the record?"

Judge: "I don't believe I need to hear any evidence from your client. I'm going to deny your request to vacate the restraining order."

In Washington State, a standard Temporary Order for Protection reads as follows:

IT IS THEREFORE ORDERED THAT...The respondent is directed to appear *and show cause why this temporary order should not be made effective for one year or more and why the court should not order the relief requested by the petitioner* or other relief which may include electronic monitoring, payment of costs, and treatment. [emphasis added]

* In New Jersey, the defendant is not allowed to depose the alleged victim because, according to the statutory wording, this "perpetuates the cycle of power and control whereby the perpetrator remains the one with the power and the victim remains powerless." It should also be noted that the wording of the law does not employ the word "alleged" to qualify the term "perpetrator."

How Common are Non-Meritorious Orders?

It's no secret that restraining orders are often issued without good cause. Following a New Jersey class, one lawyer revealed with astonishment, "A number of women attending the seminars smugly—indeed boastfully—announced that they had already sworn out false or grossly exaggerated domestic violence complaints against their hapless husbands, and that the device worked!"¹⁹

How many restraining orders are issued without good cause? To answer that question, an estimate is made of the total number of restraining orders issued each year. Then the proportion of those that are non-meritorious is calculated.

Annual Number of Restraining Orders

One analysis compiled data on *final* restraining orders (mostly in 2002) from 29 state court systems, and found that rates varied widely across the states. On average, the analysis revealed that 342 final restraining orders were issued per 100,000 persons. When extrapolated to the entire US population, an estimated 860,000 final orders were granted.²⁰

That calculation parallels data from the FBI National Crime Information Center (NCIC), which includes a national registry of restraining orders. Each year 600,000 to 700,000 permanent orders are entered into the registry.

However, eight states do not participate in the NCIC registry, and many other states have incomplete coverage. For example in Texas, 25 counties do not report. In California, 17 counties do not have a reliable procedure to enter orders into their database.

Given the trend to increasing numbers of restraining orders, the best estimate of final restraining orders now issued each year is 900,000.

The national number of *temporary* restraining orders is unknown. But break-downs on temporary vs. final orders are available from three states:

- In Connecticut, 9,390 restraining orders were issued in 2004, of which 66.5% were temporary and the remaining 33.5% were permanent.²¹
- In Pennsylvania, 57,316 Protection From Abuse orders were issued in 2004, consisting of 39,997 temporary orders and 17,319 final orders, either by stipulation/agreement or after a hearing.²²
- In Virginia, 84% of all restraining orders are emergency or temporary, 16% are permanent.²³

SAVE: STOP ABUSIVE AND VIOLENT ENVIRONMENTS

of requests from men were deferred or turned down, compared to only 10% of requests from women.²⁸

According to one Oregon attorney, "I believe many general practice attorneys who don't specialize in domestic relations would hesitate before trying to get a restraining order for a man, whereas there would be no hesitation at all for a woman under the same set of circumstances."²⁹

This statement is based on the fact that in his state, the protective orders once featured the following gender-biased language: The respondent in this order is the natural/legal *father* of the below named minor children" [emphasis added].³⁰

A father suffered repeated assaults by his wife, on one occasion requiring medical treatment for his injuries at the local emergency room. Afraid for his children and for himself, he sought a restraining order. At the time of court hearing, he brought photographs of his injuries, medical documentation of his emergency room visit, and a copy of the police report. This was the judge's explanation for denying the man's request: "Well, you have to expect one knock-down drag-out fight per divorce."³¹

Victims Accused of Being Perpetrators

Legal bias is not the only reason that male victims are often reluctant to seek restraining orders. There have been reports of abused men who found themselves accused of being the perpetrator.

The best data comes from a survey of 302 male victims of domestic violence. When asked about the types of psychological aggression their female partners had used, 39% of the men reported their partner had filed a restraining order against him under false pretenses.³² As one man reported, "She has promised to lie and accuse me of physical abuse against her, sexual abuse of our daughter, if that helps her win custody."

In another case, a woman severely bit her husband on the shoulder and chest. After showing the judge pictures of his injuries, the man was granted a restraining order. The next day the woman went before the same judge and, even though she had suffered no injuries, she claimed to be in "fear" for her life, saying that the man was the real abuser. On the basis of that unsubstantiated allegation, the judge reversed the original order against the wife and issued an order against the *husband*.³³

Sometimes these male victims are re-victimized by being subjected to arrest. A Washington State attorney gives this advice: "Don't call 911 unless you are bleeding and she still has a weapon in her hand. Too many men who have called 911 for help have ended up being arrested for DV."³⁴ As family violence expert Murray Straus put it, "There are a growing number of complaints that attempts by men to obtain police protection may result in the man being arrested."³⁵

DOMESTIC RESTRAINING ORDERS

A restraining order is a law enforcement tool designed to provide emergency relief in the event of imminent or actual serious physical harm. The original idea behind restraining orders was sound. But as the following example illustrates, judges are now issuing restraining orders on questionable grounds:

On December 15, 2005, Santa Fe District Court Judge Daniel Sanchez issued a temporary restraining order to protect Colleen Nestler. According to Nestler, for the past 11 years a man had been sending her unwanted coded messages over the airwaves expressing his desire to marry her. Her alleged harasser: CBS talk show host David Letterman.

