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Domestic Violence Toolkit

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Domestic Violence Toolkit

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Introduction

I Got Flowers Today (author unknown)

I got flowers today.
It wasn't my birthday or any other special day.
We had our first argument last night,
He said a lot of cruel things that really hurt me.
I know that he is sorry and didn't mean the things he said.
Because he sent me flowers today.

I got flowers today.
It wasn't our anniversary or any other special day.
Last night, he threw me into a wall and started to choke me.
It seemed like a nightmare.
I couldn't believe that it was real.
I woke up this morning sore and bruised all over.
I know that he must be sorry.
Because he sent me flowers today.

I got flowers today.
And it wasn't Mother's Day or any other special day.
Last night, he beat me up again.
And it was much worse than all the other times.
If I leave him, what will I do?
How will I take care of my kids?
What about money?
I'm afraid of him and scared to leave.
But I know he must be sorry.
Because he sent me flowers today.

I got flowers today.
Today was a very special day.
It was the day of my funeral.
Last night, he finally killed me.
He beat me to death.
If only I had gathered
Enough courage and strength to leave him.
I would not have gotten flowers today.

About the Author

Belinda Jones is a third-year law student at [Georgia State College of Law](#). My interest in this subject began with an externship with Atlanta Volunteer Lawyers that afforded me training in both domestic violence and the protective order procedure.

Scope

A woman is battered every four seconds in this country.

This online legal bibliography is an assignment for Professor Nancy Johnson's Advanced Legal Research class at Georgia State University College of Law. Its subject is domestic violence, focusing particularly on the protective federal and Georgia laws. The goal of this page is to provide both victims the tools they need to protect themselves and their families and to provide attorneys with the procedural tools needed to protect their clients.

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Primary Sources

Federal Statutes

Violence Against Women Act

18 U.S.C.A. §2261

(a) Offenses.--

(1) Travel or conduct of offender.--A person who travels in interstate or foreign commerce or enters or leaves Indian country with the intent to kill, injure, harass, or intimidate a spouse or intimate partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

(2) Causing travel of victim.--A person who causes a spouse or intimate partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

(b) Penalties.--A person who violates this section or [section 2261A](#) shall be fined under this title, imprisoned--

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

18 U.S.C.A. §2261A

Whoever--

(1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or

(2) with the intent--

(A) to kill or injure a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or

(B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to--

(i) that person;

(ii) a member of the immediate family (as defined in section 115) of that person; or

(iii) a spouse or intimate partner of that person,

uses the mail or any facility of interstate or foreign commerce to engage in a course of conduct that places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii), shall be punished as provided in [section 2261\(b\)](#).

18 U.S.C.A. § 2262

(a) Offenses.--

(1) Travel or conduct of offender.--A person who travels in interstate or foreign commerce, or enters or leaves Indian country, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) Causing travel of victim.--A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties.--A person who violates this section shall be fined under this title, imprisoned--

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

18 U.S.C.A. §2265

(a) Full faith and credit.--Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.

(b) Protection order.--A protection order issued by a State or tribal court is consistent with this subsection if--

(1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) Cross or counter petition.--A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if--

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) Notification and registration.--

(1) Notification.--A State or Indian tribe according full faith and credit to an order by a court of another State or Indian tribe shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State or tribal jurisdiction unless requested to do so by the party protected under such order.

(2) No prior registration or filing as prerequisite for enforcement.--Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State or tribal jurisdiction.

(e) Tribal court jurisdiction.--For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

18 U.S.C.A. §2666

In this chapter:

(1) Bodily injury.--The term "bodily injury" means any act, except one done in self-defense, that results in physical injury or sexual abuse.

(2) Course of conduct.--The term "course of conduct" means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

(3) Enter or leave Indian country.--The term "enter or leave Indian country" includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.

(4) Indian country.--The term "Indian country" has the meaning stated in section 1151 of this title.

(5) Protection order.--The term "protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(6) Serious bodily injury.--The term "serious bodily injury" has the meaning stated in section 2119(2).

