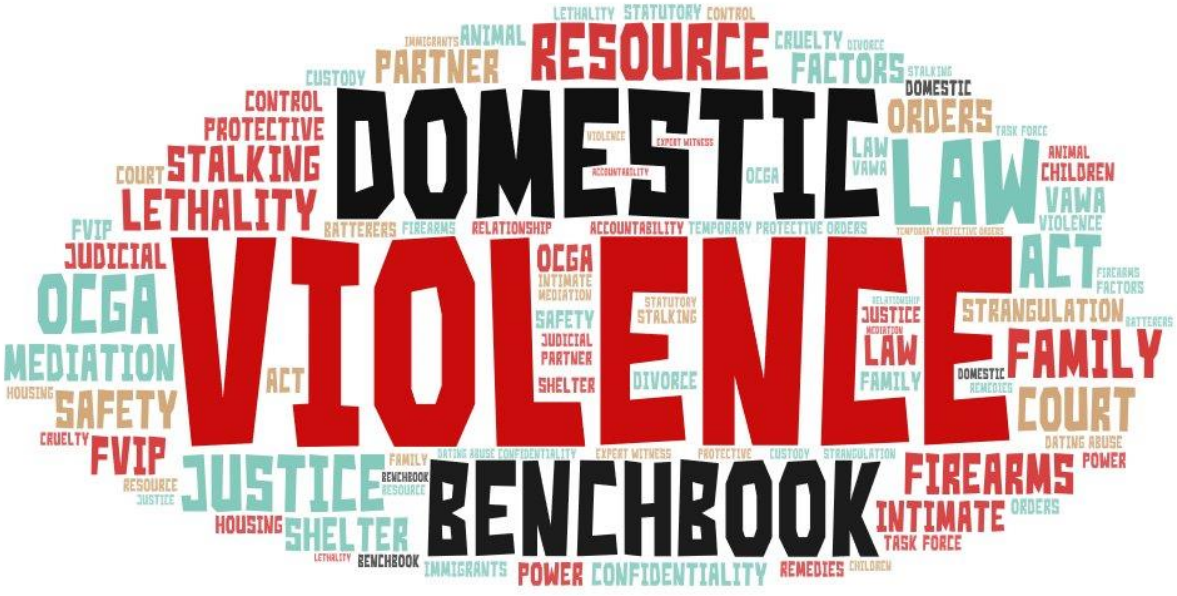

GEORGIA DOMESTIC VIOLENCE BENCHBOOK

JOAN PRITTIE & NANCY HUNTER

16TH ED.

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PREFACE TO THE 16TH EDITION

When Rich Reaves, Executive Director of the Institute of Continuing Judicial Education, first approached me about the 6th Edition of the benchbook, we discussed how funding and time restraints would necessitate a disciplined, limited approach to updates. But just as Nancy Hunter discovered years before (when the idea of a domestic violence chapter in the existing Superior Courts Benchbook morphed into a stand-alone book), the topic is so rich and the need so compelling that updates in one section led to additions in another and my discipline began to disappear.

My experience with the subsequent editions have been similar, and similarly rewarding. While working on each edition, I often reflect on my early efforts in domestic violence in the 1990's as a law clerk and later staff attorney at the Prisoner Legal Counseling Project. Identifying 78 women in prison for killing their abusive partners and preparing clemency petitions for many of them was painstaking and often heartbreaking, but it was a matchless introduction to the scope and complexity of this issue. My work back then led me to—and continues to inform—my work now, and I owe a debt to mentors from those days like Maureen Cahill and Marti Loring, as well as to the many women in prison who trusted us with their lives.

I am also grateful to Professor Paul Kurtz, Associate Dean of the University of Georgia School of Law, who retired in May, 2013. He taught me family law when I was in school, and he has taught me many more lessons since as a mentor and friend.

As Executive Director of Project Safe, I have consulted the benchbook frequently over the years. It is a resource, not just for judges, but for all of us engaged in the struggle to end domestic violence, and one that I hope will continue to grow and change in the years to come.

Joan Prittie, J.D.
Editor and Principal Author

INTRODUCTION

Domestic Violence is not an easy subject to discuss. You can anticipate intense disagreement depending upon the background and areas of interest of any participant in the conversation. Unfortunately, this leaves retreat from the forum as a very viable and maybe even a wise course of action. That option was considered by the Benchbook Committee when we were asked to develop a domestic violence bench book. I am glad we did not cut and run.

Perhaps discussion of the subject will become easier if we reflect on three important thoughts as we enter the forum.

Domestic violence is a monumental problem of our time. The phenomenon cuts across social, economic, cultural, and ethnic grounds. It is a common problem in Fulton, Rabun, Jackson, and Thomas Counties. Response to the problem is costly to law enforcement, health care, social services, education, families and to our judicial system. The personal harm to the physical and emotional well being of the victim is overwhelming.

Domestic violence stimulates a passionate response from many who have experienced it or worked in areas where the impact is most intensely felt or who have felt futility in trying to bring reform to our law enforcement, social services, and the judicial system in order to address the problem. Cynicism abounds on all sides and constructive criticism is often heard as negativism.

The legal system put in place to address the problem is less than perfect. That system ignores the adversarial system long adhered to in our courts, encourages pro se representation often to the peril of the victim, stretches fundamental ideas of notice and due process and imposes upon the judiciary a proactive social services role foreign to the traditional role of neutrality. The system apparently anticipates staff and resources, which do not exist and leaves cases with mandatory orders which cannot be enforced. The shortcomings in our present system coupled with our negative response to it have resulted in victims who are not served, cases, which have fallen through the cracks, respondents who are harmed by abuse of the process and judges who are more prone to “fight the problem” rather than to seek ways to improve the system.

The impact of domestic violence on our communities and our courts will continue to grow. We have no choice but to improve our methods and mechanisms to deal with domestic violence cases. Open debate is essential.

It is the hope of the Benchbook Committee and the dedicated professionals, who contributed to this effort, that this Domestic Violence Benchbook will serve as a cornerstone to help us understand, address and, in time, discover more complete solutions to this profound problem.

Robert W. Adamson
Benchbook Committee Chair (2005)
Council of Superior Court Judges

Chapter 1 CIVIL PROTECTIVE ORDERS

1.1. Overview

1.1.1. This chapter of the Domestic Violence Benchbook covers civil protective orders. It reviews the types of protective orders, with the required statutory findings. It describes the civil protective order process from beginning to end: jurisdiction, and venue; the issuance of ex parte orders; pre-hearing activity; and the hearing itself. The chapter discusses the remedies available in domestic violence actions; consent decrees; and mediation of cases involving issues of domestic violence. The chapter concludes with discussions of the enforcement, duration, modification, and extension of civil orders.

1.1.2. Several studies now show that civil protective orders provide safety for families in ways that no other remedy can. The National Center for State Courts (NCSC) determined that in the vast majority of cases, civil protection orders are effective. (Keilitz et al, 1997). That effectiveness depends on the specificity and comprehensiveness of the relief that is granted (See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements) and on how well the orders are enforced. Effectiveness was measured in two areas 1) improvement in petitioners well-being (quality of life, enhanced feelings of safety and self esteem) and 2) improvement in the problems stated in the petition (physical and psychological abuse, stalking, calling at home and work, coming to the home, etc.). One major study from Seattle reported an 80% reduction in police-reported physical violence for women who obtained a 12-month protective order after an incident of domestic violence. (Holt et al, 2002) In this study, shorter (2 week), temporary orders were found to be less effective than no order at all. Another study showed that protective orders do work for many victims. (T.K. Logan, 2009) This study showed that half (50%) of victims experienced no violations of the DVO during the 6 month follow-up period, For those victims who did experience violations, every single type of violence and abuse was significantly reduced during the 6 month follow up period compared to the 6 months before the protective order was issued. Further, many victims appreciated the orders and the help they received from the justice system. Accordingly, victims' fear of future harm was significantly reduced during the 6 months after the order was issued. The vast majority of victims thought the protective order was fairly or extremely effective (77%-95%) 6 months after the order was issued. Only 4% of victims requested to drop the protective order during the 6 months after the protective order was issued. *Id.*

1.1.3. Significantly for the court, the NCSC study confirms that abused women are especially vulnerable to physical violence after they initiate court proceedings; they assume considerable risk when they claim their rights under the law. However, a recent study (Bridges, Tatum and Kunselman, 2008) revealed that limiting firearm availability once a protective order has been served may help to reduce family homicide rates. Across 47 States, the authors found an inverse correlation between family homicide rates and States mandating firearm restrictions during a protective order.

1.1.4. Georgia law offers three types of protective orders: family violence protective orders, Section 1.2; stalking protective orders, Section 1.3; and employer protective orders, Section 1.4.

1.2. Family Violence Protective Orders (O.C.G.A. § 19-13-1 et seq.)

1.2.1. To issue a family violence order, a court must find that:

A. The petitioner has or had a particular relationship (See Section 1.2.2) to the respondent; and
B. The respondent has engaged in one or more particular types of violence (See Section 1.2.3); and
C. The petitioner needs protection (See Section 1.2.4) against future violence by the respondent.

1.2.2. Relationships:

A. O.C.G.A. § 19-13-1 requires that the petitioner prove that one of the following relationships exist between petitioner and respondent O.C.G.A. § 19-13-1 (first paragraph):

1. past spouses.
2. present spouses.
3. parents of the same child (unmarried parents).
4. parent and child.
5. stepparent and stepchild.
6. foster parent and foster child.
7. persons now living in the same household.
8. persons formerly living in the same household.

B. **When Cohabitation is Not Required**: Proof of a spousal, parental, stepparental or foster parental relationship permits the court to issue an order without proof of cohabitation.
C. **When Cohabitation Is Required**: Proof that petitioner and respondent are "living or formerly living in the same household" can extend the act's protection to relationships other than those specified by the statute. For example, proof of

cohabitation can allow a court to permit petitions between siblings; extended family members; roommates; unmarried intimate partners; and same-sex couples. Questions a court may have to resolve include what the term "living together" means, and what constitutes a "household"; no Georgia cases interpret these terms.

D. **Excluded Relationships**: Only relationships specified in the statute qualify under the relationship requirement. Many relationships do not meet that requirement: for example, a dating relationship between petitioner and respondent (where cohabitation does not and has not occurred) does not satisfy the relationship test. However, the same petitioner might be able to obtain a stalking order, (See Section 1.3) or benefit from an employer order (See Section 1.4)

E. **Petitions on Behalf of Minors**: The statute does not permit minors to sue directly. The statute does permit "a person who is not a minor [to] seek relief on behalf of a minor." O.C.G.A. § 19-13-3(a).

F. **Incidence of Abuse in Different Relationships**: Abusers are found in every type of domestic relationship causing adults, children, and the elderly to suffer physical and emotional harm. 35.6% of women and 28.5% of men in the United States have experienced rape, physical violence and/or stalking by an intimate partner.(Centers for Disease Control, National Intimate Partner and Sexual Violence Survey, 2010 Summary Report). The National Survey of Children's Exposure to Violence shows that 11.1% of children have had exposure to family violence in the previous year, and 25.6% experienced exposure during their lifetime (Hamby, Finkelhor, Turner, Ormrod 2011).

G. **Incidence of Abuse in Underserved Populations**: For underserved populations, the situation is even more dire. Increasing evidence indicates that there are large numbers of immigrant women trapped in violent relationships. These women may not be able to leave an abusive relationship because of immigration laws, language barriers, social isolation, and lack of financial resources. (Orloff and Little, 1999). Violence against women with disabilities is alarmingly high. Wilson and Brewer reported that women with developmental disabilities were 10.7 times as likely to be sexually assaulted as other women (Wilson and Brewer, 1992). Relatives or intimates committed more than 1 in 4 of the murders against persons age 65 or older" (Crimes Against Persons Ages 65 and Older, 1992-1997).

1.2.3. **Violence**:

A. A petitioner must prove violence using the definitions of various specified criminal offenses, O.C.G.A. § 19-3-1(1) (felonies), (2) (other crimes):

1. "**any felony**": The statute does not list these felonies by name, and does not distinguish between violent and non-violent felonies.

2. "**simple battery**": "A person commits the offense of simple battery when he or she either: (1) Intentionally makes physical contact of an insulting or provoking nature with the person of another; or (2) Intentionally causes physical harm to another." O.C.G.A. § 16-5-23(a).
3. "**battery**": "A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another." O.C.G.A. § 16-5-23.1(a). "Visible bodily harm" is defined as "harm capable of being perceived by a person other than the victim, [which] may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, or substantial bruises to body parts." Id, (b).
4. "**simple assault**": "A person commits the offense of simple assault when he or she either: (1) Attempts to commit a violent injury to the person of another; or (2) Commits an act which places another in reasonable apprehension of immediately receiving a violent injury." O.C.G.A. §16-5-20(a).
5. "**aggravated assault**": "A person commits the offense of aggravated assault when he or she assaults: (1) With the intent to murder, to rape, or to rob; (2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; (3) With any object, device, or instrument which, when used offensively against a person is likely to or actually does result in strangulation; or (4) A person or persons without legal justification by discharging a firearm from within a motor vehicle toward a person or persons." O.C.G.A. § 16-5-21(a).
6. "**stalking**": O.C.G.A. §§ 16-5-90.

    a. "A person engages in 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." O.C.G.A. § 16-5-90(a) The statute further defines the following terms:

        (1) "computer" and "computer network."
        (2) "contact"
        (3) "place or places"
        (4) "harassing and intimidating"

    b. Stalking also occurs when a person violates an existing stalking order by broadcasting or publishing "the picture, name, address, or phone number" of the person protected by the order. O.C.G.A. § 16-5-90(a)(1) and (2).
    c. The Family Violence Act does not list aggravated stalking specifically. However, as a felony offense, aggravated stalking falls within the definition of "any felony". See O.C.G.A. § 16-5-91; O.C.G.A. § 19-13-1 (1) & (2).

d. Conduct, which meets the statutory definition of stalking might justify both a family violence order and a stalking order. (See Section 3.2.7 - Stalking Order Remedies).
e. Stalking cannot occur in the defendant's home. O.C.G.A. § 16-5-90(a)(1).

7. "**criminal damage to property**"

a. **First degree**: "A person commits the offense of criminal damage to property in the first degree when he: (1) Knowingly and without authority interferes with any property in a manner so as to endanger human life; or (2) Knowingly and without authority and by force or violence interferes with the operation of any system of public communication, public transportation, sewerage, drainage, water supply, gas, power, or other public utility service or with any constituent property thereof." O.C.G.A. §16-7-22(a).
b. **Second degree**: "A person commits the offense of criminal damage to property in the second degree when he: (1) Intentionally damages any property of another person without his consent and the damage thereto exceeds $500.00; (2) Recklessly or intentionally, by means of fire or explosive, damages property of another person; or (3) With intent to damage, starts a fire on the land of another without his consent." O.C.G.A. §16-7-23(a).