Asked to explain why he had issued a restraining order on the basis of such an unusual complaint, Judge Sanchez replied that Ms. Nestler had filled out the restraining order request form correctly.¹

This Special Report summarizes the two-step process of obtaining a restraining order, highlights their impact on the family structure, evaluates the extent of non-meritorious orders, and discusses other problems with such orders.

Issuance of a Restraining Order

Restraining orders (known as “orders of protection” or “emergency protective orders” in some states) are typically issued by following a two-step process:

The initial temporary restraining orders (TROs) are generally issued on an emergency *ex parte* basis. The judge issues the order without the respondent having legal representation, being allowed to present opposing evidence, or even being aware of the allegation. It has been estimated that about 85% of such orders are issued against men, with the remaining 15% issued against women.²

Restraining orders are easy to obtain because state laws now define domestic violence broadly,³ judges seldom require proof of abuse, and statutes invoke a “preponderance of evidence” standard. In California, for example, a restraining order appears to be as easy to obtain as a hunting license. The Sacramento Superior Court’s website instructs TRO applicants as follows:

Please present the completed domestic violence forms to the Family Law Filing Window in Room 100 of the William R. Ridgeway Family Relations Courthouse. The clerk will conduct a mini-interview with you to clarify your request and to ensure that you filled out the forms correctly.⁴

In most states a temporary order is followed by a full hearing 10–14 days later; at that time, a final judicial determination is reached.

DOMESTIC RESTRAINING ORDERS

In short, the burden of proof rests not on the complainant, but on the respondent to prove that the order should not be extended for a full year.

Concerns about widespread due process violations have been voiced in legal circles for at least 25 years.⁷

- Elaine Epstein, former president of the Massachusetts Bar Association, admitted, “Everyone knows that restraining orders and orders to vacate are granted to virtually all who apply...In many cases, allegations of abuse are now used for tactical advantage.”⁸
- In Connecticut, attorney Arnold Rutkin charged that many judges view temporary restraining orders as a “rubber-stamping exercise” and that subsequent hearings “are usually a sham.”⁹
- In Missouri, a survey of judges and attorneys yielded many complaints of disregard for due process and noted that allegations of domestic violence were widely used as a “litigation strategy.”¹⁰
- In Illinois, an article in the state legal journal described legal allegations of abuse as “part of the gamesmanship of divorce.”¹¹
- In California, the State Bar admits it is concerned that protective orders are “almost routinely issued by the court in family law proceedings even when there is relatively meager evidence and usually without notice to the restrained person ... it is troubling that they appear to be sought more and more frequently for retaliation and litigation purposes.”¹²

Impact of Restraining Orders

Restraining orders have profound consequences. They:

- Require the respondent to immediately vacate the house.
- Prohibit the person from communicating with children.
- Bar the person who works in the military or law enforcement from carrying a weapon, may result in loss of a security clearance, thus harming the person’s career opportunities.
- Impose substantial legal defense costs. In contrast, the claimant may enjoy free legal assistance under the Legal Assistance for Victims provision of the Violence Against Women Act.

In some states, the existence of the order is not expunged from the respondent’s legal record, even if the final hearing finds the person innocent of all charges.

DOMESTIC RESTRAINING ORDERS

In Connecticut and Pennsylvania, two temporary restraining orders are issued for every final order. In Virginia, the ratio is over five to one. On the basis of this information, we estimate that 2-3 million temporary restraining orders are issued each year in the United States.

Non-meritorious orders

What percentage of restraining orders are issued without sound basis? Restraining orders are designed to protect individuals from physical harm. So, by any reasonable standard, a restraining order—especially when issued on an emergency *ex parte* basis—that does not even *allege* violence, or at least a credible threat of imminent violence, is non-meritorious.

A 1995 study conducted by the Massachusetts Trial Court reviewed the domestic restraining orders issued in that state. The study found that less than half of the orders involved even an *allegation* of violence.²⁴ In other words, the order was issued on the basis of alleged fear or emotional distress, not because of actual or imminent violence.

A subsequent analysis examined the allegations listed in 298 abuse prevention orders that were requested by women and issued in the Massachusetts Gardner District Court in 1997. In 41% of these cases, fear was the sole allegation listed, and in 64% of the orders the woman indicated no harm had occurred.²⁵

In a 2005 study of couples involved in custody disputes, domestic violence allegations were made in 55% of the cases. Of these allegations, 59% could not be substantiated by the courts as true.²⁶ A more recent analysis of domestic violence restraining orders issued in 2006 in Campbell County, West Virginia concluded 81% were unnecessary or false.²⁷

Based on these studies, it is estimated that *about 60% of the 2-3 million restraining orders issued annually are unnecessary or false*. This translates into 1.2-1.8 million persons who are wrongfully accused of domestic violence each year.

Other Problems with Restraining Orders

Other problems have been identified with restraining orders, in particular, gender bias in their issuance and abuse victims being accused of being perpetrators.

Gender Bias

If a man has been assaulted by his intimate partner, he should be able to obtain an order of protection. But a double standard may thwart this request.

This is borne out by research. In Massachusetts, one analysis examined all domestic *ex-parte* hearings held in the Gardner District Court in 1997. The analysis found that 34%

DOMESTIC RESTRAINING ORDERS

When government programs ignore the actions of *perpetrators* and encourage the arrest of *victims*, this is a sure sign of a justice system turned upside down.

A Betrayal of Victims

Advocates for expanding the scope of domestic violence laws claim their strategy permits society to identify future batterers, thus allowing a future tragedy to be averted. If this rationale were applied more widely, Child and Protective Services would intervene every time a mother raises a hand to her child and police would be dispatched for any schoolyard argument.

