

§ 18-6-803.5. Crime of violation of a protection order - penalty - peace officers' duties - definitions.

## Colorado Statutes

### Title 18. CRIMINAL CODE

#### Article 6. Offenses Involving the Family Relations

##### Part 8. DOMESTIC VIOLENCE

*Current through Ch. 31 of the 2019 Legislative Session (with the exception of Ch. 8 which is not yet available)*

#### **§ 18-6-803.5. Crime of violation of a protection order - penalty - peace officers' duties - definitions**

- (1) A person commits the crime of violation of a protection order if, after the person has been personally served with a protection order that identifies the person as a restrained person or otherwise has acquired from the court or law enforcement personnel actual knowledge of the contents of a protection order that identifies the person as a restrained person, the person:
  - (a) Contacts, harasses, injures, intimidates, molests, threatens, or touches the protected person or protected property, including an animal, identified in the protection order or enters or remains on premises or comes within a specified distance of the protected person, protected property, including an animal, or premises or violates any other provision of the protection order to protect the protected person from imminent danger to life or health, and such conduct is prohibited by the protection order;
  - (b) Except as permitted pursuant to section 18-13-126(1)(b), hires, employs, or otherwise contracts with another person to locate or assist in the location of the protected person; or
  - (c) Violates a civil protection order issued pursuant to section 13-14-105.5, C.R.S., or pursuant to section 18-1-1001(9) by:
    - (I) Possessing or attempting to purchase or receive a firearm or ammunition while the protection order is in effect; or
    - (II) Failing to timely file a receipt or written statement with the court as described in section 13-14-105.5(9), C.R.S., or in section 18-1-1001(9)(i) or 18-6-801(8)(i).

(1.5) As used in this section:

- (a) "Protected person" means the person or persons identified in the protection order as the person or persons for whose benefit the protection order was issued.
  - (a.5 )
    - (I) "Protection order" means any order that prohibits the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any protected person or protected animal, or from entering or remaining on premises, or from coming within a specified distance of a protected person or protected animal or premises or any other provision to protect the protected person or protected animal from imminent danger to life or health, that is issued by a court of this state or a municipal court, and that is issued pursuant to:
      - (A) Article 14 of title 13, C.R.S., section 18-1-1001, section 19-2-707, C.R.S., section 19-4-111, C.R.S., or rule 365 of the Colorado rules of county court civil procedure;
      - (B) Sections 14-4-101 to 14-4-105, C.R.S., section 14-10-107, C.R.S., section 14-10-108, C.R.S., or section 19-3-316, C.R.S., as those sections existed prior to July 1, 2004;
      - (C) An order issued as part of the proceedings concerning a criminal municipal ordinance violation; or
      - (D) Any other order of a court that prohibits a person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises.
    - (II) For purposes of this section only, "protection order" includes any order that amends, modifies, supplements, or supersedes the initial protection order. "Protection order" also includes any restraining order entered prior to July 1, 2003, and any foreign protection order as defined in section 13-14-110, C.R.S.
  - (b) "Registry" means the computerized information system created in section 18-6-803.7 or the national crime information center created pursuant to 28 U.S.C. sec. 534.
  - (c) "Restrained person" means the person identified in the order as the person prohibited from doing the specified act or acts.
  - (d) (Deleted by amendment, L. 2003, p. 1003, §6, effective July 1, 2003.)
- (2) (a) Violation of a protection order is a class 2 misdemeanor; except that, if the restrained person has previously been convicted of violating this section or a

former version of this section or an analogous municipal ordinance, or if the protection order is issued pursuant to section 18-1-1001, the violation is a class 1 misdemeanor.

(a.5 ) A second or subsequent violation of a protection order is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501(3).

(b) (Deleted by amendment, L. 95, p. 567, 3, effective July 1, 1995.)

(c) Nothing in this section shall preclude the ability of a municipality to enact concurrent ordinances. Any sentence imposed for a violation of this section shall run consecutively and not concurrently with any sentence imposed for any crime which gave rise to the issuing of the protection order.