(7) Spouse or intimate partner.--The term "spouse or intimate partner" includes--

(A) for purposes of--

(i) sections other than [2261A](#), a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; and

(ii) [section 2261A](#), a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; and

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

(8) State.--The term "State" includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

(9) Travel in interstate or foreign commerce.--The term "travel in interstate or foreign commerce" does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

Gun Control Act

18 U.S.C.A. § 922(g)

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Georgia Statutes

O.C.G.A §19-13-1 – Family Violence Defined

As used in this article, the term "family violence" means the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:

(1) Any felony; or

(2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

The term "family violence" shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.

O.C.G.A. §19-13-2 – Jurisdiction of the Superior Court

(a) Except for proceedings involving a nonresident respondent, the superior court of the county where the respondent resides shall have jurisdiction over all proceedings under this article.

(b) For proceedings under this article involving a nonresident respondent, the superior court where the petitioner resides or the superior court where an act involving family violence allegedly occurred shall have jurisdiction, where the act involving family violence meets the elements for personal jurisdiction provided for under paragraph (2) or (3) of [Code Section 9-10-91](#).

O.C.G.A. § 9-10-91 – Georgia Long Arm Statute

A court of this state may exercise personal jurisdiction over any nonresident or his executor or administrator, as to a cause of action arising from any of the acts, omissions, ownership, use, or possession enumerated in this Code section, in the same manner as if he

were a resident of the state, if in person or through an agent, he:

- (1) Transacts any business within this state;
- (2) Commits a tortious act or omission within this state, except as to a cause of action for defamation of character arising from the act;
- (3) Commits a tortious injury in this state caused by an act or omission outside this state if the tort-feasor regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;
- (4) Owns, uses, or possesses any real property situated within this state; or
- (5) With respect to proceedings for alimony, child support, or division of property in connection with an action for divorce or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph shall not change the residency requirement for filing an action for divorce.

O.C.G.A. §19-13-3 – Petition, Hearing

(a) A person who is not a minor may seek relief under this article by filing a petition with the superior court alleging one or more acts of family violence. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.

(b) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that family violence has occurred in the past and may occur in the future, the court may order such temporary relief *ex parte* as it deems necessary to protect the petitioner or a minor of the household from violence. If the court issues an *ex parte* order, a copy of the order shall be immediately furnished to the petitioner.

(c) Within ten days of the filing of the petition under this article or as soon as practical thereafter, but in no case later than 30 days after the filing of the petition, a hearing shall be held at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases. In the event a hearing cannot be scheduled within the county where the case is pending within the 30 day period the same shall be scheduled and heard within any other county of that circuit. If a hearing is not held within 30 days, the petition shall stand dismissed unless the parties otherwise agree.

(d) Family violence shelter or social service agency staff members designated by the court may explain to all victims not represented by counsel the procedures for filling out and filing all forms and pleadings necessary for the presentation of their petition to the court. The clerk of the court may provide forms for petitions and pleadings to victims of family violence and to any other person designated by the superior court pursuant to this Code section as authorized to advise victims on filling out and filing such petitions and pleadings. The clerk shall not be required to provide assistance to persons in completing such forms or in presenting their case to the court. Any assistance provided pursuant to this Code section shall be performed without cost to the petitioners. The performance of such assistance shall not constitute the practice of law as defined in Code Section 15-19-51.

O.C.G.A. §19-13-4 – Protective Orders and Consent Agreements; Contents; Issuing Copy of Order to Sheriff; Expiration; Enforcement

(a) The court may, upon the filing of a verified petition, grant any protective order or approve any consent agreement to bring about a cessation of acts of family violence. The court shall not have the authority to issue or approve mutual protective orders concerning paragraph (1), (2), (5), (9), or (11) of this subsection, or any combination thereof, unless the respondent has filed a verified petition as a counter petition pursuant to Code Section [19-13-3](#) no later than three days, not including Saturdays, Sundays, and legal holidays, prior to the hearing and the provisions of Code Section [19-13-3](#) have been satisfied. The orders or agreements may:

- (1) Direct the respondent to refrain from such acts;
- (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
- (3) Require a party to provide suitable alternate housing for a spouse, former spouse, or parent and the parties' child or children;
- (4) Award temporary custody of minor children and establish temporary visitation rights;
- (5) Order the eviction of a party from the residence or household and order assistance to the victim in returning to it, or order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order the respondent to refrain from harassing or interfering with the victim;
- (10) Award costs and attorney's fees to either party; and
- (11) Order the respondent to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.