Under such a scenario, law enforcement and social welfare services would soon become inundated with minor cases. Overly-intrusive social intervention would be found to be escalating tense situations. False accusations would become rampant. And true victims would find it increasingly difficult to get help.

Many would say this is an accurate summary of our nation's *current* domestic violence system. Increasing numbers of victims are expressing the frustration that they were turned away by abuse shelters, their wishes ignored by law enforcement, and their needs ill-served by rigid criminal justice procedures. And the needs of male victims of abuse are ignored.

This frustration motivated one group to initiate a petition calling for the U.S. Department of Justice to perform an audit of domestic violence programs "for refusing victims the resources and services they desperately need." The petition has been signed by over 11,000 victims of domestic violence.³⁶

Orders Issued with a Heavy Hand

The original idea behind domestic restraining orders may have been sound. But over the years, state definitions of abuse have been widened and evidentiary requirements relaxed.

The Fourth Amendment affirms, "The right of the people to be *secure in their persons, houses, papers, and effects, against unreasonable searches and seizures*, shall not be violated" [emphasis added]. It is those rights to be secure in their houses and to be protected from unreasonable seizures that are violated by unjustified restraining orders.

The U.S. Supreme Court once commented that the Fourteenth Amendment is violated by legal procedures that appear "fair on their faces," but are administered "with an evil eye or a heavy hand."³⁷ The same could be said about restraining orders that are freely granted without evidence or proof.

Monday, 28 July 2008

Restraining Orders Out of Control

Written by Gregory A. Hession, J.D.

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In America today, restraining orders are not only overused, but abused in such a way as to threaten the concept of justice.

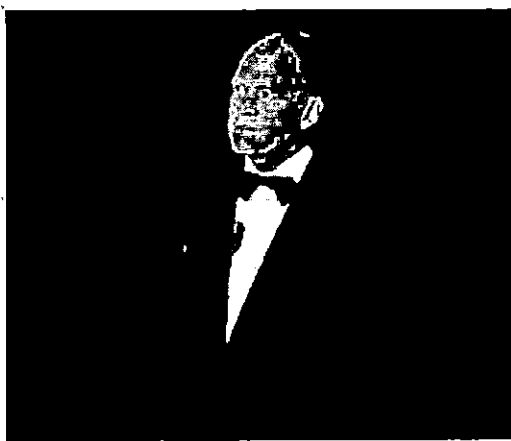
One day in December of 2005, Colleen Nestler came to Santa Fe County District Court in New Mexico with a bizarre seven-page typed statement and requested a domestic-abuse

restraining order against late-night TV host David Letterman.

She stated, under oath, that Letterman seriously abused her by causing her bankruptcy, mental cruelty, and sleep deprivation since 1994. Nestler also alleged that he sent her secret signals "in code words" through his television program for many years and that he "responded to my thoughts of love" by expressing that he wanted to marry her.

Judge Daniel Sanchez issued a restraining order against Letterman based on those allegations. By doing so, it put Letterman on a national list of domestic abusers, gave him a criminal record, took away several of his constitutionally protected rights, and subjected him to criminal prosecution if he contacted Nestler directly or indirectly, or possessed a firearm.

Letterman had never met Colleen Nestler, and this all happened without his knowledge. Nonetheless, she requested that the order include an injunction requiring him not to "think of me, and release me from his mental harassment and hammering." Asked to explain why he had issued a restraining order on the basis of such an unusual complaint, Judge Sanchez answered that Nestler had filled out the restraining-order request form correctly. After much national ridicule, the judge finally dismissed the order against Letterman. Those who don't have a TV program and deep pockets are rarely so fortunate.



Entertainer David Letterman was the defendant in a secret domestic-abuse restraining order proceeding in New Mexico, where a judge issued an order to a woman who claimed Letterman had sent secret marriage signals to her over his late-night TV program.

Is This American Justice?

Letterman's experience is replicated in state courts around the country thousands of times daily. Consider what happened to Todd, whose estranged wife went to court secretly and obtained a

restraining order against him. She swore that three men dressed in purple Fathers for Justice camouflage uniforms broke into her apartment, pushed her violently onto her couch, choked her severely, and threatened her, telling her that she better not go back to court. She complained that these were agents of the husband, as he belonged to that group. She did not call the police, but decided to go to work. Later she collapsed near the entrance of a hospital emergency room in a dramatic flourish.

As Todd's lawyer, I provided evidence that her story was as phony as the one about David Letterman. The wife lived in a

large apartment building on a main road with a busy lobby and a nosy superintendent across the hall from her. However, no one saw or heard the three strangely dressed intruders enter or leave during rush hour. The hospital records showed no bruises or evidence of physical assault. The court vacated the order against Todd.

Courts are easily manipulated by those pretending to seek protection from abuse because the political climate reinforces that men are abusers, and there is no penalty for false claims. Thus, they embolden applicants to use them for ulterior motives, such as to gain an advantage in divorce, to get custody of children easily without a family court hearing, or as a quick eviction process. Sometimes the motive is revenge or worse. For example, an order was issued against Brendan, father of two daughters, because he brought flowers to his child's home for her 10th birthday right after he sought enforcement of a custody order that the mother was routinely violating. Brendan was literally accused of "sneaking" into the yard to deliver flowers, nothing more, yet a restraining order was filed against him. This order was later vacated by a court.