8. "**unlawful restraint**":

a. **Kidnapping**: "A person commits the offense of kidnapping when he abducts or steals away any person without lawful authority or warrant and holds such person against his will." O.C.G.A. 16-5-40(a). Requires asportation.
b. **False imprisonment**: "A person commits the offense of false imprisonment when, in violation of the personal liberty of another, he arrests, confines, or detains such person without legal authority." O.C.G.A. § 16-5-41. This does not require asportation.

9. "**criminal trespass**":

a. **Damage to property**: "A person commits the offense of criminal trespass when he or she intentionally damages any property of another without consent of that other person and the damage thereto is $500.00 or less or knowingly and maliciously interferes with the possession or use of the property of another person without consent of that person." O.C.G.A. §16-7-21(a). Damage to property that another person has an interest in is criminal trespass. *Ginn v. State*, 251 Ga. App. 159 (2001) *Newsome v. State*, 289 Ga. App. 590 (2008).

b. **Entry and remaining without permission**: "A person also commits criminal trespass "when he or she knowingly and without authority: (1) Enters upon the land or premises of another person or into any part of any vehicle, railroad car, aircraft, or watercraft of another person for an unlawful purpose; (2) Enters upon the land or premises of another person or into any part of any vehicle, railroad car, aircraft, or watercraft of another person after receiving, prior to such entry, notice from the owner, rightful occupant, or, upon proper identification, an authorized representative of the owner or rightful occupant that such entry is forbidden; or (3) Remains upon the land or premises of another person or within the vehicle, railroad car, aircraft, or watercraft of another person after receiving notice from the owner, rightful occupant, or, upon proper identification, an authorized representative of the owner or rightful occupant to depart." O.C.G.A. § 16-7-21(b).

10. Note: *Dunn v. Dunn*, 363 Ga. App. 132 (Ga. App. 2022): In a case involving a divorce and a family violence protective order, the court held that ex – husband's commission of felony interference with custody was an improper ground for granting a family violence protective order.

B. **Psychic or emotional harm**: The statute does not specify psychic or emotional harm (either of adults or children) as a basis for finding "family violence." Only the offense of stalking includes a requirement to prove both "emotional distress" and "reasonable fear for their safety or the safety of their immediate family." The statute does not exclude proof of psychic or emotional harm, which may be relevant to other issues, including remedy.

C. Experts recognize that emotional abuse almost always accompanies physical violence (Carpiano, 1998); they also found that psychological domination far exceeds the physical and sexual assaults most often seen in the courts. As Herman (1992) relates, "Methods of psychological control are designed to instill terror and helplessness and to destroy the victim's sense of self in relation to others." Psychological abuse is the glue that binds the physical types of abuse together (Hunter, 2000). Once the abuser has used physical or sexual violence it is not necessary to use it as often; threats and intimidation will keep the abused person in a constant state of fear allowing for their domination. (Herman, 1992).

D. Considering that domestic violence is under-reported, and that physical violence accounts for most reports, it is clear that psychological abuse is extensive. Whereas, bones and bruises heal within a few months, psychological abuse can have a lasting impact. Stark and Flitcraft (1992) found battering was the single most important context yet identified for female suicide attempts. Almost 30 percent of the women in their study who attempted suicide were battered. (See Appendix A, Different Forms or Tactics of Abuse)

E. **Threats**: The family violence statute permits issuing a protective order based on "threats" which satisfy the requirements for "assault" or "aggravated assault". The statute only recognizes threats to the petitioner or to children.

1. The speaker does not have to intend to carry out the threat, but a reasonable person's perception that a statement is threatening is not sufficient. The standard is that the speaker communicates for the purpose of issuing a threat, or with knowledge that the communication will be understood as a threat. Elonis v. United States, 135 S. Ct. 2001 (2015).

F. "**Reasonable Discipline**": "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. § 19-13-1 (last sentence). A stinging slap to a disrespectful child, with no resulting bruises, has been held to not constitute "family violence". *Buchheit v. Stinson,* 260 Ga. App. 450, 455 - 456 (2003). Lack of visible harm does not prevent such a finding; and physical discipline might in some cases constitute "family violence". *Id.*

1.2.4. Need for Protection

A. **Likelihood of future violence**: The court must find that "family violence has occurred in the past and may occur in the future" to justify ordering relief that is "necessary to protect the petitioner or a minor of the household from violence." O.C.G.A. § 19-13-3 (b). The occurrence of past abuse standing alone does not justify issuing an order; protection must be necessary to prevent violence that "may occur in the future." At the same time, the occurrence of past violence might raise an inference about the behavior alleged by the petitioner. For example, on one list of 18 risk assessment factors for violence, past violence was the most important or heavily-weighted predictor of future violence by that same individual (Meloy, 2000). (See Appendix B - Assessing for Lethality)

B. **Timing**: The Georgia Court of Appeals has stated that although the recency of past violence may bear upon the likelihood of future violence, there is no requirement that the violence be recent. *Lewis v. Lewis,* 728 S.E.2d 741 (2012). In Lewis, the petitioner sought to obtain an ex parte temporary restraining order when there had not been any violence for a year. The Court held that the statute under which the petitioner sought a protective order did not absolutely require her to show a "relatively recent" act of family violence. The Court explained that the plain language of the statute requires "that the petitioner allege and prove by a preponderance of the evidence that the person against whom the protective order is sought has engaged in family violence at some specified time in the past and that he may engage in such violence again at some unspecified time in the furture". *Id.*

C. **Fear**: The statute does not require a finding that the petitioner fears the respondent, nor does it require that the court assess the "reasonableness" of any

fear the petitioner does have for the respondent. However, a finding of fear does allow an inference that abuse will occur in the future: the petitioner's fear tends to indicate the petitioner's belief that past violence will recur in the future. At the same time, a court makes its own assessment of whether violence "may occur in the future." The court is not required to accept the petitioner's belief as conclusive and may assess the petitioner's fears in light of all the available evidence.

1. Evidence exists that victims deny the existence of fear as a way of coping with the danger and lack of control they experience (Herman, 1992) (DSM-IV-TR, 2000). A court might consider questioning the victim not only directly about their sense of fear, but also indirectly. For example, the court might inquire whether the petitioner believes that the respondent is capable of hurting the petitioner or the petitioner's family (Hunter, 2002).

D. **Stalking**: Although stalking is most reported after the victim has left the relationship it also occurs during the relationship. Logan, Shannon and Cole (2007) found women stalked by their partners experienced significantly higher rates of psychological abuse, physical abuse, sexual abuse and injury compared to women who were not stalked by their violent partner. Not surprisingly, these women suffered more Post Traumatic Stress Disorder and anxiety symptoms as well.

1.3. Stalking Protective Orders (O.C.G.A. § 16-5-94)

1.3.1. To issue a stalking protective order, a court must find that:

A. The respondent has stalked the petitioner; and
B. The petitioner needs protection against future stalking by the respondent.
C. Stalking protective orders do not require proof of a specific relationship; any "person who is not a minor who alleges stalking by another person may seek a restraining order." O.C.G.A. § 16-5-94(a). "A person who is not a minor may also seek relief on behalf of a minor by filing such a petition." *Id.* A court may issue a stalking order even where the parties had never been married to each other, did not reside in the same house, and did not have children together. *Giles v. State,* 257 Ga. App. 65, 68 (2002).

1.3.2. Stalking

A. A person engages in stalking under O.C.G.A. §§ 16-5-90(a), cross-referenced by O.C.G.A. § 16-5-94(a) "when:

1. he or she follows, places under surveillance, or contacts another person
2. at or about a place or places
3. without the consent of the other person
4. for the purpose of harassing and intimidating the other person" or

5. in violation of a protective order, bond, or condition of probation prohibiting harassment of another person, broadcasts or publishes the name, address, or phone number of the person for whose benefit, the bond, order, or condition was made and the person making the broadcast or publication had reason to believe it would cause such person to be harassed or intimated by others. O.C.G.A. § 16-5-90(a)(2).

B. "**Contact**": The statute defines "contact" as "any communication", including but not limited to: "in person, by telephone, by mail, by broadcast, by computer, by computer network, or any other electronic device." The terms "computer" and "computer network" have the same definitions as in the Computer Systems Protection Act, O.C.G.A. § 16-9-92 (1) ("computer") and (2) ("computer network").

C. "**Place or places**": the statute protects against stalking behavior at "any public or private property occupied by the victim." *Id.* The statute does not restrict the locations at which stalking can occur to the petitioner's residence or workplace. Instead, a court may find stalking to have occurred in any location "occupied" by the petitioner, with one exception: stalking cannot occur at the defendant's residence. *Id.* If the alleged stalking occurred through means other than in person contact, the term "place or places" refers to the location "where such communication is received." *Id.*

D. "**Harassing and intimidating**": under O.C.G.A. § 16-5-90(a)(1), these terms mean:

1. "a knowing and willful course of conduct
2. directed at a specific person
3. which causes emotional distress
4. by placing such person in reasonable fear for
5. such person's safety or the safety of a member of his or her immediate family,
6. by establishing a pattern of harassing and intimidating behavior, and
7. which serves no legitimate purpose."

E. "**Course of conduct**": A court may not issue a stalking order based solely on a single act. The petitioner must prove a "course of conduct", which involves a "pattern of harassing and intimidating behavior". O.C.G.A. § 16-5-90 (a)(1). This course of conduct must also "serve no legitimate purpose," a term the statute leaves undefined.

F. **Psychic or emotional harm**: stalking rests on a finding that the respondent's conduct caused "emotional distress"; the statute does not require physical injury, or the threat of physical injury.

G. **Threats**: a stalking order may be issued based on proof of threats to the petitioner's "safety."

1. The term "**safety**" is different than the corresponding language required by the family violence order statute ("reasonable apprehension of immediately receiving a violent injury", O.C.G.A. §§ 19-3-1(2) and 16-5-20(a)). Unlike the family violence statute, a stalking order can be issued for threats to the "immediate family" of the petitioner, not just to the petitioner alone.
2. The statute requires petitioner to show a connection between the respondent's actions and the safety of the petitioner or the petitioner's family. For example, the Court of Appeals reversed a portion of a permanent stalking order which prohibited respondent from publishing or discussing the petitioner's medical condition: "there was no evidence that publishing or discussing the petitioner's medical condition with others would threaten her or her family's safety." *Collins v. Bazan,* 256 Ga. App. 164, 166, 568 S.E.2d 72, 74 (2002).

1.3.3. Need for protection:

A. **Future stalking**: A court must find not only that stalking has occurred in the past, but also that stalking "may occur in the future." O.C.G.A. § 16-5-94(c); a court may grant a stalking protective order to "bring about the cessation of conduct constituting stalking." O.C.G.A. § 16-5-94(d). Issuance of a stalking order thus requires the court to form a conclusion about the likelihood of stalking in the future, not just the occurrence of stalking in the past.
B. **Reasonable fear**: A finding of stalking requires a finding that the respondent has contacted, followed, or placed under surveillance without the consent of the other person for the purpose of harassing and intimidating the other person, and that the petitioner's fear for their safety or the safety of their family is "reasonable." O.C.G.A. § 16-5-90(a). Even though the statute mandates proof of fear, evidence of the petitioner's fear may also tend to prove the likelihood that stalking will recur. In *Pilcher v. Stribling,* 282 Ga. 166 (2007) the Georgia Supreme Court ruled that the petitioner must establish the elements of the stalking by a preponderance of the evidence. *Id.* at 167. The Stalking Protective Order had been granted for stalking at work. The victims alleged verbal abuse toward them by the fire chief and physical assaults directed toward the victims by the fire chief during basketball games that were conducted as part of their required physical training. The Supreme Court ruled that the defendant's conduct did not fall within the statutory definition of stalking as they were not sufficient to create a reasonable fear for their safety. *Id.* at 168.
C. It is important to note that victims may deny they are afraid as a way of coping with the danger and lack of control they experience. (Herman, 1992) A court might consider questioning the victim not only directly about their sense of fear, but also indirectly. For example, the court might inquire whether the petitioner believes that the respondent is capable of hurting the petitioner or the petitioner's family. (Hunter, 2002)

D. It is also important to note that fear can be present even when there has been no recent act of violence. *Lewis v. Lewis,* 728 S.E.2d 741 (2012). In Lewis, the petitioner explained that "just considering the fact that I know him and his history and I know the looks on his face or the—his demeanor... and I know when I feel threatened. and I felt threatened at that time." The Court held that there need not be any reasonably recent act of violence to establish a fear of future violence.

1.4. Employer Protective Orders (O.C.G.A. § 34-1-7)

1.4.1. Domestic violence greatly impacts the workplace. Ninety-six (96) percent of employed women who suffer abuse report that their work performance is hurt as a result of the family violence (Bureau of Labor Statistics, 1999). Homicide is the leading cause of death on-the-job for women and domestic violence accounts for 16% of female victims of job-related homicides (U.S. Dept. of Labor, 2004). The Centers for Disease Control and Prevention (2003) states the costs of intimate partner rape, physical assault and stalking exceeds $5.8 billion each year, nearly $4.1 billion of which is for direct medical and mental health care services. Moreover, of the 4 million workplace crime incidents committed against females from 1993 through 1999, only 40 percent were reported to the police (Duhart, 2001). Employers may be the only help for abused parties who are too frightened to claim their own rights in court.

1.4.2. To issue an employer protective order, a court must find that:

A. an employer-employee relationship exists between employer and the alleged victim (See Section 1.4.3); and
B. the respondent has committed violence or the threat of violence against the employee at the employee's workplace (See Section 1.4.4)
C. Unlike family violence and stalking protective orders, the statute does not explicitly require a finding that violence or threats of violence may occur in the future. See O.C.G.A. § 34-1-7(e). Note also that the procedural and evidentiary requirements for employer protective orders are stricter in many details than those for family violence and stalking orders. (See Section 2.6.1 below).

1.4.3. Employer-employee relationship

A. Only employers may request an employer protective order, and only to protect an employee. O.C.G.A. § 34-1-7 (b).
B. The term "employer" applies to "any person or entity that employs one or more employees." O.C.G.A. § 34-1-7 (a)(3).
C. The term includes the State of Georgia "and its political subdivisions and instrumentalities."