(b) A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect.

(c) Any order granted under this Code section shall remain in effect for up to one year; provided, however, that upon the motion of a petitioner and notice to the respondent and after a hearing, the court in its discretion may convert a temporary order granted under this Code section to an order effective for not more than three years or to a permanent order.

(d) A protective order issued pursuant to this Code section shall apply and shall be effective throughout this state. It shall be the duty of every superior court and of every sheriff, every deputy sheriff, and every state, county, or municipal law enforcement officer within this state to enforce and carry out the terms of any valid protective order issued by any court under the provisions of this Code section.

O.C.G.A. § 19-13-6 – Penalties

A violation of an order issued pursuant to this article may be punished by an action for contempt or criminally punished as provided in Article 7 of Chapter 5 of Title 16.

[O.C.G.A. § 16-5-95](#)

O.C.G.A. § 16-5-90 – Stalking

(a)(1) A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person. For the purpose of this article, the terms "computer" and "computer network" shall have the same meanings as set out in Code Section 16-9-92; the term "contact" shall mean any communication including without being limited to communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device; and the place or places that contact by telephone, mail, broadcast, computer, computer network, or any other electronic device is deemed to occur shall be the place or places where such communication is received. For the purpose of this article, the term "place or places" shall include any public or private property occupied by the victim other than the residence of the defendant. For the purposes of this article, the term "harassing and intimidating" means a knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose. This Code section shall not be construed to require that an overt threat of death or bodily injury has been made.

(2) A person commits the offense of stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-110, standing order issued under Code Section 19-1-1, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the harassment or intimidation of another person, broadcasts or publishes, including electronic publication, the picture, name, address, or phone number of a person for whose benefit the bond, order, or condition was made and without such person's consent in such a manner that causes other persons to harass or intimidate such person and the person making the broadcast or publication knew or had reason to believe that such broadcast or publication would cause such person to be harassed or intimidated by others.

(b) Except as provided in subsection (c) of this Code section, a person who commits the offense of stalking is guilty of a misdemeanor.

(c) Upon the second conviction, and all subsequent convictions, for stalking, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than ten years.

(d) Before sentencing a defendant for any conviction of stalking under this Code section or aggravated stalking under Code Section [16-5-91](#), the sentencing judge may require psychological evaluation of the offender and shall consider the entire criminal record of the offender. At the time of sentencing, the judge is authorized to issue a permanent restraining order against the offender to protect the person stalked and the members of such person's immediate family, and the judge is authorized to require psychological treatment of the offender as a part of the sentence, or as a condition for suspension or stay of sentence, or for probation.

O.C.G.A. § 16-5-91 – Aggravated Stalking

(a) A person commits the offense of aggravated stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-110, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, good behavior bond, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the behavior described in this subsection, follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person.

(b) Any person convicted of a violation of subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years and by a fine of not more than \$ 10,000.00. The provisions of subsection (d) of Code Section 16-5-90 apply to sentencing for conviction of aggravated stalking.

O.C.G.A. § 16-5-94 – Restraining Orders; Protective Orders

(a) A person who is not a minor who alleges stalking by another person may seek a restraining order by filing a petition alleging conduct constituting stalking as defined in Code Section [16-5-90](#). A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.

(b) Jurisdiction for such a petition shall be the same as for family violence petitions as set out in Code Section [19-13-2](#).

(c) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that stalking by the respondent has occurred in the past and may occur in the future, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from stalking. If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner.

(d) The court may grant a protective order or approve a consent agreement to bring about a cessation of conduct constituting stalking. Orders or agreements may:

- (1) Direct a party to refrain from such conduct;
- (2) Order a party to refrain from harassing or interfering with the other;
- (3) Award costs and attorney's fees to either party; and
- (4) Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of stalking.

(e) The provisions of subsections (c) and (d) of Code Section [19-13-3](#), subsections (b), (c), and (d) of Code Section [19-13-4](#), and Code Section 19-13-5, relating to family violence petitions, shall apply to petitions filed pursuant to this Code section, except that the clerk of court may provide forms for petitions and pleadings to persons alleging conduct constituting stalking and to any other person designated by the superior court pursuant to this Code section as authorized to advise persons alleging conduct constituting stalking on filling out and filing such petitions and pleadings.