An applicant can get a domestic-abuse restraining order for just about any reason. A report from an organization called Respecting Accuracy in Domestic Abuse Reporting (RADAR) suggests that it is as easy to obtain a restraining order as a hunting or fishing license. You fill out the forms and tell the judge you are afraid, and you get an order almost automatically. RADAR states: "The law defines almost any interpersonal maladjustment as 'domestic violence,' the courts then establish procedures to expedite the issuance of these orders."

The restraining-order laws of the several states are remarkably similar in their wording, as though an invisible hand were guiding them. They allow a woman to come to court secretly and claim that she feels fearful of "abuse" from a family member or person she lives with. The accused person is not there, and there is no requirement to notify him. There are no traditional rules of evidence, no opportunity for cross examination, no burden of proof beyond a reasonable doubt, no jury, nor even a necessity to have a story that makes sense.

The definition of "abuse" set forth in these state laws is always subjective, rather than requiring an injury or genuine threat. They all include a clause that expands abuse to include "fear of harm," often including even "emotional harm." Courts routinely issue orders on sworn statements like, "I just don't know what he may do," or, "he has a long history of verbal and emotional abuse."

A week after the initial secret hearing, a "return" hearing is held, where the defendant gets to tell his side of the story. He is usually allowed to present evidence and testimony, but it is often difficult to assemble needed documents and witnesses in that short period. Most of the temporary orders are extended for a year, regardless of the evidence, alibi, or witnesses offered.

To some judges, evidence is irrelevant; they just issue orders. Professor Stephen Baskerville, in his book *Taken Into Custody*, quotes Judge Richard Russell of Ocean City, New Jersey, at a restraining-order training seminar:

Throw him out on the street, give him the clothes on his back and tell him, "See ya around."... The woman needs this protection because the statute granted her that protection.... They have declared domestic violence to be an evil in our society. So we don't have to worry about the rights. Grant every order. That is the safest thing to do.

My client Mr. L's experience is a perfect example of this. I filed a motion to vacate the restraining order his ex-wife had against him, and she filed one to extend it, so the judge held a hearing to consider both motions — sort of. Here is the pertinent part of the actual transcript of the hearing to vacate the order:

Mr. Hession: Can you please state your name and your address for the record? [The Court argues with counsel as to whether Mr. L can testify.]

The Court: I don't believe I need to hear any evidence from your client. I'm going to deny your request to vacate the restraining order.

The hearing on whether to extend the order was no better:

The Court: Mrs. L_____, do you remain fearful of your husband?

Mrs. L_____: Yes. [Weeping]

The Court: Thank you.

The judge then extended the restraining order for a year, without Mr. L uttering his name on the witness stand, and with one generalized question to the wife about "fear." Judges who conduct hearings like this violate their oath to apply the law impartially and encourage the filing a false complaints — which is an enormous problem.

According to professor of accountancy Benjamin P. Foster, Ph.D, CPA, CMA, of the 4,796 emergency protective-order petitions issued in West Virginia in 2006, an estimated 80.6 percent "are false or unnecessary." Foster acknowledges the duplicitous nature of many of the complaints: "In divorce and child custody cases, a party generally obtains favorable treatment when the other party has engaged in domestic violence." In West Virginia, one incident of domestic violence, "which includes 'reasonable apprehension of physical harm' and 'creating fear of physical harm by harassment, psychological abuse,'... could impact the Parenting plan approved by the Family Court." On the other hand, a "parent must have *repeatedly* made fraudulent reports of domestic violence or child abuse" to lose favor with a court. (Emphasis added.) Just the "identifiable costs" — the cost for the state, not the victims — for these false reports was in excess of \$18,200,000 in 2006.

Drastic Punishment

Falsely issued restraining orders are of great concern because the punishment that is meted out to defendants is so drastic. After an initial secret restraining order is issued, the clerk faxes it to the local police, who then serve it on the defendant. Since most orders contain a "no contact" provision, the first thing the police do is remove the man from his home, with little more than the shirt on his back, just as Judge Richard Russell urged in his judicial training. Utterly taken by surprise, the man usually has no idea that the hearing took place, that the order was granted, or what he may have done to deserve it. The police are rarely sympathetic.

Most restraining orders require that the defendant may not contact the plaintiff directly or indirectly or get within some distance, usually 100 yards, of the alleged "victim." Often, wives place the children as "co-victims" on these orders, so the defendant cannot contact his children either. "No contact" means no phone calls, cards, letters, or even incidentally running into the person.

No reconciliation is possible once an order is issued because any contact is a crime and subjects the violator to immediate arrest and jail. Even indirect contact is a crime, such as asking a relative to help work things out. Many men have sent flowers to a spouse or a birthday card to a child, only to end up in prison. Once an order is in place, the state becomes the father in the family, pushing out the real one.

Most district attorneys, prompted by feminist political pressure, have a "no-drop" policy on prosecuting all violations of restraining orders, no matter how minor. Joseph found that out the hard way. His wife obtained a restraining order after telling the judge he had kicked a plastic cooler and slammed the door while leaving his house. She omitted the part about telling him she had found another man.

No abuse or threat had occurred, but an order was issued against Joseph anyway. While it was in place, the wife made 14 false criminal complaints about violations of the order, which resulted in some arrests. I had to go to court with Joseph again and again, and we somehow managed to beat every case. Only a dysfunctional system allows a complainant to continue to make such false allegations without any accountability whatsoever.