1.4.4. Violence or threats of violence:

A. Under O.C.G.A. § 34-1-7 (b), the employer must prove that the employee:

1. "has suffered
2. unlawful violence or
3. a credible threat of violence
4. from any individual,
5. which can reasonably be construed to have been carried out at the employee's workplace."

B. "**unlawful violence**": under O.C.G.A. § 34-1-7(a)(4), these terms include:

1. assault, both simple and aggravated, O.C.G.A. §§ 16-5-20, -21;
2. battery, including "simple battery", "battery", and "aggravated battery", O.C.G.A. §§ 16-5-23, 23.1, 24; or
3. stalking, including "aggravated stalking", O.C.G.A. §§ 16-5-90, -91.
4. "Unlawful violence" does not include "lawful acts of self-defense or defense of others."

C. "**credible threat of violence**": under O.C.G.A. § 34-1-7(a)(2), these terms include either a "knowing and willful" statement or a "course of conduct", which:

1. "would cause a reasonable person to believe that he or she is under threat of death or serious bodily injury"; and
2. the respondent intends to cause "a person to believe that he or she is under threat of death or serious bodily injury"; and
3. "actually causes" the person to believe the threat; and
4. "serves no legitimate purpose."

D. **Course of conduct**: The statute makes clear that "course of conduct" means more than one act; instead, it means "a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose . . ." O.C.G.A. § 34-1-7(a). Behaviors which might evidence a "continuity of purpose" include: following or stalking to or from the workplace, entering the workplace, following during work hours, telephone calls or correspondence, including both mail, fax, and e-mail. O.C.G.A. § 34-1-7(a)(1).

1.4.5. Constitutionally protected conduct: In ruling on an employer protective order, a court may not restrain "speech or other activities which are protected by the Constitution of this State or the United States." O.C.G.A. § 34-1-7(b).

1.5. Constitutional Considerations

1.5.1. The Georgia Supreme Court has held that the definitions of stalking in the misdemeanor stalking statutes were not unconstitutionally vague or overbroad, in a case arising from a criminal conviction for stalking, *Johnson v. State*, 264 Ga. 590, 449 S.E.2d 94 (1994), *Fly v. State*, 229 Ga. App. 374 (1997), *Collins v. Bazan*, 256 Ga. App. 164 (2002).

1.5.2. No Georgia case has ruled on the constitutionality of the civil protection statutes, whether on vagueness or other grounds. Other state and federal courts have reviewed comparable civil statutes under federal constitutional standards, and have consistently upheld them. These courts have held that:

A. Civil domestic violence statutes are entitled to a presumption of constitutionality, *Johnson v. Cegielski*, 393 N.W.2d 547 (Wis. Ct. App. 1986) (per curiam).

B. The ex parte provisions of the civil statute do not violate federal due process standards, *Crowley v. Lilly*, 2003 WL 21040256 (Ky.App., 2003)(unpublished opinion), *Peters-Riemers v. Riemers*, 624 N.W.2d 83 (N.D. 2001), *Blazel v. Bradley*, 698 F. Supp. 756 (W.D. Wisconsin 1988), *Kampf v. Kampf*, 603 N.W.2d 295, 299 (Mich. Ct. App. 1999), State ex rel. *Williams v. Marsh*, 626 S.W. 2d 223, 232 (Mo. 1982), *Marquette v. Marquette*, 686 P.2d 990, 996 (Okla. Ct. App. 1984), *Scramek v. Bohren*, 429 N.W.2d 501, 505-506 (Wis. Ct. App. 1988), *Sanders v. Shepard*, 541 N.E.2d 1150, 1155 (Ill. Ct. App. 1989), *Nollet v. Justices of the Trial Court*, 83 F. Supp. 2d 204 (D. Mass. 2000), *Willmon v. Daniel*, 2007 U.S. Dist. LEXIS 11538 (N.D. Tex. 2007), *Moore v. Moore*, 657 S.E.2d 743, 749 (S.C. 2008). The prevailing federal test for procedural due process claims appears in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

C. The language of the relevant civil statutes is not unconstitutionally vague or overbroad, *State v. Kidder*, 843 A.2d 312 (N.H., 2004), *Delgado v. Souders*, 334 Or. 122, 46 P.3d 729 (2002), *Kirkley v. Dudra*, 1996 WL 33360281 (Mich.App. 1996)(unpublished opinion), *Scramek v. Bohren*, 429 N.W.2d 501, 505-506 (Wis. Ct. App. 1988), *Gilbert v. State*, 765 P.2d 1208 (Okla. Crim. App. 1988), *Kreitz v. Kreitz*, 750 S.W.2d 681 (Mo. Ct. App. 1988), *State v. Tripp*, 795 P.2d 280 (Haw. 1990), *People v. Whitfield*, 498 N.E.2d 262, 267 (Ill. App. Ct. 1986), *State v. Sarlund*, 407 N.W.2d 544 (Wis. 1987), *People v. Stuart*, 100 N.Y.2d 412 (2003). Only one court has declared a stalking statute unconstitutionally vague, *Commonwealth v. Kwiatkowski*, 418 Mass. 543, 637 N.E.2d 854 (1994), a decision later superseded by a constitutionally valid stalking statute, *Commonwealth v. Alphas*, 430 Mass. 8, 12, 712 N.E.2d 575, 580 (1999).

D. Domestic violence statutes do not violate constitutional protections for free speech, *LaFaro v. Cahill*, 203 Ariz. 482, 489 , 56 P.3d 56, 62 (Ariz. App., 2002), *Scramek v. Bohren*, 429 N.W.2d 501, 505-506 (Wis. Ct. App. 1988), *People v. Blackwood*, 476 N.E.2d 742 (Ill. App. Ct. 1985), *Gilbert v. State*, 765 P.2d 1208, 1210 (Okla. Crim. App. 1988), *Lampley v. State*, 2005 WL 388277 (Alaska Ct. App. 2005), or freedom of travel, *Delgado v. Souders*, 334 Or. 122, 46 P.3d 729 (2002).

1.6. Divorce Action Restraining Orders

1.6.1. Restraining orders entered in divorce actions under the general equitable powers of the court do not have the statutory enforcement mechanisms associated with the Family Violence Act (FVA) temporary protective orders(TPO). They may not be as dangerous for victims as mutual temporary protective orders under the FVA, nor are they as effective.

Divorce action restraining orders are not entered onto the Family Violence Registry and are not enforceable through criminal stalking procedures. Law enforcement are reluctant to enforce these civil orders and they may not be entitled to full faith and credit enforcement in other states. Moreover, restraining orders in divorce actions do not invoke the firearms restrictions under federal law.

1.6.2. Mutual or standing mutual restraining orders can be entered in divorce actions against both parties without any particular procedural requirements. The Family Violence Act requires that a mutual order in a family violence act case must be requested 3 business days prior to the hearing and be based on written claims of specific acts of violence. O.C.G.A. 19-13-4(a). Where family violence is present between spouses, a FVA protective order claim should be separately pleaded and proved. A FVA TPO will provide more protection for the victim than a restraining order in a divorce.

1.7. Dating Violence Protective Orders (O.C.G.A. § 19-13A-1 et seq.)

In 2021, the Georgia Legislature passed O.C.G.A. § 19-13A-1 et seq., an act providing protection to victims of dating violence. Rather than adding dating relationships to the list of ones qualifying for relief under the Family Violence Protective Act, legislators chose to create a new dating violence petition and order. Though the procedures involved in filing for relief under the new dating violence statute are very similar to those involved in filing for relief under the Family Violence Protective Act, the statute that applies to victims of dating violence (See O.C.G.A. § 19-13A-4(b)) affords fewer protections than the one that applies to victims of family violence (See O.C.G.A. § 19-13-4(a)). In 2022, the statute was amended to extend the timeframe of a prior dating relationship from within six months to within twelve months.

1.7.1. To issue a dating violence protective order, the court must find that:

A. The petitioner has or had a particular relationship (See Section 1.7.4) to the respondent; and
B. The respondent has engaged in one or more particular types of violence (See Section 1.7.5)

1.7.2. Jurisdiction:

A. In cases where the respondent is a resident of Georgia, the superior court of the county where the respondent resides has jurisdiction over Dating Violence Protective Order proceedings. See O.C.G.A. § 19-13A-2.
B. In cases where the respondent is not a resident of Georgia, one of the courts listed below shall have jurisdiction over the case:

    1. The superior court in the county where the petitioner resides
    2. The superior court in the county where the act or injury involving dating violence allegedly occurred

1.7.3. Procedures:

The procedures for filing a Dating Violence Protective Order (O.C.G.A. § 19-13A-3) are nearly identical to those for filing a Family Violence Protective Order (O.C.G.A. § 19-13-3).

A. After the petitioner files a petition for a Dating Violence Protective Order, the court may (after determining that an act of dating violence has occurred and that such protection is necessary) issue an ex parte order, or a temporary order, issuing protection and relief for the petitioner. The ex parte relief may include protections such as mandating the respondent to vacate the residence and not to contact the petitioner. See O.C.G.A. § 19-13A-3(a).

    1. This ex parte order is effective until a hearing is held or until the court dismisses the order.

B. No later than 30 days after the petition is filed, a hearing shall be held. At this hearing, the petitioner must prove the allegations of the petition by a preponderance of the evidence. If a hearing is not held within 30 days of the filing of the petition, the petition will be dismissed (unless the parties agree otherwise).(See O.C.G.A. § 19-13A-3(b).

    1. At this hearing, the judge will decide whether a Dating Violence Protective Order will be issued. The order typically lasts one year.
    2. A hearing shall be held regardless of whether or not ex parte relief was ordered.

C. Social service agency staff members designated by the court may explain to petitioners who are not represented by an attorney the process of filling out and filing a petition. The clerk of the court may provide forms and pleadings to petitioners and people authorized to advise petitioners. See O.C.G.A. § 19-13A-3 (c).

D. If the court finds that a party is avoiding service (meaning avoiding being served with papers such as an ex parte order or an order scheduling a hearing), the court may delay dismissal of the petition for 30 more days. See O.C.G.A. § 19-13A-3(d).

1.7.4. Relationships:

A. For a dating violence protective order to be granted:

1. The parties must be currently in a dating relationship. See Section 1.7.4(B);

2. The parties must have been in a dating relationship within the last twelve months. See Section 1.7.4(B);

a. Even if the parties are no longer dating, if they were dating within the last twelve months, this relationship qualifies under the statute.

OR

3. A current pregnancy has developed between the parties.

See O.C.G.A. § 19-13A-1.

B. What constitutes a dating relationship?

1. A "dating relationship" is a committed romantic relationship that has a level of intimacy that is greater than that of friendships or relationships between people in typical business, social, or educational contexts. See O.C.G.A. § 19-13A-1(1).

a. Though the level of intimacy is required needs to be greater than that expected of colleagues, classmates, friends, etc., sexual involvement is <u>not</u> required for two people to have a dating relationship. See O.C.G.A. § 19-13A-1(1).
b. Online relationships do qualify under the statute.

2. For a protective order to be granted on the basis that two people are in a dating relationship, the court must provide findings of facts establishing <u>at least one of the following</u>**.** It is not required that the court make findings regarding each of these.

a. The parties share a committed romantic relationship that is not normally found in typical business, social, or educational contexts.

b. Factors exist that further demonstrate the existence of a dating relationship.
c. The parties have an interpersonal bond that is greater than that of a normal or casual friendship.
d. The length of the parties' relationship indicates a dating relationship exists.

(1) There is no quantifiable standard for the length of the relationship being indicative of a dating relationship.

e. The nature and frequency of the interactions between the parties indicate that the parties intend to be in a dating relationship.

(1) Nature and frequency are not defined any more specifically than this.

f. The parties, either by statement or how they behave, have demonstrated to other people an affirmation of the existence of a dating relationship.
g. Both parties have acknowledged the dating relationship.

3. The language of the dating violence statute should not be interpreted to indicate that people who cohabitate are unable to file for or obtain a protective order that is otherwise provided for under law. See O.C.G.A. § 19-13A-4.

1.7.5. Violence:

A. A petitioner must prove violence using the definitions of various specified criminal offenses – any felony or one of several enumerated misdemeanors (simple battery, battery, simple assault, or stalking). See O.C.G.A. § 19-13A-1(2).

1. "**any felony**": The statute does not list these felonies by name, and does not distinguish between violent and non-violent felonies.
2. "**simple battery**": "A person commits the offense of simple battery when he or she either: (1) Intentionally makes physical contact of an insulting or provoking nature with the person of another; or (2) Intentionally causes physical harm to another." O.C.G.A. § 16-5-23(a).
3. "**battery**": "A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another." O.C.G.A. § 16-5-23.1(a). "Visible bodily harm" is defined as "harm capable of being perceived by a person other than the victim, [which] may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, or substantial bruises to body parts." Id, (b).

4. "**simple assault**": "A person commits the offense of simple assault when he or she either: (1) Attempts to commit a violent injury to the person of another; or (2) Commits an act which places another in reasonable apprehension of immediately receiving a violent injury." O.C.G.A. §16-5-20(a).
5. "**stalking**": O.C.G.A. §§ 16-5-90.

    a. "A person engages in 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." O.C.G.A. § 16-5-90(a) The statute further defines the following terms:

        (1) "computer" and "computer network."
        (2) "contact"
        (3) "place or places"
        (4) "harassing and intimidating"

    b. Stalking also occurs when a person violates an existing stalking order by broadcasting or publishing "the picture, name, address, or phone number" of the person protected by the order. O.C.G.A. § 16-5-90(a)(1) and (2).
    c. The Dating Violence Act does not list aggravated stalking specifically. However, as a felony offense, aggravated stalking falls within the definition of "any felony". See O.C.G.A. § 16-5-91; O.C.G.A. § 19-13A-1 (2).
    d. Conduct, which meets the statutory definition of stalking might justify both a family violence order and a stalking order. (See Section 3.2.7 - Stalking Order Remedies).
    e. Stalking cannot occur in the defendant's home. O.C.G.A. § 16-5-90(a)(1).

B. **Psychic or emotional harm**: The statute does not specify psychic or emotional harm (either of adults or children) as a basis for finding "dating violence." Only the offense of stalking includes a requirement to prove both "emotional distress" and "reasonable fear for their safety or the safety of their immediate family." The statute does not exclude proof of psychic or emotional harm, which may be relevant to other issues, including remedy.