O.C.G.A. § 16-5-95 – Offense of violating family violence order; Penalty

(a) A person commits the offense of violating a family violence order when the person knowingly and in a nonviolent manner violates the terms of a family violence temporary restraining order, temporary protective order, permanent restraining order, or permanent protective order issued against that person pursuant to Article 1 of Chapter 13 of Title 19, which:

- (1) Excludes, evicts, or excludes and evicts the person from a residence or household;
- (2) Directs the person to stay away from a residence, workplace, or school;
- (3) Restrains the person from approaching within a specified distance of another person; or

(4) Restricts the person from having any contact, direct or indirect, by telephone, pager, facsimile, e-mail, or any other means of communication with another person, except as specified in the order.

(b) Any person convicted of a violation of subsection (a) of this Code section shall be guilty of a misdemeanor.

(c) Nothing contained in this Code section shall prohibit a prosecution for the offense of stalking or aggravated stalking that arose out of the same course of conduct; provided, however, that, for purposes of sentencing, a violation of this Code section shall be merged with a violation of any provision of Code Section [16-5-90](#) or [16-5-91](#) that arose out of the same course of conduct.

Cases

Federal Cases

[U.S. v. Al-Zubaidy](#), 283 F.3d 804 (6th Cir. 2002) (*must have permission from Westlaw to link from Findlaw*)

Interstate stalking statute was within Congress's authority under the Commerce Clause.

A statute that punishes people for using the channels of interstate commerce to bring harm to people of other states is within Congress's power under the Commerce Clause.

The offense of interstate stalking has three main elements: (1) interstate travel; (2) intent to injure or harass another person; and (3) placing that person in reasonable fear of death or serious bodily injury to herself or a member of her family.

[US v. Von Foelkel](#), 136 F.3d 339 (2nd Cir. 1998)

Statute that criminalized crossing state lines with intent to violate a protective order was within Congress's power under the Commerce Clause and did not violate the 10th Amendment.

The trial court did not abuse its discretion when the court admitted evidence as to defendant's prior bad acts since these acts are indicative of his intent to violate the protection order.

[US v. Casciano](#), 124 F.3d 106 (2nd Cir. 1997)

In a prosecution under the Violence Against Women Act, the questions to the validity of the protective order were questions for the judge and not the jury.

The defendant's conviction under the Violence Against Women Act did not violate due process, despite defendant's claim he did not have actual notice of the order when the evidence indicated that the victim had told the defendant about the order, that the defendant attempted to avoid service, and would have not received the order even if it had been mailed to him.

The defendant's constant stalking and harassment of the victim, his threats to kill any male with whom she might associate, and his use of force on at least two occasions to prevent her from leaving made nonviolent blackmail guideline inapplicable.

Georgia Cases

[Bucheit v. Stinson](#), 260 Ga. App. 450 (2003) (*not yet on Georgia Appellate Courts page*)

It is not the function of appellate courts to second-guess the trial court's decision as to the issuance of the protective order, which turns largely on questions of credibility and judgment. The trial court is in the best position to make determinations on these issues.

The Court of Appeals will not overrule the trial court's judgment in cases involving whether to issue a protective order under Family Violence Act if there is any reasonable evidence to support that judgment.

[Giles v. State](#), 257 Ga. App. 65 (2002)

The State court judge had jurisdiction to enter a six-month protective order under the Family Violence Act, where the order designated the state court judge to assist the superior court and explicitly provided for the length of judge's services and scope of his duties.

The Superior Court had subject matter jurisdiction to enter a protective order against the defendant under the Family Violence Act, even though the defendant and stalking victim, who sought the protective order, had never been married to each other, did not reside in same house, and did not have children together. The Superior Court judge had authority to issue the protective order under the stalking statute or Family Violence Act.

[Baca v. Baca](#), 256 Ga. App. 514 (2002)

Husband's enumerations of error in proceeding for protective order under the Family Violence Act that related to an alleged ex parte submission of an incomplete list of personalty husband was to be permitted to retrieve from family house and trial court's alleged failure to correct discrepancy were rendered moot by expiration of protective order.