Restraining orders also interfere with Second Amendment rights. Each state's laws require that a defendant surrender all guns and ammunition, and violation of this provision is not only a state crime, but a federal one, under the Violence Against Women Act of 1994.

"Mike" was an Air Force officer in charge of a military police unit on base. When his ex-wife got a restraining order against him, he lost his right to carry a weapon and had to take a desk job. He had custody of their child, which the mother resented. She came to a child's doctor appointment and attempted to create an incident, but was unsuccessful. However, the mother went to the local police to help her get an order. She told the police that there was no abuse and no history of abuse, so they wouldn't get involved. She then went to the court in the adjoining state where she lived and claimed that there was abuse, and obtained a restraining order. Then, to cover her tracks, she went back to the police in

the husband's state and requested that they change her statement about no abuse. Eventually, he was able to remove the order, after hiring an expensive lawyer in the wife's state.

Many police officers and military personnel who carry firearms are not so lucky, and have had careers permanently ruined by false allegations on restraining orders. In many places, once an order issues, even if it is eventually vacated, it is often impossible to get a gun license back.

Restraining orders especially impact the children. These orders are frequently used as a quick and dirty custody hearing, without the trouble of going to family court. In one minute, the father can lose the right to see his children for a year or longer. Children often get used as pawns in these situations, without any rebuke from a judge. "While judges certainly know that falsely obtained orders are pervasive, they care little for the well-being of the children who are harmed by losing their father for long periods. The children often have no understanding of why they are being kept from their father because the father cannot even speak to them.

If dad works from home, as more people are now doing, additional problems arise. Under any order, he will be summarily evicted, and thus lose access to phones, business records, and equipment, without recourse. As a RADAR report puts it: "The man, now homeless and distraught, has only a few days to find a lawyer and prepare a defense." When a home business is involved, he now cannot earn income, although he may be ordered to pay child support, needs alternate living quarters, and may have had his bank account emptied by his wife.

The case of Bob, who worked from home, shows the misuse of orders against self-employed persons. His wife got a restraining order against him, based on "a long history of verbal and emotional abuse," which is not a legal basis for an order. After it was issued, Bob had to leave the home he owned prior to his marriage, in which he had his home-based business. Eventually, he was allowed to do business in one half of the home, while his wife and children lived in the other half. Despite her alleged "fear," the wife came within a few feet of Bob on a regular basis. Meanwhile, the disruption of his business, the stress involved, and support payments destroyed him financially. He could not pay the huge child and spousal support assessments ordered by the court, which totaled triple his net income, and he was jailed twice. His business suffered, and he has still not recovered from the experience.

Skewed View of Abuse

The domestic-abuse industry has become a multi-billion dollar business during the last three decades, fueled by large influxes of government money and bolstered by media hysteria about abuse. Retired Massachusetts Judge Milton Raphaelson has stated, however, that there is not an epidemic of domestic violence, but rather an epidemic of hysteria about domestic violence.

State restraining-order laws suddenly sprang up in every state during the 1970s, at the insistence of radical feminist groups who had gained political ascendancy. Family abuse was indeed a problem. However, the feminists identified the problem wrongly and proposed a solution that made it worse.

Building on the sensationalism of certain well-publicized cases, feminists built an "identity politics" view of abuse. It is true that some men still ascribed to the chauvinist notion that women were chattel and could be maltreated with impunity, but the feminists exploited that fact and got laws that harmed, not just men, but families. They declared that men were abusers and women were victims. Abused women were shown off at legislative hearings to manipulate the mostly male legislators into passing restraining-order laws.

For the first time, we now have laws that penalize people before they are proven to be criminals, for something they only might do. The laws are paradigms of pragmatism over principle, as they jettison centuries of highly developed legal theory and substitute a subjective and weak new legal framework which allows baseless allegations, while making it very difficult to defend against them. They allow a woman to claim "fear" of abuse, even if none has happened, leading to a classic "he said, she said," where she holds all the cards.

While many persons involved in passing these laws may have been well-meaning, thinking they were going to help stop abuse, the unintended (or perhaps intended) consequences have been to change the very fabric of the legal system,

and to decimate millions of families. In my experience, little abuse has been prevented by these laws. Stats back this up. For example, in West Virginia between 1981 and 1992, "domestic violence claims increased 466% from 1,065 to 6,029" and in Puerto Rico after a comprehensive domestic violence law was instituted in 1989, violence claims "did not decline or level off," according to Professor Foster.

Answer to Domestic Violence?

Domestic-abuse restraining orders came about because a certain number of abusers really do assault and batter their partners. Scores of studies have attempted to understand the problem and find practical solutions, but domestic-abuse restraining orders are a flawed solution that has made the problem worse.

First, they have identified the wrong culprit. Women commit abuse more than men do. The U.S. Centers for Disease Control and Prevention reports, "In nonreciprocally violent relationships, women were the perpetrators in more than 70 percent of the cases. Reciprocity was associated with more frequent violence among women, but not men." Psychologist John Archer reviewed hundreds of studies and concluded, "Women were slightly more likely than men to use one or more acts of physical aggression and to use such acts more frequently." While men are more often the victims of abuse, women are injured more often and more severely than men. Moreover, about two-thirds of the reported cases are minor, such as throwing a pillow.