1. Experts recognize that emotional abuse almost always accompanies physical violence (Carpiano, 1998); they also found that psychological domination far exceeds the physical and sexual assaults most often seen in the courts. As Herman (1992) relates, “Methods of psychological control are designed to instill terror and helplessness and to destroy the victim's sense of self in relation to others.” Psychological abuse is the glue that binds the physical types of abuse together (Hunter, 2000). Once the abuser has used physical or sexual violence it is not necessary to use it as often; threats and intimidation will keep the abused person in a constant state of fear allowing for their domination. (Herman, 1992).
2. Considering that domestic violence is under-reported, and that physical violence accounts for most reports, it is clear that psychological abuse is extensive. Whereas, bones and bruises heal within a few months, psychological abuse can have a lasting impact. Stark and Flitcraft (1992) found battering was the single most important context yet identified for female suicide attempts. Almost 30 percent of the women in their study who attempted suicide were battered. (See Appendix A, Different Forms or Tactics of Abuse)

1.7.6. Need for Protection:

A. **Stalking**: Although stalking is most reported after the victim has left the relationship it also occurs during the relationship. Logan, Shannon and Cole (2007) found women stalked by their partners experienced significantly higher rates of psychological abuse, physical abuse, sexual abuse and injury compared to women who were not stalked by their violent partner. Not surprisingly, these women suffered more Post Traumatic Stress Disorder and anxiety symptoms as well.
B. **Leaving an abusive relationship:** Leaving an abusive relationship is often the most dangerous time in the relationship for survivors of domestic violence. Thus, it is important that the dating violent protective order exists to protect survivors who are in the process of leaving and to protect those who have recently left, since one can file if they were in a dating relationship with the other party in the last six months. See O.C.G.A. § 19-13A-1.

1.7.7. Relief Offered:

A. The court may approve orders or agreements that:

1. Require respondents to refrain from acts of dating violence;
2. Mandate that parties are able to maintain or obtain possession of their personal property;
3. Require the respondent to not harass or interfere with the petitioner;
4. Award costs and attorney’s fees to either party; and

5. Require the respondent to receive psychiatric, psychological, or educational services to prevent dating violence from occurring in the future.

See O.C.G.A. § 19-13A-4(b).

B. A dating violence protective order shall last for one year. However, after proper proceedings (including a motion, notice to the respondent, and a hearing), the court has the discretion to extend a dating violence protective order to last for three years OR covert the order to a permanent order. See O.C.G.A. § 19-13A-4(d).
C. Dating violence protective orders shall be effective and enforced throughout the state. See O.C.G.A. § 19-13A-4(e).

CHAPTER 2 JURISDICTION AND PROCEDURE

2.1. Jurisdiction & Venue

2.1.1. **Overview**: The four violence protection statutes have identical provisions on jurisdiction and venue.

A. Jurisdiction for stalking protective orders is the same as for family violence protective orders. O.C.G.A. § 16-5-94 (b), citing O.C.G.A. § 19-13-2.
B. Jurisdiction for employer protective orders is the same as for family violence protective orders. O.C.G.A. § 34-1-7 (c) (using language identical to that contained in O.C.G.A. § 19-13-2.)
C. Jurisdiction O.C.G.A. § 19-13A-2 (using language nearly identical to that contained in O.C.G.A. § 19-13-2.)

2.1.2. **Subject matter jurisdiction**: The superior courts have subject matter jurisdiction over family violence protective orders, stalking protective orders, and dating violence protective orders. O.C.G.A. §§ 19-13-2, 16-5-94(b), 34-1-7(c), 19-13A-2.

2.1.3. **Personal Jurisdiction**: In *Anderson v. Deas,* 279 Ga. App. 892, 632 S.E. 2d 682(2006), the Court of Appeals held that if the respondent is a non-resident Georgia courts do not have jurisdiction unless the act met the requirements of O.C.G.A. § 9-10-91(2)or(3). In Deas the respondent had placed harassing phone calls from another state to the petitioner in Georgia but lacked the requirements of paragaphs 2 or 3 of the long arm statute. Effective July 1, 2015 O.C.G.A § 16-11-39.1 includes other forms of communication besides phone calls, and also states that the offense is committed either in the county where the communication was sent, or where it was received.

2.1.4. **Venue**: Venue depends on the residency of the respondent. Residency exists where the respondent is domiciled, O.C.G.A. § 19-2-1; *Davis-Redding v. Redding,* 246 Ga. App. 792, 793, 542 S.E.2d 197, 198 (2000).

A. Resident respondent: The superior court of the county where the respondent resides normally has jurisdiction. Id, §§ 19-13-2(a), 19-13A-2(a). Where the respondent resides in two different Georgia counties, venue may lie in either county. For example, venue exists in two counties where "the respondent has left the family home but has not avowed an intention to remain in his new location." *Davis-Redding v. Redding,* 246 Ga. App. at 794 (2000).
B. Non-resident respondent: for non-resident respondents, venue may be proper in two alternate counties:

1. the county where the petitioner resides; or

2. the county "where an act involving family violence occurred" or "where an act or injury involving dating violence allegedly occurred." For venue in such a county, the relevant acts must satisfy the Georgia's long-arm statute with respect to "tortious acts or omissions" or "tortious injury". O.C.G.A. § 19-13-2(b), citing O.C.G.A. § 9-10-91(2) and (3), O.C.G.A. § 19-13A-2.
3. In cases involving cyberstalking, when communications come from out of State, temporary protective orders are proper when filed in the state from which the respondent sent the communications. *Huggins v. Boyd*, 2010 Fulton County D. Rep. 2141 (2010).

C. **Waiver of venue**: If the respondent waives the defense of improper venue, or fails to contest venue, a superior court lacks the authority to dismiss a petition sua sponte for improper venue. *Davis-Redding v. Redding*, 246 Ga. App. at 794 - 795(2000).
D. **Judges sitting by designation**: A superior court may designate the judge of another court to serve as a superior court judge with respect to family violence act petitions without destroying the superior court's subject matter jurisdiction. *Giles v. State,* 257 Ga. App. 65, 66, 570 S.E.2d 375, 377 (2002) (magistrate court judge designated to sit as a superior court judge).

2.1.5. **Military Jurisdiction**: No Georgia case has ruled on extending a superior court's jurisdiction over violence protection petitions to military bases. Modern United States Supreme Court cases permit states to exercise "power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government." Howard v. Commissioners of the Sinking Fund of Louisville, 344 U.S. 624, 627, 73 S.Ct. 465, 467, 97 L.Ed. 617 (1953). Courts in at least two other states have held that this precedent permits a trial court both to hear petitions from petitioners who reside on military bases, and to apply violence protection orders to respondents both on and off military bases. *Cobb v. Cobb*, 545 N.E.2d 1161 (Mass. 1989); Tammy S. v. Albert S., 95 Misc.2d 892, 893, 408 N.Y.S.2d 716, 717 (1973). The latter court also held that the order could be enforced on the military base by presenting the order to military authorities, who could then enforce the order.

2.2. Procedure Generally

2.2.1. Application of the Civil Practice Act: Georgia law does not specify which procedural rules apply to protective order proceedings.

A. On the one hand, the Civil Practice Act states that, "this chapter governs the procedure in all courts of record of this state in all actions of a civil nature." O.C.G.A. § 9-11-1.
B. On the other hand, an unofficial opinion of the Georgia Attorney General states that, "the Family Violence Act is a special statutory proceeding rather than a regular civil action." 1995 Op. Atty. Gen. No. U95-7. According to this opinion,

since "abbreviated procedures are specifically outlined in the Family Violence Act … the CPA would not apply." *Id.* This opinion also states that, even where the Family Violence Act does not specify a procedure, the Civil Practice Act would not apply, "because the latter is not a civil action in the ordinary meaning of the term." *Id.* The opinion does assert that "if… CPA…provisions were used, they would be sufficient." *Id.*

C. The Georgia Court of Appeals reached the same conclusion in dicta, relying on this opinion. *Carroll v. State,* 224 Ga. App. 543, 546, 481 S.E.2d 562, 564 (1997). See also O.C.G.A. § 9-11-81 (applying the Civil Practice Act to "special statutory proceedings.")

D. Thus, where a protective order statute creates a process that diverges from the Civil Practice Act, it would appear that the protective order statute would control. Where a protective order statute is silent on a particular point of procedure that the Civil Practice Act specifies, the CPA may still not control. However, in such a case, compliance with the Civil Practice Act would seem to satisfy the protective order statutes.

2.2.2. **Superior Court Rules**: The Uniform Superior Court rules governing "domestic relations" actions do govern petitions under the Family Violence Act. Uniform Superior Court Rule 24.1. These rules do not explicitly include either stalking or employer protective orders.

2.2.3. Similarity of Protective Order Procedures:

A. The stalking protective order statute incorporates by reference certain procedural and substantive provisions of the Family Violence Act. O.C.G.A. § 16-5-94(e) cross-referencing O.C.G.A. §§ 19-13-3(c) & (d), 19-13-4(b),(c) & (d), and 19-13-5. These provisions include those:

1. for scheduling hearings within 30 days of the filing of the petition.
2. defining the roles of lay advocates and clerks in preparing petitions.
3. requiring issuance of final orders to sheriffs, and retention of orders by sheriffs.
4. governing the duration of final orders.
5. establishing the effectiveness of final orders throughout Georgia.
6. specifying the supplemental nature of remedies under each statute.

B. The dating violence protective order statute has near identical procedural provisions to the Family Violence Act. The Family Violence Act specifies that non-minors may seek relief under this statute and that non-minors can seek relief on behalf of a minor by filing a petition pursuant to this act. Though the Dating Violence Act does not specify procedures for minor petitioners, there is nothing in the statute excluding minors from seeking relief. O.C.G.A. §§ 19-13-3, 19-13A-3. According to Georgia Law, the Civil Practice Act does not apply to cases of Family Violence except when it is silent on an issue. An unofficial opinion of the

Georgia Attorney General states that, "the Family Violence Act is a special statutory proceeding rather than a regular civil action." 1995 Op. Atty. Gen. No. U95-7. According to this opinion, since "abbreviated procedures are specifically outlined in the Family Violence Act … the CPA would not apply." *Id.* This opinion also states that, even where the Family Violence Act does not specify a procedure, the Civil Practice Act would not apply, "because the latter is not a civil action in the ordinary meaning of the term." *Id.* The opinion does assert that "if… CPA…provisions were used, they would be sufficient." *Id.* The Georgia Court of Appeals reached the same conclusion in dicta, relying on this opinion. *Carroll v. State*, 224 Ga. App. 543, 546, 481 S.E.2d 562, 564 (1997). See also O.C.G.A. § 9-11-81 (applying the Civil Practice Act to "special statutory proceedings."). Under the Civil Practice Act (OCGA § 9-11-17), a representative (such as a guardian, committee, conservator, or other like fiduciary) can bring or defend an action on behalf of an infant, or person under the age of 18. If an infant does not have a representative, they may bring an action by their next friend or by a guardian ad litem. A guardian ad litem shall be appointed by the court when an infant is not otherwise represented in an action, or the court can order a guardian ad litem when it otherwise deems it appropriate. Thus, it seems that a parent, guardian, committee, conservator, friend, or guardian ad litem could file for a TPO on behalf of a minor.

Provisions identical to the Family Violence Act include:

1. giving the court the authority to order ex parte relief
2. scheduling hearings within 30 days of the filing of the petition
3. defining roles of lay advocates and clerks in preparing petitions
4. court's authority when a party is avoiding service

C. The dating violence protective order statute has similar substantive provisions for relief to the Family Violence Act. O.C.G.A. §§ 19-13-4, 19-13A-4. Under these two code sections, both statutes include rules and requirements for:

1. requiring issuance of final orders to sheriffs, and retention of orders by sheriffs.
2. governing duration of final orders
3. establishing the effectiveness of final orders throughout Georgia

However, the relief or remedies offered under each of these statutes is different. The family violence protective order offers more protection and potential types of remedies than the dating violence protective order does. See O.C.G.A. §§ 19-13-4, 19-13A-4.

D. The employer protective order statute contains its own procedures, which vary in certain details from those for family violence, stalking, and dating protective orders. This section addresses those differences separately below.

2.3. Petitions

2.3.1. A person seeking either a family violence protective order, a stalking protective order, or a dating violence protective order must file a petition. O.C.G.A. §§ 19-13-3(a), 16-5-94(a), 19-13A-3(a). The petition must be verified. Id, §§ 19-13-3(b), 16-5-94(c), 19-13A-3(a); see also O.C.G.A. §§ 9-11-11 (verified pleadings), 9-10-110 (verified petitions for equitable relief.)

2.3.2. **Financial affidavits**: In family violence protective order cases, petitioners may seek various remedies involving the payment of money, including child support, spousal support, and attorneys' fees, O.C.G.A. § 19-13-4(a)(6), (7), (10).

A. In protective order actions filed under O.C.G.A. § 19-13-1 et seq. and in other emergency actions, the affidavit may be filed and served on or before the date of the hearing or at such other time as the court orders, and shall not be required at the time of filing of the action. Uniform Superior Court Rule 24.2.
B. The court has the discretion to treat failure to file an affidavit as grounds for contempt or to continue the hearing until the affidavit has been filed.

2.3.3. Assistance from lay advocates and court clerks: The superior court may designate staff members of family violence shelters or social services agencies to "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." O.C.G.A. § 19-13-3(d). Clerks are not required to provide assistance in completing forms or presenting cases in family violence cases. *Id.* Any assistance provided by lay advocates must be without cost to petitioners. *Id.* Assistance by lay advocates within this provision does not constitute the unauthorized practice of law. *Id.*

2.3.4. **Fees**: The superior court may not assess fees "in connection with the filing, issuance, registration, or service of a protection order … to protect a victim of domestic violence, stalking, or sexual assault." O.C.G.A. § 15-6-77(e)(4). The same statutory section bars fees for petitions for prosecution orders of protection, and fees for the filing of criminal charges by "an alleged victim of any domestic violence offense . . ." Id, § 15-6-77(I)(3) and § 15-10-82.

2.3.5. **Forms**: The clerk of each superior court may provide petitioners (or lay advocates) with the forms necessary for family violence, stalking, and dating violence petitions. O.C.G.A. §§ 19-13-3(d), 16-5-94(e), 19-13A-3(c).