The trial court was not required to engage in a detailed calculation set forth in statute determining final child support awards when awarding child support temporarily under the Family Violence Act.

Trial court retains broad discretion when ruling on temporary custody of children for the period during which a protective order entered pursuant to Family Violence Act is in effect. The Court of Appeals will not interfere with its discretion absent abuse.

Any award of temporary custody in proceedings for temporary protective order under the Family Violence Act should be predicated on best interests of child

[Davis-Redding v. Redding](#), 246 Ga. App. 792 (2000)

In a family violence case, venue is proper in the respondent's county of residence. If the respondent has left the family home but has not avowed an intention to remain in the new location, venue is proper in both the county where the respondent has relocated and the county of the family's residence.

Trial court was not authorized to sua sponte dismiss wife's petition for protective order due to improper venue.

[Schmidt v. Schmidt](#), 270 Ga. 461 (1999)

Orders entered under the Family Violence Act must come by discretionary application rather than by direct appeal.

Because actions under the Family Violence Act involve neither divorce nor alimony, appeals from such actions do not fall within Supreme Court's exclusive jurisdiction. Therefore, jurisdiction lies in the Court of Appeals.

Trial court was required to apply reasonable doubt standard of proof, rather than preponderance standard, when imposing unconditional incarceration as punishment for criminal contempt in connection with violation of a consent restraining order entered under the Family Violence Act.

The husband who was held in contempt for violating consent restraining order entered under Family Violence Act had adequate notice that he might be required to pay wife's attorney fees since consent order stated that issue of attorney fees would be reserved until further hearing..

[Caroll v. State](#), 224 Ga. App. 543 (1997)

Petition for relief filed under the Family Violence Act, and orders resulting therefrom, are not subject to the Civil Practice Act.

The defendant's predawn break-in of his estranged wife's residence violated the judgment under the Family Violence Act which ordered the defendant to provide 48 hours notice to his estranged wife before he approached her residence to obtain his child in the exercise of his visitation privileges.

[Cook v. State](#), 199 Ga. App. 14 (1991) (*not available on Georgia Appellate Courts Page because the case is too old*)

A victim's prior acts of violence against a defendant are relevant in weighing the truth of a defendant's claim of justification.

Prior acts are admissible if the defendant makes prima facie case showing that the victim was the aggressor and was assailing the defendant and that the defendant was honestly seeking to defend himself.

[White v. State](#), 242 Ga. 21 (1978) (*not available on Georgia Appellate Courts Page because the case is too old*)

Evidence of prior difficulties between the defendant and alleged victim can be admitted for the purpose of illustrating the state of feeling between the two and the course of the defendant's conduct.

Current Legislation

Federal Pending Legislation

To link to this history free of charge- <http://thomas.loc.gov>

108th Congress

Senate Bill 2189 – Domestic Violence Connections Campaign Act of 2004 - To establish grants to improve and study the National Domestic Violence Hotline.

3.10.04 – referred to Senate Committee

Senate Bill 1954 – Proposed to amend Violence Against Women Act to include victims of dating violence

11.25.03 – referred to Senate Committee

House Bill 1895 – Domestic Violence Victim Protection Act - To amend Federal crime grant programs relating to domestic violence to encourage States and localities to implement gun confiscation policies, reform stalking laws, create integrated domestic violence courts, and hire additional personnel for entering protection orders, and for other purposes.

5.5.03 – referred to House subcommittee

Georgia Pending Legislation

To link to this history free of charge - <http://www.legis.state.ga.us>

House Bill 1108 - Child Endangerment Bill - A bill that worsens the punishment for people who put children in harms way. But some fear it could be mistakenly used by police officers to punish battered women who fail to remove their children from a home where they may be harmed by an abusive boyfriend or husband.