Has anyone vilified Hillary Clinton for throwing household objects at Bill, or singer Amy Winehouse for using her husband as a "punch bag"? We are desensitized to violence against men. In domestic arrest situations, it is almost always the man who is arrested, even if he is the only one injured. None of this is to justify abuse by anyone, only to show the fallacy of focusing solely on the abuse of women. Such unequal application of the law has likely led to more trauma and abuse than it purports to prevent, as well as destroyed respect for the system among fair-minded persons.

Whenever lawmakers respond to political pressure, a bad law is the usual result. Law has the properly limited purpose of insuring restitution to victims of those who intrude on the person or property of others. It has never been preventative, as domestic-abuse restraining-order laws seek to be, nor should it be. If true abuse does occur — a relative or non-relative threatens to batter or kill you or actually does physically attack — you are already able to make a criminal complaint for assault (which is defined as a threat to batter) and battery. And a criminal restraining order will likely be set in place. These new restraining-order laws seek to prevent crime by identifying persons who may commit one, and stop it before it happens. However, this is entirely speculative, and cannot identify perpetrators with any reliability.

In our imperfect world, we settle for an imperfect system that uses fear of punishment, rather than preemption, as its primary deterrent, but look at the alternative. With unjust restraining-order laws, we are creating a legal system that victimizes large groups of innocent people. We need to develop a better system, before we completely lose control of the present one. Thomas Reed, Speaker of the House of Representatives in the late 19th century, said, "One of the greatest delusions in the world is the hope that the evils in this world are to be cured by legislation." Domestic-abuse restraining-order laws are a vain and delusional attempt to do so, and we need to eliminate them.

The most important strategies to use in opposing an order are the ones described above. At the return hearing, you will be allowed to cross examine the plaintiff about all these things. However, there is another critical strategy or tool for you to use to undermine the credibility of the plaintiff. That is to show the judge that there is a plausible motive, other than fear of harm, that has motivated the person to seek an order.

Such an allegation of an ulterior motive has to be provable to really work, not just a he-said/she-said situation, or the judge will almost always believe the one who wants the order. You need documents, witness testimony from a best friend, or some objective way to prove the bad motive.

Let's look at some of the wrong motives:

This is a list of possible ulterior motives for which the 'victim' may have sought a 209A restraining order against you:

1. To gain an advantage in a divorce; (Some divorce lawyers routinely advise getting one.)
2. To quickly get custody of your children without a hearing;
3. To keep you from your children;
4. To stop you from modifying custody after your child expresses a desire to live with you.
5. To quickly put you out of the house without an eviction or a Probate Court hearing;
6. To allow the complainant to get a new boy/girlfriend into the picture, and you out;
7. To get vengeance;
8. To control or manipulate you, or get leverage in some way;
9. The 'victim' got sucked in by a victim-witness advocate who preyed on weakness;
10. To put you in jail;
11. To enjoy watching you suffer.
12. To get \$\$\$\$\$\$ and help from DSS or a victim group.
13. To adjust her immigration status under the Violence Against Women Act (VAWA) by falsely claiming domestic abuse.

In order to successfully pursue this strategy, You must figure out which of these motives are behind the push for a restraining order against you. Then you must be able to bring some document or witness that will prove pretty strongly that the motive you allege is the REAL reason why the person is seeking the order. This is discussed more below in the "hearing" section.

Dealing with ulterior motives also has another critical strategic advantage. It allows you to anticipate what the person may try to do to you before it comes about, and head it off. So, you must...

Location:

Thursday, Feb. 5, 2015 | Last updated: Saturday, Dec. 14, 2013 at 12:58 p.m.

- [Home \(/\)](#)
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- [Blog \(/blog/\)](#)
- [Contact \(/contact/\)](#)
- [About \(/about/\)](#)

This week, I assisted a man in court who was falsely accused of abuse by a woman he had married, who was from Brazil. They had been married only weeks, and she moved to the other end of the state and got an ex parte restraining order under Mass. General Laws, Chapter 209A. Fortunately, I was able to show that she had lied, and the order was dismissed a few days later.

But most people in that situation are not so fortunate.

She was trying to play the new, exciting game called, "Marry an American chump and falsely accuse him of abuse" in order to get a short cut to citizenship under provisions of the Violence Against Women Act (VAWA)

There is a growing industry in immigrant communities which tries to use false-allegation restraining orders as a first step to get citizenship. The method is even preached from the pulpit in some churches. You get a restraining order, and then apply to the immigration authorities for a "domestic abuse" citizenship exception.

The law says:

To be eligible for adjustment of status under the VAWA II, the woman must show one of the following:

- Their marriage was ended within the past two years for reasons connected to domestic violence;
- The abuser lost his or her immigration status within the past two years for reasons related to domestic violence;
- If a US citizen, the abuser died within the past two years; or The abuser was or is a bigamist.

Under the VAWA law, the "victim" merely has to end the marriage, claiming "domestic violence".

For some examples of terrible stories about how trusting spouses (always men) are abused by lying illegal immigrants using VAWA, [see here](http://www.expertlaw.com/forums/showthread.php?t=107380&page=1). (<http://www.expertlaw.com/forums/showthread.php?t=107380&page=1>.)

Male Americans, beware.