2.4. Ex Parte Orders

2.4.1. **Review and Screening of Petitions**: Nothing in either the statute or the court rules describes how a superior court should review and screen petitions for ex parte relief. Judges thus have discretion to decide on granting ex parte relief using only the written allegations of the petition. Alternately, a court may also decide on ex parte relief after review of the petition and direct contact with the petitioner A court may delegate screening to a court employee, often a law or court clerk, to screen petitions. (See Appendix B - Assessing for Lethality, Appendix C - Screening for Domestic Violence and Appendix D - Checklist for Ex Parte Applicants)

2.4.2. **Contact with Respondent**: The statute does not explicitly specify whether the court may have contact with the respondent before issuing an ex parte order. However, the term "ex parte" necessarily implies issuance of an order "for the benefit of one party only, and without notice to, or contestation by, any person adversely interested." Black's Law Dictionary (6th ed. 1990)(definition of ex parte), cited in *Cagle v. Davis,* 236 Ga. App. 657, 661-662, 513 S.E.2d 16, 21 (1999). The statute's use of the term "ex parte" appears to indicate a legislative intent that a court not contact the respondent prior to issuing an ex parte order under the statute. This legislative intent likely arises from the fact that women are more likely to be victims of homicide when they are estranged from their abusive partners than when they live with them. The risk of homicide is higher in the first two months after separation (Wilson and Daly, 1993)(Campbell, 2003). Contact with the respondent prior to service could in many cases endanger the petitioner. The statutes state that the court "may [issue or order] such temporary relief ex parte;" neither authorizes the issuance of interim relief after contact with the respondent. O.C.G.A. §§ 19-13-3(b), 16-5-94(c), 19-13A-3(a).

2.4.3. Issuing Ex Parte Orders:

A. A person seeking an ex parte family violence, stalking, or dating violence order must allege "specific facts" indicating the occurrence of family violence or stalking. O.C.G.A. §§ 19-13-3(b), 16-5-94(c), 19-13A-3(a).
B. The court may grant ex parte relief if it finds that "probable cause" exists that family violence or stalking "has occurred in the past and may occur in the future." *Id.*

    1. The court may grant whatever temporary relief it "deems necessary to protect the petitioner or a minor of the household" O.C.G.A. §§ 19-13-3(b), 16-5-94(c) or that it "deems necessary to protect the petitioner from dating violence." O.C.G.A. § 19-13A-3(a).
    2. Upon issuance of the ex parte order, the court must immediately provide the petitioner with a copy. O.C.G.A. §§ 19-13-3(b), 16-5-94(c), 19-13A-3(a).

C. The statute specifies a range of possible remedies that the court might order, which will be more fully described later. O.C.G.A. §§ 19-13-4(a) (family violence), 16-5-94(d) (stalking), 19-13A-4(b) (dating violence). In issuing ex parte orders, the court should consider:

1. protection for the petitioner and the petitioner's children, including cessation of violent behavior by the respondent, and prevention of all efforts by the respondent to contact or come near the petitioner and the petitioner's children.
2. provision for temporary custody of the parties' children;
3. possession of a residence.
4. respondent's possible use of firearms.

D. Repeat Petitioners:

1. A court might sometimes receive frequent petitions from the same petitioner, each petition followed by a withdrawal or dismissal. Such a practice can create understandable concern about the use of court resources. At the same time, these repeat filings may reflect a compelling aspect of intimate violence or stalking, that of the abuser's ability to use professions of love, promises to change and appeals for mercy so that in the eyes of the abused party the balance of power appears to change in their favor. This seeming power shift does not last for long (Herman, 1992).
2. Neither the family violence nor the protective order statutes permit a court to dismiss a petition solely because the petitioner has filed and dismissed petitions on multiple prior occasions. Instead, the statute contemplates that the court assess probable cause in light of the "specific facts" of the current petition. O.C.G.A. §§ 19-13-3(b), 16-5-94(c), 19-13A-3(a).
3. Given the nature of family violence or stalking as a social and interpersonal phenomenon, prior repetitive filings may indicate nothing, or may well indicate support for "probable cause" in the case at hand.
4. A court concerned with a petitioner's practice of repetitive filing might consider a referral to a family violence shelter or social services agency for assistance and counseling in the petitioner's efforts to separate from an alleged abuser. (See Resources).

E. **Denial of Ex Parte Relief / Continuation of Petition**: The court may order ex parte relief. Whether or not the court grants a petitioner's claim for ex parte relief, the statute states that "a hearing shall be held" within a certain time period after "the filing of the petition." O.C.G.A. §§ 19-13-3(c) (family violence) cross-referenced by O.C.G.A. § 16-5-94(d) (stalking), O.C.G.A. § 19-13A-3(b). The statute sets the date of the hearing with reference to the filing of the petition, not the decision on ex parte relief. Thus, after denying an ex parte request, the court must still schedule the final hearing if petitioner requests it, at which the petitioner "must prove the allegations of the petition." *Id.* The hearing requires notice to the respondent and the opportunity for the respondent to contest. The court may dismiss the petition either upon failure of the petitioner's proof or upon petitioner's dismissal of the petition. If a hearing is scheduled when ex parte relief has been denied, care should be taken to link petitioner to an advocate from the

local domestic violence shelter or prosecutor's office to assist with safety planning.

F. In most cases the ex parte hearing occurs prior to the filing of the petition, therefore an order (Rule Nisi) for the hearing should be entered and filed with the petition even if ex parte relief is denied. If the petitioner does not wish to pursue the case to the final hearing, the court should enter an order denying ex parte relief and dismissing the petition without prejudice at petitioner's request. If petitioner wishes to pursue the case to final hearing but the court does not want to grant ex parte relief then the court should enter an order denying ex parte relief but setting a hearing within thirty (30) days as required by the statute.

G. Forms Attached:

1. Form A: Family violence order denying ex parte relief/ status of petition
2. Form B: Stalking order denying ex parte relief/status of petition

2.5. Pre-Hearing Process

2.5.1. The family violence and stalking protective order statutes leave unresolved the various possibilities for pre-hearing procedure. The short time frames within which the protective orders hearing must occur naturally limit the extent of pre-hearing activity. The family violence statute does specify rules governing counter petitions for protection. Beyond, the statutes do not specify how courts should handle motions, discovery, or consolidation with other claims.

2.5.2. **Scheduling the Hearing**: The court must set a hearing on a petition within 10 and no longer than 30 days after the filing of a petition. O.C.G.A. § 19-13-3(c), cross-referenced by O.C.G.A. § 16-5-94(d) (stalking), O.C.G.A. § 19-13A-3(b), unless the court finds that a party is attempting to avoid service O.C.G.A. §§ 19-13-3(e), 19-13A-3(d).

A. If the court cannot set a hearing date within these time periods in the original county of filing, a court must schedule and hear the case in "any other county of that circuit." *Id.* Failure to hold the hearing within the stated time periods results in dismissal of the petition, "unless the parties otherwise agree." *Id.* The Civil Practice Act's provisions for calculating dates and times can apply. O.C.G.A. § 9-11-6.

B. The 30 day time period for family violence and stalking hearings can place great strain on a court's docket, mandating that the court hear these petitions in advance of other pending cases. Some of this docket pressure can be relieved by settlement.

C. On occasion, a court may find that it lacks the time in its docket to hear the case, even though it had scheduled the case within the 30-day period. As noted, the family violence, stalking, and dating violenc estatutes permit the parties to agree to extend the time frame. O.C.G.A. §§ 19-13-3(c), 19-13A-3(b). A court may discuss the problem with the parties, with a view to securing their consent to an

extension. Lacking the parties consent, the court must either hold the hearing or dismiss the order. Dismissal of the petition where the petitioner has fully prosecuted the complaint seems at odds with the policy, if not the letter, of the protective order statutes.

D. A solution to the time dilemma would allow a court to commence the hearing, and take evidence, but to continue it to the earliest possible later date when court time is available. Such a solution can be justified on the language of the family violence, stalking, and dating violence protective order statutes, which require that the hearing "be held" within the 30-day time frame. O.C.G.A. §§ 19-13-3(c), 19-13A-3(b). The court would need to extend the ex parte order to that date of the later hearing. Such an approach seems consistent with the statute's dual concerns to protect the petitioner and to assure the respondent an early hearing. It also seems to fall within the court's inherent authority to manage its own docket. See *Duggan v. Duggan-Schlitz,* 246 Ga. App. 127, 128, 539 S.E.2d 840, 842 (2000) (approving the "commence and continue" approach where the court could not complete hearing a motion to extend a six-month order within the original six month period.)

E. If a hearing is not held within the statutorily required 30 day window, and no agreement is reached, the court must, as a matter of law, dismiss the petition as stated in O.C.G.A. §§ 19-13-3(c) and 19-13A-3(b). The agreement must be a part of the record, or must be admitted to by both parties in order to be enforced. *Peebles v. Claxton,* 326 Ga App 53 (2014) (holding that the trial court erred in ordering that the parties comply with the prior order because it should have been dismissed under O.C.G.A. § 19-13-3(c)).

F. In 2018 the statute was amended to provide for an exception to the 30 day window: O.C.G.A. § 19-13-3(e) provides, "If the court finds a party is avoiding service to delay a hearing, the court may delay dismissal of the petition for an additional 30 days." The dating violence statute uses the same language in O.C.G.A. § 19-13A-3(d).

2.5.3. **Service on the Respondent**: After setting the hearing date, the petitioner must ensure notice to the respondent of the petition, of the date of the hearing and any ex parte order. O.C.G.A. §§ 9-11-4 (service of petition), 9-11-5 (service of papers after original complaint.) See also O.C.G.A. § 34-1-7(f) (requiring service of employer protective order petitions, ex parte orders and notices of hearing on the respondent.). The Family Violence statute does not specify personal service but if child support is requested then there must be personal service.

A. Failure to assure proper service on the respondent justifies dismissal of the petition by the court. O.C.G.A. § 9-11-41(b). In *Loiten v. Loiten,* 288 Ga. App. 638, 655 S.E.2d 265 (2007), the out-of-state respondent was served with the ex-parte order but not the petition. The trial judge directed that the respondent be served when he left the court. The sheriff served the respondent with the petition

in the courthouse parking lot. The Court of Appeals held that service of the petition on the defendant following a noticed hearing at which he made a Motion to Dismiss for insufficient notice and lack of service because he was not served with the petition was insufficient and prohibited under *Steelman v. Fowler,* 234 Ga. 706, 707 (1), 217 SE2d 285 (1975).

B. Dismissal in this case is without prejudice; the petitioner may refile when service on the respondent becomes possible, but new acts may be required. O.C.G.A. § 9-11-41. See also O.C.G.A. § 9-11-41(b) (involuntary dismissal for want of prosecution or failure to comply with the Civil Practice Act.)
C. Service of the ex parte order has a special practical urgency in protective order cases. The respondent does not have legal notice of the order, and law enforcement officials may not enforce it, until respondent has been served.
D. Since this is also the most dangerous period for the abused party timely service becomes a life-saving issue (Campbell, 2003) (Wilson & Daly, 1993).

2.5.4. **Answers**: Neither the family violence nor the stalking protective order statutes require the defendant to file an answer to the petition. The employer protective order statute permits such a response. O.C.G.A. § 34-1-7(e). The respondent may appear and contest the allegations of the complaint on the merits without having filed a responsive pleading. Such an approach seems justified by the statutes' concerns for rapid resolution of claims raised by ex parte relief. Such an approach modifies the Civil Practice Act, which treats a party's failure to file a responsive pleading as waiver of entitlement to all later notices, including notice of the date and time of hearing. O.C.G.A. § 9-11-5(a). In protective order cases, the respondent should continue to receive notice of hearings and all other motions prior to the date and time set for hearing.

2.5.5. **Counter petitions**: On occasion, respondents may request that the court issue a restraining order against the petitioner, in addition to any relief that the petitioner seeks. To obtain such a "mutual protective order" under the Family Violence Act or the Dating Violence Act, the respondent must file a separate petition "as a counter petition." O.C.G.A. §§ 19-13-4(a), 19-13A-4(b). This counter petition must be verified, and must independently satisfy the requirements for protection against family violence, O.C.G.A. § 19-13-4(a) and citing O.C.G.A. § 19-13-3 in the Family Violence Act, and must be verified and must independently satisfy the requirements for dating violence, O.C.G.A. § 19-13A-4(b) and citing § 19-13A-3 in the dating violence act. The respondent must file the counter petition "no later than three days, not including Saturdays, Sundays, and legal holidays, prior to the hearing" under the Family Violence Act (*see* O.C.G.A. § 19-13-4(a)) and "no later than three days prior to the hearing" under the Dating Violence Act (*see* O.C.G.A. § 19-13A-4(b)). Until these requirements are satisfied "the court shall not have the authority to issue or approve mutual protective orders". *Id.* In *Williams v. Jones,* 291 Ga. App. 395, 662 S.E.2d 195 (2008) the Court of Appeals reversed portions of a family violence protective order because the respondent had not filed a verified counter petition. The trial court previously issued a family violence protective order that restrained and enjoined both parties from certain acts and ordered both to attend a batterer's intervention program.

A. There is considerable debate regarding the issuance of mutual restraining orders. Zorza (1999) enumerates many unintended consequences that are created by mutual orders that can endanger and/or negatively impact all parties involved.

2.5.6. **Motions**: Either party may file motions addressed to the court prior to the date set for hearing. O.C.G.A. § 9-11-7.

A. The Uniform Superior Court rules provide that the party opposing the motion may have up to 30 days to respond to the motion, Uniform Superior Court Rule 6.2. So stated, this time frame seems inconsistent with the 30 day time period required for protective orders. However, the rule permits the court to order a different time period for response. *Id.*
B. A separate rule relating to emergency motions goes farther. Uniform Superior Court Rule 6.7. It permits the assigned judge "to waive the time requirement applicable for emergency motions" and also to "grant an immediate hearing on any matter requiring such expedited procedure." *Id.* To justify this expedited process, the motion must 1) be in writing, 2) show good cause, and 3) "set forth in detail the necessity for such expedited procedure." *Id.*
C. Nothing in the Superior Court rules or the Civil Practice Act prevents the court from scheduling any motions in protective order cases at the same time as the hearing set for the merits. Moreover, Superior Court rules permit the court to rule on a motion without oral hearing. Uniform Superior Court Rule 6.3.

2.5.7. **Discovery**: The 30 day requirement for final hearings in protective order cases severely limits the opportunity for effective discovery, at least within the normal time frames of the relevant rules. The Superior Court rules do permit a court to "shorten the time to utilize the court's compulsory process to compel discovery." Uniform Superior Court Rule 5.1 (stating that in the normal course, discovery should be completed within 6 months). In family violence, stalking, and dating violence cases, the parties themselves may extend the date of the hearing to avoid dismissal of the case. O.C.G.A. §§ 19-13-3(c), 19-13A-3(b). These provisions permit the court and the parties to structure a discovery schedule consistent with the need for an early hearing on the petition for protection. However, in the normal course, the court can expect little if any discovery prior to a hearing on the merits.