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Secondary Sources

Legal Encyclopedias

24 Am. Jur. 2d. Divorce and Separation §296 (2003)

Provides an overview of protective orders, explains the requisite circumstances, and the petitioner's burden.
Call Number KF154 .A85 1998

American Law Reports

Elaine Tomko, Annotation, *Admissibility of Evidence of Prior Physical Acts of Spousal Abuse Committed by Defendant Accused of Murdering Spouse or Former Spouse*, 24 A.L.R. 5th 465 (1994)

This annotation collects and analyzes the cases in which the courts have discussed or determined the admissibility of prior physical acts of spousal abuse committed by a defendant accused of murdering a spouse or former spouse.
Call Number KF132 .A522

Licia Esposito, Annotation, *Liability of Municipality or Other Governmental Unit For Failure to Provide Police Protection From Crime*, 90 A.L.R. 5th 273 (2001)

This annotation collects and discusses cases in which the courts have determined the liability of a municipality or other governmental unit for failure to provide police protection from crime rendered at the hands of third parties. Included are those situations in which the municipality or other governmental unit was requested to provide police protection, undertook to provide police protection, or was or should have been aware of a particular impending crime or one in the process of commission.
Call Number KF132 .A522

Law Review Articles

Kit Kinports, *So Much Activity, So Little Change: A Reply to the Critics of Battered Women Self Defense*, 23 St. Louis U. Pub. L. Rev. 155 (2004)

Despite numerous "milestones" and "wake-up calls," domestic violence continues to be a seemingly intractable problem in this country. Substantial numbers of women are still beaten by their husbands and boyfriends every day, and many of them die as a result. A much smaller number of women strike back and kill their abusers. The most troublesome self-defense questions arise in cases involving non-confrontational killings. Here, the woman strikes back before or after a beating, or, most controversially, when her abuser is asleep. Although statistically most killings do not fall into this category, they raise the most difficult questions and have generated the most interest.

This article concentrates on the legal advancements in the area of domestic violence and victims' self-defense, while reminding the reader that there is much to be accomplished.
Call Number Per .S132 .L57 .4545

Jennifer Johnson, *Privileged Justice Under the Law: Reinforcement of Male Privilege by the Federal Judiciary Through the Lens of the Violence Against Women Act and US V. Morrison*, 43 Santa Clara L. Rev. 1399 (2003)

Every year in the United States, violence by men kills women in numbers equivalent to the lives lost in the terrorist attacks of September 11, 2001. In fact, three of four women in the United States will be victims of at least one violent crime in their lifetimes. Such injustice is the result of a system that discounts the harms of violence against women by taking it less seriously than other crimes, characterizing it as "family law," and offering little to no monetary relief to redress these harms.

This article focuses on violence against women and the limitations of the Violence Against Women Act.
Call Number Per .5285 .L38

Tom Lininger, *Evidentiary Issues in Federal Prosecutions of Violence Against Women*, 36 Ind. L. Rev. 687 (2003)

This short essay considers whether the federal criminal justice system would benefit from adopting some of the new evidentiary rules that states have created for cases involving violence against women. In particular, this essay addresses three questions. First, should the federal courts permit impeachment of a testifying defendant with his prior misdemeanor crimes involving domestic violence? Second, should the federal courts freely admit evidence of prior similar conduct to show propensity in a prosecution for a VAWA offense? Third, should the federal courts recognize a new hearsay exception for victims of domestic violence who speak to the police shortly after they are abused, whether or not the circumstances meet the requirements for traditional hearsay exceptions such as the excited utterance rule?

Call Number Per .I397 .L415

Angela Killian, *Mandatory Minimum Sentences Coupled With Multi-Facet Interventions: An Effective Response to Domestic Violence*, 6 U. D.C. L. Rev. 51 (2001)

Part I of this comment focuses on the history of domestic violence among intimate partners. Part II of this comment examines the current state of domestic violence among intimate partners. Part III of this comment discusses the District of Columbia's response to alleviating domestic violence for example, its Domestic Violence Unit and its Domestic Violence Intake Center. Part IV of this comment addresses the federal government's response to domestic violence in recent years, namely, its enactment of the Violence Against Women Act of 1994 and its reauthorization of the Violence Against Women Act of 2000. Part V of this comment critically evaluates the District of Columbia's response to the increase in domestic violence and explains why the District of Columbia's response has not effectively stopped the spread of domestic violence. Part VI of this comment provides an effective response to domestic violence, specifically, mandatory minimum sentences coupled with multi-facet interventions.

Georgia State College of Law Library does not have 2001 Volume.