- [Dad 'unfit parent for refusing son McDonald's \(/headlines/2013/nov/\)](#)
- [Obamacare Contains Forced Inspection Provision \(/headlines/2013/aug/\)](#)
- [CHILDREN ARE NOT WHOSE PROPERTY? \(/headlines/2013/jul/\)](#)

- [DCF kidnaps child because of pot smoking - Kills child \(/blog/2013/aug/5/DCF-kidnaps-child-because-of-pot-smoking-kills-child/\)](#)
- [Beware the Restraining Order Immigration Scam \(/blog/2011/jan/26/beware-the-restraining-order-immigration-scam/\)](#)
- [Supreme Judicial Court Justices Don't Shovel Sidewalks, After Ruling We Have To \(/blog/2010/dec/30/supreme-judicial-court-justices-dont-shovel-sidewa/\)](#)

- [2009 \(/blog/2009/\)](#)
- [2010 \(/blog/2010/\)](#)
- [2011 \(/blog/2011/\)](#)
- [2013 \(/blog/2013/\)](#)

- [Why Can the State Kidnap Your Child? \(/ma/cps-resources/why-can-the-state-kidnap-your-child/\)](#)
- [What to do if DCF comes to your door \(/ma/cps-resources/what-to-do-if-dcf-comes-to-your-door/\)](#)
- [DCF Dirty Tricks \(/ma/cps-resources/dcf-dirty-tricks/\)](#)
- [DCF Law, Regulations, and Definitions \(/ma/cps-resources/dcf-law-regulations-and-definitions/\)](#)
- [DCF Policy on Placement of Children \(/ma/cps-resources/dcf-policy-on-placement-of-children/\)](#)
- [Guide to DCF Organization \(/ma/cps-resources/guide-to-dcf-organization/\)](#)
- [How DCF Does Court Cases \(/ma/cps-resources/how-dcf-does-court-cases/\)](#)
- [The DCF Snitch Network \(/ma/cps-resources/the-dcf-snitch-network/\)](#)

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 612-FN

BILL TITLE: establishing a penalty for falsifying information to obtain a protective order.

DATE: 3/2/15

LOB ROOM: 204

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Cushing

Seconded by Rep. Martin

Vote: 16-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.


Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Dennis Fields, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 612-FN

BILL TITLE: establishing a penalty for falsifying information to obtain a protective order.

DATE: 3/2/15

LOB ROOM: 204

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *CMS RYAN*

Seconded by Rep. *MARTIN*

Vote: *16-0* (Please attach record of roll call vote.) *YAYS 16*
NAO 0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

YES **CONSENT CALENDAR VOTE:**

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Dennis H. Fields
Rep. Dennis Fields, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/8/2015 1:43:23 PM
Roll Call Committee Registers
Report

2015 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: 1012 FW Title: _____

PH Date: 11-15-15 ⁰¹¹⁵ Exec Session Date: 3 1 2 1 15

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Tholl, John E., Chairman	/	
Welch, David A., V Chairman	/	
Fields, Dennis H., Clerk	/	
Fesh, Robert M.	/	
Marston, Dick	/	
Burt, John A.	/	
Sweeney, Shawn P.	ABSENT	
Barnes, Arthur E.	/	
Comeau, Ed	/	
Fisher, Robert Z.	/	
Martin, John F.	/	
Pantelakos, Laura C.	/	
Berube, Roger R.	ABSENT	
Robertson, Timothy N.	/	
Cushing, Robert R.	/	
Hirsch, Geoffrey D.	ABSENT	
O'Hearne, Andrew S.	/	
Mangipudi, Latha D.	/	
DiSesa, Len	/	
TOTAL VOTE:	YEAS 16	NAYS 0

Committee Report

CONSENT CALENDAR

March 3, 2015

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB612-FN,

AN ACT establishing a penalty for falsifying information to obtain a protective order. Having considered the same, report the same with the following Resolution: RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Robert R. Cushing

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	CRIMINAL JUSTICE AND PUBLIC SAFETY
Bill Number:	HB612-FN
Title:	establishing a penalty for falsifying information to obtain a protective order.
Date:	March 3, 2015
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

There is already language contained within RSA 173-B:3, Protection of Persons from Domestic Violence, which states: "Any person filing a petition containing false allegations of abuse shall be subject to criminal penalties." Further, it is already a misdemeanor, under current statute, to falsely report to law enforcement. Making it a Class B felony to falsely report in order to obtain a protective order would be inconsistent with the rest of the statute and would more harshly penalize victims of domestic violence than anyone else making a false statement to law enforcement. The policy implications of passing this bill would be the codified presumption that victims of domestic violence make false allegations at a higher rate than other civil litigants, such as big corporations or tort litigants in personal injury claims, with no basis in empirical evidence that this is the case. There is however, extensive literature supporting that batterers often use the legal system as a further method of power and control over their victims. To that end, abusers are much more likely to generate false claims in family court.

The American Bar Association's Commission on Domestic and Sexual Violence has collected data that debunks the notion that victims obtain protective orders in order to gain an advantage in divorce or parenting proceedings. The ABA's Commission cites there is no effect on custody outcomes in cases where there are allegations of abuse against fathers. In fact, abusers are more likely to seek sole custody of their children over the non-abusive parent, and are successful in doing so 70% of the time.

Before a final domestic violence protective order can be granted, the court must find abuse as defined in our criminal code, and further find that the defendant poses a credible threat to the victim's safety. The burden of proof in these cases is on the

Original: House Clerk
Cc: Committee Bill File

petitioner—not the defendant. These cases are highly scrutinized in court. In 2013, 42% of all domestic violence petitions scheduled for a final hearing resulted in the court granting a final protective order for one year. Less than half of these petitions being granted speak to a careful review of all facts, circumstances, and credibility of both parties. These orders are not handed out easily or indiscriminately.