2.5.8. **Consolidation**: Before a hearing on the protective order, parties may also file independent claims with which a family violence or stalking case might be consolidated. These claims include divorce, legitimation, or deprivation actions.

2.5.9. **Dismissal**: The petitioner can dismiss the petition before the hearing occurs. O.C.G.A. § 9-11-41(a). If the respondent has filed a counterclaim, the Civil Practice Act states that the counterclaim "shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court." O.C.G.A. § 9-11-41(a)(2). Since the Family Violence Act requires that a respondent's counterclaim satisfy the requirements for an initial petition, it seems likely that such a counterclaim "can remain pending." Thus, a petitioner's dismissal should not in the ordinary course lead to dismissal of respondent's counterclaim.

2.6. Hearings

2.6.1. **Evidence and Findings**: The petitioner has the burden of proving the elements necessary to justify an order providing further relief from abuse. The elements required for different protective orders are covered in more detail above. This section summarizes the basic elements:

A. **Family Violence Protective Order**: under O.C.G.A. §§ 19-13-1, 19-13-3, the petitioner must prove that:

1. the petitioner has a particular relationship to the respondent; and
2. the respondent has engaged in one or more particular types of violence; and
3. the petitioner needs protection against future violence by the respondent.
4. the burden of proof is preponderance of evidence.

B. **Stalking Protective Order**: under O.C.G.A. §§ 16-5-90, 16-5-94, the petitioner must prove that:

1. the respondent has stalked the petitioner, meaning that the respondent:

a. has followed, placed under surveillance, or contacted the petitioner;

b. at or about a place or places;
c. without the petitioner's consent;
d. for the purpose of harassing and intimidating the petitioner.
e. burden of proof is preponderance of evidence.

2. the petitioner needs protection against future stalking by the respondent.

C. **Employer Restraining Order**: under O.C.G.A. § 34-1-7, the employer must prove that:

1. the employer has an employer-employee relationship with the employee;
2. the employee has suffered unlawful violence or a credible threat of violence;

a. from the respondent,
b. at the employee's workplace or in the course of the employee's work.

3. the burden of proof is clear and convincing evidence.

D. **Dating Violence Protective Order:** under O.C.G.A. § 19-13A-1, 19-13A-4, the petitioner must prove that:

1. the petitioner has or had a dating relationship to the respondent;
2. the respondent has engaged in one or more particular types of violence; and
3. the petitioner needs protection against future dating violence by the respondent.
4. the burden of proof is preponderance of evidence.

2.6.2. **Extension of Relief**: At the 2nd, or 30 day, hearing, the Petitioner must present evidence to prove the allegations in the Petition. The court cannot extend ex parte relief without addressing the merits of the Petition. *White v. Raines*, 2015 WL 1432323 (March 30, 2015) (reversing the trial court's decision to extend ex parte relief for 60 days to assess the Respondent's behavior during that time before making a decision on a one-year Order.)

2.6.3. In addition to these basic elements, the petitioner must also prove facts sufficient to support the requested relief. (See Section 3.2 - Remedies).

2.6.4. Standard for Factual Review:

A. Trial courts have broad discretion in finding facts in protective order cases.
B. The Court of Appeals has stated that "[C]ases such as this … turn largely on questions of credibility and judgments as to the welfare of the child. The trial court is in the best position to make determinations on these issues, and we will not overrule its judgment if there is any reasonable evidence to support it." *Baca v. Baca,* 256 Ga. App. 514, 568 S.E.2d 746 (2002) (affirming a child custody determination in family violence case), *Buchheit v. Stinson,* 260 Ga. App. 450,

579 S.E.2d 853 (2003) (reversing a determination on the occurrence of family violence.) (See Appendix J - Guardians Ad Litem In Family Violence Cases)

2.6.5. Burden of Proof:

A. In family violence, stalking, and dating violence cases, the petitioner has the burden of proving the allegations of the petition by a preponderance of the evidence. O.C.G.A. §§ 19-13-3(c), 16-5-94(e), 19-13A-3(b).
B. In employer protective order cases, the employer has the burden of proving the allegations of the petition by clear and convincing evidence. O.C.G.A. § 34-1-7(e).

2.6.6. **Witnesses**: No rule limits the number of witnesses that a party may call in a protective order case.

A. Uniform Superior Court Rule 24.5 does limit the numbers of witnesses that parties may present for "temporary hearings" in "domestic relations actions." Uniform Superior Court Rule 24.5(a), see also Uniform Superior Court Rule 24.1 (including Family Violence Act petitions as "domestic relations actions.")
B. However, the Court of Appeals has stated on different facts that these hearings produce "final orders, … nothing remains pending." *Williams v. Stepler,* 221 Ga. App. 338, 471 S.E.2d 284 (1996) (holding that a family violence order constitutes a final order, not requiring interlocutory appeal.)

2.6.7. **Absent Parties**:

A. If the petitioner fails to attend the hearing, a court may (and on request must) dismiss the case for failure to prove the allegations of the petition. O.C.G.A. § 19-13-3(c), see also O.C.G.A. § 9-5-41(b) (involuntary dismissal for want of prosecution) and 19-13A-3(b).
B. If the respondent fails to attend the hearing, the statute still requires the petitioner to prove the allegations of the pleading. O.C.G.A. § 19-13-3(c) and O.C.G.A. § 19-13A-3(b), therefore there is no default.

2.6.8. **Interpreters**: The court shall provide an interpreter for either a petitioner and or respondent in a temporary protective order hearing, "when necessary for the hearing on the petition." O.C.G.A. § 15-6-77(e)(4). The court may arrange for payment of the "reasonable cost" of an interpreter out of the local victim assistance funds. O.C.G.A. § 15-6-130 et seq.

A. Tapestri, Inc., a state organization that provides national training on issues specific to battered refugee and
B. immigrant women, advises that it is dangerous to use victim's companions or children as interpreters. They recommend developing a list of contract interpreters

that are well-trained in domestic violence. (See Appendix H - Immigrants and Refugees)

2.6.9. **Appeals**: TPOs that are appealed rarely reach their appeal while they are still in effect. Normally, this would make all appeals fail for mootness. However, because the issues that appear in appeals are capable of repition and there is insufficient time to obtain judicial relief, these appeals do not fail for mootness, and appeals can be heard. *Elgin v. Swann*, 315 Ga. App. 809 (2012) (ruling that even though a stalking order had expired, the Appeals Court had the authority to review the appeal because the issues on appeal were likely to be seen in future cases, and the duration of TPOs provide insufficient time to seek judicial relief.).

2.7. Employer Protective Order Process

2.7.1. The procedures for employer protective orders in general parallel those for family violence and stalking protective orders. An employer must file a petition, and may obtain an ex parte remedy. The court must hold a hearing within a limited time, and may issue a restraining order of longer duration upon proof of the allegations in the petition.

2.7.2. However, employer restraining order proceedings also vary in significant respects from proceedings for family violence or stalking protective orders:

A. Affidavit required for ex parte relief: To obtain a "temporary restraining order", in addition to filing a petition, the employer must file an affidavit. O.C.G.A. § 34-1-7(d). The affidavit must address the following facts:

1. the employee has suffered "unlawful violence or a credible threat of violence";
2. "great or irreparable harm shall result" to the employee without relief; and
3. the employer has made "a reasonable investigation into the underlying facts." *Id.* Compare O.C.G.A. §§ 19-13-3(c), 16-5-94 (in family violence or stalking petitions, requirement of a "verified petition" alleging "specific facts".)

B. Standard for granting ex parte relief: Before granting a temporary restraining order in an employer petition, the court must find that the affidavit contains "reasonable proof" of its allegations. O.C.G.A. § 34-1-7(d). Compare O.C.G.A. §§ 19-13-3(c), 16-5-94 (in family violence or stalking petitions, requirement of "probable cause.")

C. Duration of ex parte relief: A temporary restraining order in an employer protective order case can last "for a period not to exceed 15 days, unless otherwise modified or terminated by the court." O.C.G.A. § 34-1-7(d). Note that the court must schedule a hearing "no later than 30 days after the filing of the petition", Id § 34-1-7(e). This suggests that, where the court grants a temporary restraining order, but sets a hearing for a date more than 15 days later, the

employer may need to request the court to renew or modify the restraining order before the hearing. Compare O.C.G.A. §§ 19-13-3, 19-13-4, 16-5-94, 19-13A-3, 19-13A-4 (in family violence, stalking, or dating violence petitions, ex parte order lasts until the hearing.). This is important information for employers since a recent study indicated that two-week orders are less effective than no order at all (Holt, 2002).

D. Answer and counter-claim permitted: "the respondent may file a response which explains, excuses, justifies, or denies" the allegations in the petition. The respondent may also file "a cross-complaint" requesting an employer restraining order. O.C.G.A. § 34-1-7(e). Compare O.C.G.A. §§ 19-13-3(c), 16-5-94, 19-13A-3(b) (in family violence, stalking, or dating violence petitions, answer by respondent not required; counter-claim required for mutual protective order.)
E. Independent inquiry by court: At a hearing on an employer protective order petition, the court shall hear "any testimony that is relevant." The court may also "make an independent inquiry." O.C.G.A. § 34-1-7(e). Compare O.C.G.A. §§ 19-13-3(c), 16-5-94, 19-13A-3(b) (in family violence, stalking, or dating violence petitions, no provision authorizing independent inquiry.)
F. Burden of proof: The employer must prove the allegations of the petition "by clear and convincing evidence." O.C.G.A. § 34-1-7(e). Compare O.C.G.A. §§ 19-13-3(c), 16-5-94, 19-13A-3(b) (in family violence, stalking, or dating violence petitions, requirement of proof by a preponderance of the evidence.)
G. Duration of order: An employer protective order may have duration of up to three years. O.C.G.A. § 34-1-7(e), and may be renewed by motion of petitioner within three months before the expiration of the order. Compare O.C.G.A. §§ 19-13-4(c), 16-5-94, 19-13A-4(d) (in family violence, stalking, or dating violence petitions, duration of up to one year but may be extended to three years or permanently.)

CHAPTER 3 REMEDIES, SETTLEMENTS, AND ORDERS

3.1. Overview

3.1.1. The four protective order statutes offer various remedies. (See Section 3.2 below, Remedies).
3.1.2. All four permit parties to provide for remedies through negotiation, (See Section 3.3 below, Settlements).
3.1.3. Special considerations arise with respect to the mediation of cases involving family violence. (See Section 3.4 below and Appendix K - Mediation).
3.1.4. Finally, protective orders have special features with respect to finality, service, duration, extension and enforcement. (See Section 3.5 below, Orders).

3.2. Remedies

3.2.1. Family violence protective orders offer the widest range of potential remedies. This section first addresses family violence protective order remedies in four categories: protection; children; property and money; and treatment. The section then discusses the remedies available for stalking protective orders, employer protective orders, and dating violence protective orders. It concludes with a discussion of the court's equitable powers to fashion additional remedies.
3.2.2. Protection:

A. **Restraining orders**: Family violence orders may:

1. Direct the respondents to "refrain from" the acts, which led to the court's finding of family violence. O.C.G.A. § 19-13-4(a)(1).
2. "Order the respondent to refrain from harassing or interfering with the victim." O.C.G.A. § 19-13-4(a)(9).
3. A superior court judge can and should apply the general language of these provisions in a variety of more specific ways, with a view towards assuring the safety of the petitioner and any children involved. For example, under these provisions, courts routinely award:

    a. **Stay-away orders**: requiring the respondent to stay a specified distance away from the petitioner, or the petitioner's children, or the petitioner's residence or workplace.
    b. **No-contact orders**: requiring the respondent to have no contact with the petitioner. These orders should be as specific as possible for the intended purpose. Orders can and should specify those types of contact that are of particular concern, including phone contact, letters, e-mail. At the same time, orders should make clear that all contact is prohibited, even through methods of communication not specifically listed in the order.

c. **Limited or structured contact orders**: on occasion, the parties might require contact for a limited purpose, such as transportation or transfer of children, or the exchange or pick up of personal property. Protective orders should prevent or at the outside minimize such incidental contact. Where it must happen, the circumstances of contact should be clear, specific and carefully limited, and should include provision for a third-party presence during the contact.
d. Georgia law suggests that the court has the authority to enter these orders. See O.C.G.A. § 16-5-95. This section describes the misdemeanor offense of violating a family violence order. The section specifically notes stay-away, no-contact, and distance-limiting orders as enforceable orders under the Family Violence Act. *Id.*

4. A substantial body of literature indicates that, for maximum effectiveness, protective orders must be clear, unambiguous and specific. Respondents require clear notice of the proscribed behavior; and law enforcement agencies need clarity for those occasions when enforcement becomes necessary.

B. **Firearms**: Many Superior Courts routinely include gun provisions in family violence protective orders. The Family Violence Act does not specifically mention such provisions but allows the court to grant any protective order to bring about the cessation of acts of family violence. However, federal law does prohibit most family violence respondents subject to final orders from possessing or purchasing firearms or ammunition. 18 USC 922

1. Solid authority indicates the critical importance of limiting gun possession and use in family violence situations. In 1999 approximately, 15% of the 790,000 violent assaults against intimate partners involved the use of a weapon by the assailant. (Rennison, 2003) Leaving a respondent with access to a gun increases the risk that later incidents of violence will turn lethal. A study of intimate partner assaults in Atlanta found that these assaults were twelve times more likely to result in death to the victim if a firearm was present (Saltzman, 1992). From 1990 to 2002, over two-thirds of spouse and ex-spouse victims were killed by guns (Bureau of Justice Statistics, 2005). Those who research the risk factors for intimate partner homicide indicate the importance of enforcement of the legal prohibition of gun ownership by those convicted of domestic violence and the inclusion of firearms search-and-seizure provisions in orders of protection. (Campbell et al, 2003)

2. Federal law renders it illegal for any intimate partner respondent against whom a court, after a hearing of which the respondent had notice, and 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 has issued a final restraining order to receive, transfer or possess a firearm. 18 U.S.C.A. § 922(g)(8). (See Appendix E - Firearms). 18 USC §922(g)(9) prohibits a convicted respondent from possessing firearms if he/she has been convicted of a misdemeanor crime of family violence. In *U.S. V. Hayes*, 129 S. Ct. 1079 (2009) the Supreme Court held that domestic relationship did not have to be a defining element of the predicate offense. The domestic relationship would have to be established but did not need to be an element of the predicate offense. Thus, in a final order, a Georgia court has ample authority to order law enforcement to confiscate any weapons in the respondent's possession. Given the severity of the risk inherent in the link between firearms and domestic violence, courts should consider such provisions in every order.
3. These federal laws apply only to respondents subject to final orders; they do not apply to orders issued ex parte. See 18 U.S.C.A. § 922(g)(8)(A).

    a. Under Georgia law, however, a Georgia court has the authority to order temporary confiscation of the respondent's firearms in a family violence ex parte order. O.C.G.A. § 19-13-3(b). "The court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor child of the household from violence." Such a provision permits law enforcement to remove a major risk to the petitioner's safety during the critical time between ex parte and final orders. See Section 3.2.7(B)(3) for limitations regarding firearms in stalking orders.
    b. Respondents have the opportunity to regain possession of the firearms by successfully contesting the petition at the later hearing.