Bruce Winick, *Applying the Law Therapeutically in Domestic Violence Cases*, 69 UMKC L. Rev. 33 (2000)

This Article applies the approach of therapeutic jurisprudence to the processing of domestic violence cases. In addition to proposing changes in the law in this area, it offers suggestions about how the various legal actors that deal with domestic violence cases -- police, judges and other court personnel, prosecutors, and defense lawyers -- can perform their roles in ways that can help to rehabilitate offenders and bring about healing for their victims. Part II analyzes some important differences between domestic violence and stranger violence, and argues that, as a result, domestic violence should be treated differently in several respects. Part III examines the various ways in which the police and the courts attempt to predict the risk of future domestic violence in particular cases. Part IV proposes that police, prosecutors, and judges and other court officials should give greater consideration to the impact of their roles on the victims of domestic violence, including their children, who often are secondary victims. This Part makes several suggestions about how these officials can increase their sensitivity to victims, help to empower them, and decrease the antitherapeutic effects that their actions can have on them. Part V analyzes the role attorneys play representing individuals accused of domestic violence offenses and proposes that they consider the rehabilitation of clients who repeatedly engage in domestic violence as an appropriate subject for discussion in the attorney/client dialogue. Part VI examines the question of whether there should be mandatory arrest in domestic violence cases. Finally, Part VII

contains some concluding remarks concerning how insights from therapeutic jurisprudence can be used to improve the processing of domestic violence cases.
Can not be obtained at Georgia State College of Law Library.

www1.law.umkc.edu/Lawreview/CurrentIssue/index.htm

Nancy Egan, *The Police Response to Spouse Abuse: A Selective, Annotated Bibliography*, 91 Law Libr. J. 499 (1999)

Bibliography concentrates on responses to domestic violence. The bibliography is arranged in four sections: (1) empirical research, (2) criminal justice commentary, (3) feminist commentary, and (4) legal commentary.
Call Number Per .L416 .L42 .J86

www.heinonline.org – from Georgia State Computer Lab

Kathleen Waits, *Battered Women and Their Children: Lesson's From One Woman's Story*, 35 Hous. L. Rev. 29 (1998)

Statistics cannot tell the whole story. They are too abstract and impersonal. The sheer magnitude of the numbers can desensitize us. Domestic violence is so widespread, we can easily become numb to the human suffering behind the statistics. Telling individual women's stories is one way to address this dilemma. Stories touch our feelings in a way that statistics cannot. Stories can also spur us to action when statistics only depress us.

This article tells the story of one woman. After telling Mary's story, Part III discusses some lessons that can be learned from what she experienced. Part IV then addresses some questions that might be raised by her story, including whether Mary's story is credible and whether Mary is a "typical" battered woman.
Call Number Per .H843 .L4154

www.heinonline.org – from Georgia State Computer Lab

Pamela Bracher, *Mandatory Arrest for Domestic Violence: The City of Cincinnati's Simple Solution to a Complex Problem*, 65 U. Cin. L. Rev. 155 (1996)

This Comment investigates whether Cincinnati's mandatory arrest policy is an effective means of deterring domestic violence, especially in light of the recent passage by the State of Ohio of legislation that states a preference for, but does not require, mandatory arrest. Part II of this Comment provides a background discussion on domestic violence by profiling a batterer and comparing theories about why batterers batter. Part III of this Comment looks into the various responses by the legal system, the law enforcers, the prosecutors, the judges, and the legislators to the problem of domestic violence. Part IV of this Comment considers the State of Ohio's recent legislative action that requires police to enforce a preferential arrest policy rather than a mandatory arrest policy and compares this action to the long-standing City of Cincinnati mandatory arrest policy. In Part V, this Comment recommends the use of a preferential arrest policy rather than a mandatory arrest policy as the most effective means of addressing the growing problem of domestic violence.