- (3)
- (a) Whenever a protection order is issued, the protected person shall be provided with a copy of such order. A peace officer shall use every reasonable means to enforce a protection order.
- (b) A peace officer shall arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of a restrained person when the peace officer has information amounting to probable cause that:
- (I) The restrained person has violated or attempted to violate any provision of a protection order; and
  - (II) The restrained person has been properly served with a copy of the protection order or the restrained person has received actual notice of the existence and substance of such order.
- (c) In making the probable cause determination described in paragraph (b) of this subsection (3), a peace officer shall assume that the information received from the registry is accurate. A peace officer shall enforce a valid protection order whether or not there is a record of the protection order in the registry.
- (d) The arrest and detention of a restrained person is governed by applicable constitutional and applicable state rules of criminal procedure. The arrested person shall be removed from the scene of the arrest and shall be taken to the peace officer's station for booking, whereupon the arrested person may be held or released in accordance with the adopted bonding schedules for the jurisdiction in which the arrest is made, or the arrested person may be taken to the jail in the county where the protection order was issued. The law enforcement agency or any other locally designated agency shall make all reasonable efforts to contact the protected party upon the arrest of the restrained person. The prosecuting attorney shall present any available arrest affidavits and the criminal history of the

restrained person to the court at the time of the first appearance of the restrained person before the court.

- (e) The arresting agency arresting the restrained person shall forward to the issuing court a copy of such agency's report, a list of witnesses to the violation, and, if applicable, a list of any charges filed or requested against the restrained person. The agency shall give a copy of the agency's report, witness list, and charging list to the protected party. The agency shall delete the address and telephone number of a witness from the list sent to the court upon request of such witness, and such address and telephone number shall not thereafter be made available to any person, except law enforcement officials and the prosecuting agency, without order of the court.
- (4) If a restrained person is on bond in connection with a violation or attempted violation of a protection order in this or any other state and is subsequently arrested for violating or attempting to violate a protection order, the arresting agency shall notify the prosecuting attorney who shall file a motion with the court which issued the prior bond for the revocation of the bond and for the issuance of a warrant for the arrest of the restrained person if such court is satisfied that probable cause exists to believe that a violation of the protection order issued by the court has occurred.
- (5) A peace officer arresting a person for violating a protection order or otherwise enforcing a protection order shall not be held criminally or civilly liable for such arrest or enforcement unless the peace officer acts in bad faith and with malice or does not act in compliance with rules adopted by the Colorado supreme court.
- (6)
  - (a) A peace officer is authorized to use every reasonable means to protect the alleged victim or the alleged victim's children to prevent further violence. Such peace officer may transport, or obtain transportation for, the alleged victim to shelter. Upon the request of the protected person, the peace officer may also transport the minor child of the protected person, who is not an emancipated minor, to the same shelter if such shelter is willing to accept the child, whether or not there is a custody order or an order allocating parental responsibilities with respect to such child or an order for the care and control of the child and whether or not the other parent objects. A peace officer who transports a minor child over the objection of the other parent shall not be held liable for any damages that may result from interference with the custody, parental responsibilities, care, and control of or access to a minor child in complying with this subsection (6).
  - (b) For purposes of this subsection (6), "shelter" means a battered women's shelter, a friend's or family member's home, or such other safe haven as may be designated by the protected person and which is within a reasonable distance from the location at which the peace officer found the victim.

- (7) The protection order shall contain in capital letters and bold print a notice informing the protected person that such protected person may either initiate contempt proceedings against the restrained person if the order is issued in a civil action or request the prosecuting attorney to initiate contempt proceedings if the order is issued in a criminal action.
- (8) A protection order issued in the state of Colorado shall contain a statement that:
- (a) The order or injunction shall be accorded full faith and credit and be enforced in every civil or criminal court of the United States, another state, an Indian tribe, or a United States territory pursuant to 18 U.S.C. sec. 2265;
  - (b) The issuing court had jurisdiction over the parties and subject matter; and
  - (c) The defendant was given reasonable notice and opportunity to be heard.
- (9) A criminal action charged pursuant to this section may be tried either in the county where the offense is committed or in the county in which the court that issued the protection order is located, if such court is within this state.

**Cite as C.R.S. § 18-6-803.5**

**History.** Amended by 2014 Ch. 302, §13, eff. 5/31/2014.

Amended by 2013 Ch. 218, §19, eff. 7/1/2013.

Amended by 2013 Ch. 366, §2, eff. 6/5/2013.