4. 18 USC § 922 does not apply to acts and offenders of dating violence and to couples who are dating.

C. **Restraining the Petitioner (Mutual Orders)**: A respondent may not request that a restraining order be issued against the petitioner, and the court shall not issue or approve such an order, unless the respondent has filed a verified counter petition against the respondent sooner than three days before the final hearing. See *Williams v. Jones*, 291 Ga. App. 395, 662 S.E.2d 195 (2008). The three day period does not include Saturdays, Sundays, or legal holidays. O.C.G.A. § 19-13-4(a).

1. This requirement applies both to orders directing the cessation of violence, O.C.G.A. § 19-13-4(a)(1), and orders preventing harassment or interference. O.C.G.A. § 19-13-4(a)(9).
2. Absent such a counter petition, “a court shall not have the authority to issue or approve a mutual restraining order”, regardless of evidence at hearing concerning the petitioner’s behavior.
3. There is much debate about mutual orders of protection. Zorza (1999) lists several ways that mutual orders have unintended consequences that can endanger and negatively impact all parties.

3.2.3. Children:

A. If petitioner and respondent have minor children, only family violence orders permit the court to address custody, visitation, and child support. Neither stalking protective orders, O.C.G.A. § 16-5-94(d), nor employer protective orders O.C.G.A. § 34-1-7(e) permit courts to address these issues.
B. Since batterers are twice as likely as non-batterers to ask for custody of their children (Bowermaster & Johnson, 1998) (Zorza, 1995), and since "approximately 70% of contested custody cases, (in the U.S.), that involve a history of domestic violence result in an award of sole or joint custody to the abuser" (Aiken & Murphy, 2000), the court plays a crucial role in assuring not just the physical but also the emotional safety of each child raised in a violent home. Most sources recommend that a finding of domestic violence should create a presumption that the perpetrators of violence not have sole or joint custody of children including the NCJFCJ Model Code, the American Psychological Association, the American Bar Association, and the U. S. Congress through a Sense of Congress Resolution (Jaffe, Lemon et.al., 2003).
C. A custody or visitation order that leaves the details about exchanges and holiday time unspecified other than "to be negotiated by the parties" poses a safety risk. (Mathis & Tanner, 1998) Very young children are particularly vulnerable. The first two years of life have a critical impact on brain development. Trust, impulse control, and the ability to form positive intimate relationships are formed during this time. The absence of appropriate nurturing to develop these life-long qualities, form the seeds of adult violence. (Karr-Morse & Wiley, 1997) (\, 2003)
D. Due to the toll that family violence takes on children, the court may want to consider assessing all domestic relations cases for violence. (See Appendix C - Screening for Domestic Violence) (See also Appendix O - Children and Domestic Violence)
E. Dating Violence Protective Orders, as provided for in O.C.G.A. § 19-13A-1 et seq, do not address the children the petitioner might have outside of the relationship at hand.

F. **Custody and Visitation**: In family violence orders, the court may award "temporary custody of minor children and establish temporary visitation rights." O.C.G.A. § 19-13-4(a)(4).

1. The "temporary" nature of such orders refers both:

    a. to the period between an ex parte order and the hearing on the petition; and
    b. to the period of the final order, which the statute limits to "up to one year." O.C.G.A. § 19-13-4(c) unless extended through motion and a hearing.

2. Custody:

    a. In making custody decisions, the court shall determine "solely" "what is for the best interest of the child or children and what will best promote their welfare and happiness." 19-13-3(a)(2). *Baca v. Baca,* 256 Ga. App. 514, 568 S.E.2d 746 (2002). However, the court may draw on existing custody law in reaching custody decisions. (See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements)
    b. Where the court has made a finding of family violence, O.C.G.A. § 19-9-3(a)(3) adds additional factors that a court must consider in reaching a custody decision:

        (1) the court "shall consider as primary" the child's safety and well-being, and that of the parent who is the victim of violence.
        (2) the court "shall consider" the respondent's history of causing harm or fear of harm.
        (3) the victim has been forced to relocate or to be absent from the child because of the alleged violence, the court shall not treat the absence or relocation as an abandonment.

    c. O.C.G.A. § 19-9-1 exempts family violence petitioners and respondents from the requirement of filing parenting plans with the family violence court.

3. **Visitation**: Special statutory considerations apply when a court awards visitation to a respondent found to have committed acts of family violence.

    a. In general, a court may award visitation to a parent who has committed acts of family violence "only if the court finds that adequate provision for the safety of the child and the parent who is a victim of family violence can be made." O.C.G.A. § 19-9-7.

b. As a practical matter, ongoing contact between parents about visitation represents a flashpoint where violence (or threats of violence) can recur. Protective orders can ease these risks through careful consideration of both the rights and the protections afforded the parties. (See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements) (See also Appendix N, Paragraph B. Suggestions for Consideration in Cases Involving Domestic Violence)
c. O.C.G.A. § 19-9-7 identifies a range of different protective measures a court may take, including:

(1) requiring exchange of the child "in a protected setting."
(2) requiring supervised visitation. See also O.C.G.A. § 19-9-3.
(3) mandating completion of an FVIP program "as a condition of visitation."
(4) preventing the use of alcohol, marijuana or any regulated substance during and for 24 hours before scheduled visitation.
(5) prohibiting overnight visitation.
(6) requiring a bond from the perpetrator.

d. Supervised visitation:

(1) where the court orders supervised visitation, it may also order the perpetrator to pay the costs of supervision. O.C.G.A. § 19-9-7(a)(5).
(2) where a family or household member is to supervise visitation under the order, the court "shall establish conditions to be followed during visitation." O.C.G.A. § 19-9-7(d).

e. These remedies are non-exclusive. The court may impose "any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or another family or household member." O.C.G.A. § 19-9-7(a)(8). See e.g. *Carroll v. State*, 224 Ga. App. 543, 546, 481 S.E.2d 562, 564 (1997) (describing an order requiring 48 hours notice before the exercise of visitation.)
f. Whether the court prevents or allows visitation, the court may order that the address of the child and the victim remain confidential. O.C.G.A. § 19-9-7(b).

4. A court may not condition an award of custody or visitation to an adult victim of family violence on the victim's attendance at joint counseling with the perpetrator. O.C.G.A. § 19-9-7 (c).
5. The Court of Appeals has stated that it may be the "better practice" to include findings of fact in support of orders of custody and visitation. *Baca v. Baca*, 256 Ga. App. 514, 568 S.E.2d 746 (2002).

a. In Baca, however, the court affirmed an award of custody and visitation even where the court failed to include specific findings of fact.
b. "We will not simply presume the trial court misapprehended the law unless the record clearly reflects such misapprehension." Id, 256 Ga. App. at 518.

6. O.C.G.A § 19-13-4 (a)(4) "provides, the trial court may award temporary custody or establish temporary visitation rights, See, e.g., *Baca v. Baca,* 256 Ga. App. 514, 516-517(2) (568 S.E. 2d 746)(2002). O.C.G.A § 19-13-4 contains no provision for the award of permanent custody, however, and as the trial court acknowledged, 'generally the Family Violence Act cannot be the vecicle used to modify custody.'" *Chatman v. Palmer,* 328 Ga. App. 222, 226 (2014) (holding that the trial court erred in using a permanent protective order to permanently alter custody and visitation.).

G. **Child support**: In family violence orders, the court may "Order either party to make payments for the support of a minor child as required by law" O.C.G.A. § 19-13-4(a)(6). (See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements) (See also Appendix N, Paragraph B-Suggestions for Consideration in Cases Involving Domestic Violence)

1. The reference to "support… as required by law" refers generally to the provisions of Georgia's child support statutes. O.C.G.A. § 19-6-14 – 19-6-34.
2. O.C.G.A. § 19-6-15 (c)(1) requires the use of child su pport worksheets and the new child support guidelines in all temporary or final legal child support proceedings. The child support worksheets shall be used when the court enters a temporary or permanent child support order. Currently, the worksheets and schedules do not have to be filed with the protective orders. Thus child support worksheets are not required with the filing of the Family Violence petition or Order, but the guidelines and provisions are to be used to determine the amount. www.georgiacourts.org/csc/.
3. If a petition requests child support, Superior Court Rule requires the parties to file financial affidavits and child support worksheets. Uniform Superior Court Rule 24.2.

a. "In family violence actions filed under O.C.G.A. § 19-13-1 et seq., the affidavit and schedules may be filed and served on or before the date of the hearing… and shall not be required at the time of the filing of the action." Uniform Superior Court Rule 24.2.
b. The rule leaves the court discretionary authority:

(1) to hold parties in contempt for failing to file an affidavit; and
(2) to continue the hearing until an affidavit is filed, which may cause a problem with the 30 day period.

4. **Contempt**: If a non-custodial parent does not pay child support as ordered in the Protective Order, a contempt action can be brought. In *James-Dickens v. Petit-Compere*, 299 Ga. App. 519, 683 S.E.2d 83 (2009) the petitioner attempted to file for a contempt hearing on child support arrears but was denied because the TPO would expire before the hearing. The Court held that the child support arrears are enforceable after an underlying order has expired

3.2.4. **Property and Money**: The Family Violence Act permits the court to address possession of the premises and the provision of shelter to the petitioner; temporary division of personal property if married; and spousal support. Neither stalking protective orders, O.C.G.A. § 16-5-94(d), nor employer protective orders. O.C.G.A. § 34-1-7(e) permit courts to address these issues in those actions.

A. Shelter and possession of the residence:

1. Family violence can severely dislocate the petitioner; indeed, the risk of losing shelter may serve as one pressure keeping the petitioner in an abusive relationship.

    a. The Family Violence Act recognizes this reality by providing both for possession of an existing residence and for payment for alternate housing for a spouse, former spouse or parent and the party's child or children.
    b. Note that petitioners in crisis may also have access to family violence shelters. (See Resources, A. Local Resources)
    c. At the same time, courts will often face the prospect of removing the respondent from a residence in which the respondent has a primary, and perhaps even sole ownership interest.
    d. The emergency created by the underlying acts of family violence can thus result in dislocation for the respondent, and the imposition of added housing costs.

2. **Possession of Residence**:

    a. The Family Violence Act permits a court to "grant to a party possession of the residence or household of the parties." O.C.G.A. § 19-13-4(a)(2).
    b. There appears to be a difference between superior courts on whether the statute allows an award of possession to a party with no ownership interest in the premises.

        (1) A party seeking protection and possession of the residence may have a variety of different forms of interest in the premises, including:

            i. **sole or joint title**: the court has clear authority to order that the party receive possession.

ii. **inchoate interests**: a spouse may claim an inchoate interest in the assets of the other spouse. The other party can counter that the premises reflect separate property. Spouses would normally resolve contested inchoate claims through divorce.

iii. **tenancy**: a party who lives in premises owned by another by agreement with the owner may qualify as a tenant, with rights to possess defined by the terms of their agreement. Parties would normally resolve competing claims to possession through a dispossessory action.

iv. **invitee status**: a party who lives in premises owned by another by permission of the owner may qualify as an invitee. The owner in such a case would have the ability to dispossess the invitee without resort to judicial process.

(2) The Family Violence Act refers to "residence or household" of the parties, terms which in normal usage refer to either where or with whom a person lives. These terms often cover arrangements in which the resident or household member does not have an ownership interest, such as leases. The statute does not explicitly require fact-finding on legal ownership of the relevant property.

(3) Any order of possession under the Family Violence Act has a maximum time limit of one year unless extended. Orders of possession thus do not constitute a permanent shift in legal title, although permanent orders could in effect do this. The statute also provides limited authority for the court to order one party to bear the cost of two residences. See below (alternate housing for spouses, former spouses, or parents of shared children).

(4) It seems clear that the legislature did not intend that parties use Family Violence action to settle permanently disputes over title.

(5) At the same time, it also seems clear that the legislature did intend to allow courts to award possession of the premises where necessary to alleviate dislocations caused by family violence.

(6) The possessory provisions of the Family Violence Act are discretionary, not mandatory, and leave a court with discretion to find other remedies relating to shelter. See O.C.G.A. § 19-13-4 (a).

c. A court can consider these practical and legal dimensions, and can structure possessory remedies that include:

(1) Shorter time frames for an owner to regain possession of the premises by a party-owner that differ from those of the underlying order.

(2) Provisions for payment of rent or mortgage to ensure ongoing stability of possession. (See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements).
(3) Provisions for alternate shelter should a third party successfully foreclose or regain possession of the residence or household.

d. Rights of third parties:

(1) **Ownership**: Orders for possession only bind the parties to the action, and not any interested third parties, including mortgagees.
(2) **Lease**: A court order for possession does not bind the landlord to accept the remaining tenant. Petitioners who remain in possession of leased premises may face eviction if they are not already party to the lease agreement. Moreover, tenants renting from HUD-subsidized public housing may face eviction because they have been party to a violent incident, even where they were an innocent victim

e. Exclusion or eviction of "other party": where the court has awarded possession to one party, the court may also:

(1) "exclude the other party from the residence or household", O.C.G.A. § 19-13-4(a)(2).
(2) "order the eviction of a party from the residence or household", O.C.G.A. § 19-13-4(a)(5).
(3) "order assistance to the victim in returning to" the residence or household. *Id.*

3. **Alternate housing**: Instead of awarding possession, the court can also "require a party to provide suitable alternate housing for a spouse, former spouse, or parent and the parties' child or children." O.C.G.A. § 19-13-4(a)(3).

a. A court cannot provide for alternate housing for unmarried parties who have not had children together.

B. Personal property:

1. The court may also "provide for possession of personal property of the parties." O.C.G.A. § 19-13-4(a)(8).

a. The statute states no standard for the division of personal property, nor does case law provide guidance.
b. A potential question exists about the extent of the court's authority over "personal property":

(1) On the one hand, items such as clothing, utensils, furniture, cars and personal tools would seem well within the scope of the statute.
(2) On the other hand, personalt property such as stocks and investments, pension plans and other assets of comparable value might raise more questions:
(3) Married parties would normally resolve their competing claims through divorce.
(4) Unmarried parties would have to use a partition action with respect to jointly held assets.
(5) It is not clear that the legislature intended the Family Violence Act as an alternative to those remedies.

c. The Family Violence Act grants the court authority only to "provide for possession."