Cannot be obtained at Georgia State College of Law Library

www.heinonline.org – from Georgia State Computer Lab

Books and Other Treatises

Eve S. Buzawa and Carl G. Buzawa, *Do Arrests and Restraining Orders Work?* (Sage Publications 1996)

Publication that examines how to identify offenders, whether arrest of offenders is effective, the prosecutor's response, and the effects of restraining orders on victims.
Call Number HV6626.2 .D6 1996

Charlotte Clark and Deborah Epstein, *Know Your Rights: A Victim's Guide to the Domestic Violence Justice System*, US Department of Justice, Office of the United States Attorney, District of Columbia (Department of Justice 1997)

Publication by the United States Justice Department that explains victims' rights of recourse in both criminally and civilly.
Call Number HV6626.2 .C53 1997

Domestic Violence and Stalking: The Annual Report to Congress Under the Violence Against Women Act, Violence Against Women Grants Office (Department of Justice 1997)

Reports presented to Congress that include statistics on domestic violence and stalking as well as an overview of each state's law.
Call Number KF9324.5.A15 D66

Kristin A. Kelly, *Domestic Violence and Politics of Privacy* (Cornell University Press 2003)

Book focuses on the dichotomy of public and private life and role of the family in these spheres.
Call Number HV 6626.2 .K45 2003

Susan Keilitz, *Domestic Violence and Child Custody Disputes: A Resource Handbook for Judges and Court Managers* (National Center for State Courts 1997)

Training manual that includes suggestions for case management, mediation, custody and visitation, as well as a list of resources.
Call Number KF9322.Z9 D66 1997

Nancy K.D. Lemon, *Domestic Violence Law* (West Group 2001)

Extensive coverage of domestic violence law including case citations. Book also covers many subsets of domestic violence including same-sex battering.
Call Number KF9320 .D657 2001

Karen Maschke, *The Legal Response to Violence Against Women* (Garland Pub. 1997)

Book includes all crimes against women with separate chapters on images of battered women, stalking laws, and domestic violence.
Call Number KF9304 .L44 1997

Albert R. Roberts, *Handbook of Domestic Violence Intervention Strategies: Policies, Programs, and Legal Remedies* (Oxford University Press 2002)

Call Number HV 6626.2 .H36 (2002)

Unable to locate at law library although [GIL](#) lists book as available

Online Services

Statutes – all statutes can be searched on www.westlaw.com and www.lexis.com for a fee. If you are a law student, use www.lawschool.westlaw.com or www.lexis.com/lawschool. These services allow you to build your own search using natural language or terms and connectors. You can also search by citation or party name. These services also provide material through Shepards and Keycite that update your research.

Georgia Code Sections – The Georgia Code can be obtained through a variety of on-line sources. Below are examples of free services:

www.legis.state.ga.us - double click on Georgia Code and then double click on the appropriate section

www.findlaw.com – look for box entitled for legal professionals, then double click on states, then double click on Georgia, and finally double click on State Code

United States Code Sections – The US Code can be obtained through a variety of on-line sources. Below is a list of free services:

www.findlaw.com – look for box entitled for legal professionals, then double click on US Law Cases and Codes and then double click on US Code

Cases- a search can be performed for case law on both www.westlaw.com and www.lexis.com for a fee. If you are a law student, use www.lawschool.westlaw.com or www.lexis.com/lawschool. These services allow you build your own search using natural language or terms and connectors. You can also search by citation or party name. These services also provide material through Shepards and Keycite that update your research.

Full text of cases can also be obtained through a variety of sources. Below is a list of free services:

www.ganet.org/appeals/opinions - Georgia cases from the Court of Appeals and the Supreme Court from 1997 to the present. However, this only provides a keyword search option

www.lexisone.com – this service will provide for free searches of cases, both state and federal, for the previous five years. You can search through keywords or with a citation. However, registration is required.

www.findlaw.com – quick search of federal cases from 1996 to the present

News

www.ndvh.org - National Domestic Violence Hotline

This site offers up to date press releases, hotline numbers, and specific information for each state

www.ncadv.org - National Coalition Against Domestic Violence

This site offers press releases and specific state helpline numbers

endabuse.org - End Abuse

This site offers press releases and various resources for victims of domestic violence

www.dvsheltertour.org -

This site offers a tour of a domestic violence shelter and various resources including instructions on how to make a safety plan

www.cpsdv.org - Center for Prevention of Sexual and Domestic Violence

Faith-base site that offers resources and material regarding domestic violence.

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Statewide Domestic Violence Resources

Statewide Domestic Violence Resources

Georgia Coalition Against Domestic Violence – 404-209-0280

State Bar of Georgia Pro-Bono Project – 404-527-8762

24 Hour Crisis Line – 404-873-1766

Atlanta Gay Helpline – 404-892-0661

Shelter Helpline –1-800-33-HAVEN

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