Vote 16-0.

Rep. Robert R. Cushing
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB612-FN, establishing a penalty for falsifying information to obtain a protective order.

INEXPEDIENT TO LEGISLATE.

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Original: House Clerk

Cc: Committee Bill File

HB 612-FN, an act establishing a penalty for falsifying information to obtain a protective order.

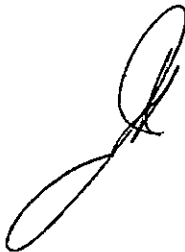
ITL

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Rep. Robert Cushing for Criminal Justice and Public Safety

A handwritten signature in black ink, appearing to be 'R. Cushing', written in a cursive style.

Karwocki, Karen

From: Larivee, Kathy
Sent: Monday, March 16, 2015 2:45 PM
To: Karwocki, Karen
Subject: HB612-FN-Majority.doc

edited report

CONSENT CALENDAR

March 3, 2015

<p>HOUSE OF REPRESENTATIVES REPORT OF COMMITTEE</p>

The Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB612-FN,

**AN ACT establishing a penalty for falsifying information to obtain a protective order. Having considered the same, report the same with the following Resolution:
RESOLVED, That it is INEXPEDIENT TO LEGISLATE.**

<p>Rep. Robert R. Cushing FOR THE COMMITTEE</p>

COMMITTEE REPORT

Committee:	CRIMINAL JUSTICE AND PUBLIC SAFETY
Bill Number:	HB612-FN
Title:	establishing a penalty for falsifying information to obtain a protective order.
Date:	March 3, 2015
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

There is already language contained within RSA 173-B:3, Protection of Persons from Domestic Violence, which states: "Any person filing a petition containing false allegations of abuse shall be subject to criminal penalties." Further, it is already a misdemeanor, under current statute, to falsely report to law enforcement. Making it a Class B felony to falsely report in order to obtain a protective order would be inconsistent with the rest of the statute and would more harshly penalize victims of domestic violence than anyone else making a false statement to law enforcement. The policy implications of passing this bill would be the codified presumption that victims of domestic violence make false allegations at a higher rate than other civil litigants, such as big corporations or tort litigants in personal injury claims, with no basis in empirical evidence that this is the case. There is however, extensive literature supporting that batterers often use the legal system as a further method of power and control over their victims. To that end, abusers are much more likely to generate false claims in family court. The American Bar Association's Commission on Domestic and Sexual Violence has collected data that debunks the notion that victims obtain protective orders in order to gain an advantage in divorce or parenting proceedings. The ABA's Commission cites there is no effect on custody outcomes in cases where there are allegations of abuse against fathers. In fact, abusers are more likely to seek sole custody of their children over the non-abusive parent, and are successful in doing so 70% of the time. Before a final domestic violence protective order can be granted, the court must find abuse as defined in our criminal code, and further find that the defendant poses a credible threat to the victim's safety. The burden of proof in these cases is on the petitioner—not the defendant. These cases are highly scrutinized in court. In 2013, 42% of all domestic violence petitions scheduled for a final hearing resulted in the court granting a final protective order for one year. Less than half of these petitions being granted speak to a careful review of all facts, circumstances, and credibility of both parties. These orders are not handed out easily or indiscriminately.

Vote 16-0.

Rep. Robert R. Cushing
FOR THE COMMITTEE

CONSENT CALENDAR**CRIMINAL JUSTICE AND PUBLIC SAFETY**

HB 612-FN, establishing a penalty for falsifying information to obtain a protective order. **INEXPEDIENT TO LEGISLATE.**

Rep. Robert R. Cushing for Criminal Justice and Public Safety. There is already language contained within RSA 173-B:3, Protection of Persons from Domestic Violence, which states: "Any person filing a petition containing false allegations of abuse shall be subject to criminal penalties." Further, it is already a misdemeanor, under current statute, to falsely report to law enforcement. Making it a Class B felony to falsely report in order to obtain a protective order would be inconsistent with the rest of the statute and would more harshly penalize victims of domestic violence than anyone else making a false statement to law enforcement. The policy implications of passing this bill would be the codified presumption that victims of domestic violence make false allegations at a higher rate than other civil litigants, such as big corporations or tort litigants in personal injury claims, with no basis in empirical evidence that this is the case. There is however, extensive literature supporting that batterers often use the legal system as a further method of power and control over their victims. To that end, abusers are much more likely to generate false claims in family court. The American Bar Association's Commission on Domestic and Sexual Violence has collected data that debunks the notion that victims obtain protective orders in order to gain an advantage in divorce or parenting proceedings. The ABA's Commission cites there is no effect on custody outcomes in cases where there are allegations of abuse against fathers. In fact, abusers are more likely to seek sole custody of their children over the non-abusive parent, and are successful in doing so 70% of the time. Before a final domestic violence protective order can be granted, the court must find abuse as defined in our criminal code, and further find that the defendant poses a credible threat to the victim's safety. The burden of proof in these cases is on the petitioner—not the defendant. These cases are highly scrutinized in court. In 2013, 42% of all domestic violence petitions scheduled for a final hearing resulted in the court granting a final protective order for one year. Less than half of these petitions being granted speak to a careful review of all facts, circumstances, and credibility of both parties. These orders are not handed out easily or indiscriminately. **Vote 16-0.**