L. 91: Entire section added, p. 418, § 1, effective May 31. L. 92: Entire section amended, p. 294, § 4, effective April 23; (1) and (2) amended, p. 404, § 18, effective June 3; entire section amended, p. 177, § 3, effective July 1. L. 94: (2) and (3) amended and (6) added, p. 2027, § 4, effective July 1; entire section amended, p. 2010, § 7, effective January 1, 1995. L. 95: (1), (2), and (3)(d) amended, p. 567, § 3, effective July 1. L. 96: (3)(d) amended, p. 736, § 6, effective July 1; (1.5)(d) amended, p. 1692, § 26, effective January 1, 1997. L. 98: (1.5)(b), (1.5)(d), and (3)(c) amended and (8) added, p. 1232, § 3, effective July 1; (6)(a) amended, p. 1404, § 58, effective February 1, 1999. L. 99: (1.5)(d) amended, p. 502, § 11, effective July 1. L. 2000: (1) and (1.5)(d) amended, p. 1011, § 2, effective July 1. L. 2003: Entire section amended, p. 1003, § 6, effective July 1. L. 2004: (1.5)(a.5) amended, p. 555, § 12, effective July 1; (2)(a.5) added, p. 636, § 10, effective August 4. L. 2005: (3)(d) amended and (9) added, p. 427, § 6, effective April 29. L. 2006: (1) amended, p. 1057, § 2, effective July 1. L. 2007: (1)(a) and (1.5)(a.5)(I) amended, p. 726, § 8, effective July 1. L. 2008: IP(1) amended, p. 1718, § 1, effective July 1. L. 2013: (1) amended, (SB 13-197), ch. 366, p. 2130 § 2, effective June 5; (1.5)(a.5)(II) amended, (HB 13-1259), ch. 218, p. 1016, § 19, effective July 1. L. 2014: (1)(c) amended, (HB 14-1363), ch. 302, p. 1264, § 13, effective May 31.

**Editor's Note:**

*Amendments to this section in House Bill 92-1075 and House Bill 92-1078 were harmonized. Amendments to this section in House Bill 94-1090 and House Bill 94-1253 were harmonized.*

**Case Notes:**

## ANNOTATION

**Law reviews.** For article, "1994 Legislature Strengthens Domestic Violence Protective Orders", see 23 Colo. Law. 2327 (1994). For article, "Animal-Related Legal Disputes: Litigation, ADR, and Court Appointments", see 42 Colo. Law. 43 (Dec. 2013).

**Because the elements of violation of a mandatory restraining order and the elements of harassment by stalking** are not the same, the subsequent prosecution of defendant did not violate double jeopardy protections. *People v. Carey*, 198 P.3d 1223 (Colo. App. 2008).

**Because the elements of violation of a protection order and harassment are not the same**, the principles of double jeopardy do not require that the convictions for both offenses be merged. *People v. Thomeczek*, 284 P.3d 110 (Colo. App. 2011).

**To constitute "contact" in violation of the statute**, defendant's conduct must involve physical touching or some element of direct or indirect communication or attempted communication with the victim. Incidental contact that occurs unintentionally and is unavoidable is not sufficient, by itself, to establish a violation. *People v. Serra*, 2015 COA 130, 361 P.3d 1122.

**Violation may consist of more than coming within specified distance.** Where defendant came within 100 feet of protected person and thereafter broke into her apartment with intent to make direct contact with her, the intent to make direct contact supplied the intent to commit a "crime" upon entry so as to support a conviction for first degree burglary. *People v. Widhalm*, 991 P.2d 291 (Colo. App. 1999).

**The required culpable state of mind of "knowingly" applies to all elements of the crime of violation of a restraining order.** *People v. Coleby*, 34 P.3d 422 (Colo. 2001).

**The defense of consent of the victim is not available regarding a violation of a permanent criminal protection order (CPO).** As stated in § 13-14-106, a CPO is an order of the court and not an order issued by the protected person, and the protected person's consent cannot, as a matter of law, constitute a restrained party's defense to the crime for violation of a protection order. *Hotsenpiller v. Morris*, 2017 COA 95, \_\_\_ P.3d \_\_\_.

**Contact with victim.** Victim's testimony that defendant stared at her for ten to fifteen seconds and smirked at her, coupled with her testimony that she had previously seen him use the same facial expression as a form of communication was sufficient, although barely, for a reasonable jury to determine that defendant communicated or attempted to communicate with victim. *People v. Serra*, 2015 COA 130, 361 P.3d 1122.

### Cross References:

For the legislative declaration in the 2013 act amending subsection (1), see section 1 of chapter 366, Session Laws of Colorado 2013.