(1) It does not authorize permanent settling of competing claims to title.
(2) Family violence orders are necessarily time-limited, and seem intended only to meet needs, which might arise during that time period.

d. A rule of reason would seem to distinguish between:

(1) "**Dividing**" personal assets to which the parties will need access during a time-limited order, and
(2) Permanently settling ownership of assets to which the parties have contested claims.

2. Transferring personal property: contact between parties around retrieval of personal property presents another point where violence (or threats of violence) can recur.

a. Protective orders can ease these risks through careful advance delineation of the times, places and circumstances of retrieval.
b. The court may "order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered". O.C.G.A. § 19-13-4(a)(5). To prevent problems the court can order that the respondent be accompanied by local law enforcement to retrieve personal property.
c. The statute does not explicitly mention structuring an order for retrieval of the respondent's personal property if the respondent has been evicted. However, the court's authority to structure the respondent's contact with the petitioner gives it discretion to arrange for the respondent to recover possession of personal property.

C. Spousal support:

1. The court may "order either party to make payments for the support of a spouse as required by law."19-13-4(a)(7). (See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements)

    a. The statute specifies "support of a spouse"; the provision does not authorize support between unmarried partners.
    b. The reference to "support … as required by law" refers generally to the provisions of Georgia's alimony statutes. O.C.G.A. § 19-6-1 – 19-6-13.

2. The alimony statute distinguishes between temporary and permanent alimony. O.C.G.A. § 19-6-1 (a).

    a. The Family Violence Act does not specify whether to use the standards for "temporary alimony", O.C.G.A. § 19-6-3, or for "permanent alimony", O.C.G.A. §§ 19-6-1, 19-6-5 (a), in calculating the amount of the award.
    b. The temporary alimony statute states that the court "in fixing the amount of alimony, may inquire into the cause and circumstances of the separation rendering the alimony necessary and in his discretion may refuse it altogether". O.C.G.A. § 19-6-3(c).
    c. The permanent alimony statutes also permit the court to consider the conduct of either party in determining whether and how much alimony to award. O.C.G.A. § 19-6-1 (b), (c); *Bryan v. Bryan,* 242 Ga. 826, 251 S.E.2d 566 (1979); *Davidson v. Davidson,* 243 Ga. 848, 257 S.E.2d 269 (1979). In general, the court must also consider "the wife's need and the husband's ability to pay." Bryan, 242 Ga. at 828. The statute requires the court to consider a series of more specific factors in determining the amount of alimony. O.C.G.A. § 19-6-5(a).

3.2.5. Counseling and Family Violence Intervention Programs:

A. Psychiatric or Psychological Services:

1. In family violence actions, the court may "order the respondent to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence." O.C.G.A. § 19-13-4(a)(11).

    a. Family violence orders can require only the respondent to undergo counseling.
    b. Counseling must serve "to prevent the recurrence of family violence."

2. In stalking actions, the court may "order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of stalking." O.C.G.A. § 16-5-94 (d)(4).

a. Stalking orders can require either the respondent, the petitioner or both to undergo counseling.
b. Counseling must serve "to prevent the recurrence of stalking."

3. In employer protective order cases, the statute does not authorize the court to order counseling of any kind.

B. The statutory requirement for "appropriate" services seem to require fact-finding on the need for and impact of any proposed counseling service.

1. The petitioner has the burden of proving the need for and the particular type of counseling requested in the order.
2. The mandate for "appropriate" services suggests a relationship between the nature and goals of the specific services and its intended effect on the specific individual.
3. Types of "psychiatric and psychological services": a court might consider various forms of psychiatric and psychological services. (See Appendix I - Mental Illness and the Court and Appendix G - Family Violence Intervention Programs)

C. Joint counseling:

1. Joint counseling requires ongoing contact between petitioner and respondent and is not recommended because it presents a risk that further violence, threats of violence or re-traumatization may occur.
2. In family violence cases, the court has authority to require only the respondent, and not the petitioner, to engage in counseling. The court may require petitioner to engage in counseling only where the respondent files an appropriate counter-petition. O.C.G.A. § 19-13-4(a). The presence of a properly filed counter-petition does not mandate joint counseling.
3. In stalking cases, the court has authority to order "either or all parties" to engage in counseling. O.C.G.A. § 16-5-94 (d)(4). The statute neither mandates nor prohibits joint counseling. The term "either or all" can be interpreted either to require separate counseling or to permit joint counseling. No case law interprets the point.
4. The overarching purpose for both, family violence orders or stalking orders remains "to bring about a cessation of acts of family violence" or "of conduct constituting stalking."

a. Both family violence orders and stalking orders permit the issuance of orders for conduct, which might recur during future contact between the parties.
b. Given this, the court must weigh:

(1) The extent to which joint counseling might lead to the cessation of violence or stalking
(2) Against the risk that violence or stalking might recur during, or as a result of, joint counseling.

c. Other provisions suggest a presumption against joint counseling:

(1) The guidelines for mediation between couples in cases involving family violence explicitly prevents mediation in cases where the victim does not consent, after full disclosure: "No case involving issues of domestic violence should be sent to mediation without the consent of the alleged victim given after a thorough explanation of the process of mediation.
(2) In custody disputes, a court may not order joint counseling as condition of receiving custody or visitation of a child. O.C.G.A. § 19-9-7(c).

D. Family Violence Intervention Programs (FVIP):

1. A "family violence intervention program" means:

a. "Any program that is certified by the Department of Community Supervision pursuant to Code Section 19- 13-14 and designed to rehabilitate family violence offenders." O.C.G.A. § 19-13-10(6).
b. The term includes "batterer intervention programs, anger management programs,
c. anger counseling, family problem resolution, and violence therapy." *Id.*

2. Family violence intervention programs differ significantly from programs that address anger management. (See Appendix G - Family Violence Intervention Programs)

a. The latter targets individuals involved in road rage, bar fights or neighbors fighting: individuals who make a poor choice and use their anger offensively during an isolated incident.
b. In domestic violence, where there is a pattern of using violence and intimidation to control an intimate partner, anger management does not account for premeditated controlling behaviors of abusers and may be dangerous to the victim. (Gondolf & Russell, 1986) Recent research has raised further questions about the use of anger management as a remedy for batterers. (Gondolf, 2002)
c. Certified family violence intervention programs directly address the unique aspects of this behavior and have proven a far more effective method than anger management programs.

3. Georgia law requires the certification of these programs:

    a. The Department of Community Supervision certifies these programs, O.C.G.A. § 19-13-15, and promulgates and administers the rules and regulations under which the programs operate, O.C.G.A. § 19-13-14.
    b. The programs may be operated by private business, or by public entities, including specifically the Department of Community Supervision and the State Board of Pardons and Paroles. O.C.G.A. §§ 19-13-14(b), 19-13-15.
    c. The Department of Community Supervision must maintain a list of certified programs, available to the public and the courts. O.C.G.A. § 19-13-14(f). The list is available and updated on the Georgia Commission on Family Violence at http://www.gcfv.org/

4. **FVIP orders**:

    a. "When imposing a protective order against family violence", a court "shall order the defendant to participate in a family violence intervention program." O.C.G.A. § 19-13-16(a).

        (1) The definition of "family violence" excludes employer protective orders. O.C.G.A. § 19-13-10(5). Courts need not order FVIP in such cases.
        (2) Participation in FVIP by the respondent is mandatory in family violence cases.
        (3) A court may waive the requirement only if "the court determines and states on the record why participation in such a program is not appropriate." O.C.G.A. § 19-13-16(a).

    b. The defendant must bear the cost of participation in FVIP. O.C.G.A. § 19-13-16(c). "If the defendant is indigent, the cost of the program shall be determined by a sliding scale based upon the defendant's ability to pay." *Id.*

E. **Enforcement**: FVIP orders, and orders for psychiatric or psychological counseling, pose special problems of enforcement.

1. If the respondent fails to comply with such an order, only the petitioner or the service provider stand in a position to request enforcement of the order. (See Appendix G, Paragraph C - Monitoring by the Court). Some courts are ordering the respondents to return to court on a specific date to prove that they are in compliance with this order; and some require them to prove that they have attended three sessions by that date, and order them held on contempt if they are not in compliance.

a. The petitioner's ability to enforce the order depends upon the petitioner's knowledge of the respondent's compliance. Nothing in the statute requires notice to the petitioner of the respondent's record of compliance.
b. The service provider may or may not have sufficient incentive to report non-compliance to the court, at least in the civil context. Nothing in the statute gives the court authority to compel the service provider to report on the respondent's record of compliance.

2. In the event the court does learn of non-compliance, the court has a limited pool of remedies for non-compliance with an order.

a. Neither the remedial provisions of the family violence or stalking statutes, nor the FVIP article in the Family Violence Act provide any explicit method for enforcement of these orders.
b. The misdemeanor offense of "violating [a] family violence order" does not include failure to attend counseling or FVIP in the definition of the offense. O.C.G.A. § 19-5-95(a)(1-4).
c. The felony offense of "aggravated stalking" for violation of a stalking order does not include failure to attend court-ordered counseling in the definition of the offense. O.C.G.A. § 19-5-91(a).

3. Civil contempt represents the most likely remedial measure available to a court. (See Section 3.5.5, below). Civil contempt orders permit the court to impose incarceration or fines, which the respondent may purge by complying with the provisions of the order.

3.2.6. Attorneys fees:

A. In family violence and stalking cases, the court may "award costs and attorney's fees to either party." O.C.G.A. §§ 19-13-4(a)(10), 16-5-94(d)(3).

1. The award of costs and fees is not authorized for employer protective order cases, O.C.G.A. § 34-1-7.
2. The family violence and stalking statutes provide no explicit standard for determining whether to award costs and fees or how much to award.
3. The divorce standard for determining an award of fees appears not to apply under the Family Violence statute, O.C.G.A. § 19-6-2(a)("disparity in income"); *Suarez v. Halbert*, 246 Ga. App. 822, 543 S.E.2d 733 (2000). The Court of Appeals reversed an award of fees, stating in dicta that the "disparity of income" standard was inapplicable in family violence cases.

B. Awarding costs and fees "to either party":

1. The stalking and family violence statutes permit the court to award costs and fees "to either party." The language appears to permit the award of fees in favor of the prevailing party.
2. The language "either party" does not justify an award of fees against the prevailing petitioner. In *Suarez v. Halbert,* 246 Ga. App. 822, 543 S.E.2d 733 (2000), the Court of Appeals reversed the award of fees against grandparents who have successfully obtained a restraining order granting them custody of a grandchild.

    a. In that case, a trial court had awarded attorney's fees against a prevailing party in a family violence act, finding a "disparity of income" between the parties.
    b. The Court of Appeals held that the Family Violence Act contained no authority for awarding attorney's fees against the prevailing party.
    c. "Imposing attorney fees upon well-intentioned petitioners seeking to thwart the occurrence or recurrence of family violence would only serve to deter others from filing similar actions." Id at 825.

C. Standard of review: the Georgia Supreme Court has applied an abuse of discretion standard in reviewing an award of attorney's fees under the Family Violence Act. *Schmidt v. Schmidt,* 270 Ga. 461, 463, 510 S.E.2d 810 (1999) ("we cannot say that the trial court abused its discretion in awarding $1,500.00 in fees in this case.")

3.2.7. Stalking order remedies:

A. Georgia law provides for fewer remedies in a stalking order than for a family violence order, O.C.G.A. § 16-5-94(d)(1-4). A court may:

1. "Direct a party to refrain from" stalking conduct.
2. "Order a party to refrain from harassing or interfering with the other."
3. "Award costs and attorney's fees to either party."
4. "Order … appropriate psychiatric or psychological services."

    a. The statute permits the court to order "either or all parties" to undergo these services.
    b. The statute does not require a court to order a party into a family violence intervention program. O.C.G.A. § 19-13-16(a).

B. The statute states that stalking remedies should be designed "to bring about a cessation of conduct constituting stalking."

1. An order may not restrict behavior that does not constitute stalking as defined in the statute.

2. In *Collins v. Bazan,* 256 Ga. App. 164, 568 S.E.2d 72 (2002), the Court of Appeals reversed a stalking order that prevented the respondent from publishing or discussing the petitioner's medical records.

    a. The court found that the respondent's behavior, although "extremely insensitive and unacceptable", would not "threaten [the petitioner] or [her] family's safety."
    b. The court noted that it interpreted the statute in such a way as to avoid an unconstitutional burden on the respondent's freedom of speech.

3. In *Rawcliffe v. Rawcliffe,* 283 Ga. App. 264 (2007), the Georgia Court of Appeals held that the trial court exceeded its authority when it prohibited the respondent from owning or possessing firearms in a Stalking Twelve Month Protective Order. The Court held that the prohibition of owning or possession a firearm for the duration of the protective order was not set forth in O.C.G.A. 16-5-94(d). *Id.* at 265. The Court stated that the relief a court may provide pursuant to O.C.G.A. § 16-5-94 is limited to that listed in the statute. The protective order was not vacated, only the section dealing with possession of or owning firearms. The parties did not come under the protection of the Brady Gun Act 18 USC 922(g) as they had not been intimate partners. The court was not specifically authorized to prohibit owning or possessing a firearm.

C. Where the parties meet the relationship requirements of the Family Violence Act then O.C.G.A. § 19-13-1 et seq. should be used so that the additional remedies available under the Family Violence Act can be used.

1. The family violence act extends only to a limited pool of relationships, but it does include "stalking" in the definition of family violence. See above and O.C.G.A. § 19-13-1.

    a. The stalking act applies to anyone who stalks another person, with relational restrictions.
    b. Petitioners who suffer from stalking and who have a relationship defined in the Family Violence Act may use either or both statutes.

2. Stalking petitioners who seek family violence remedies must satisfy the petition and filing requirements of the Family Violence Act.

3.2.8. Employer protective order remedies:

A. Employer protective orders may only order the cessation of "unlawful violence or threats of violence". O.C.G.A. § 34-1-7(e). Since the petitioner is not the victim, but the employer, no overlap with either family violence or stalking orders exists.
B. An employer protective order can be effective at one or more locations:

1. "At the employee's workplace"; or
2. "While the employee is acting within the course and scope of employment with the employer." *Id.*

C. Orders designed to protect the employee while "acting within the course or scope of employment" might refer to many additional locations, depending on the employee's work responsibilities.
D. If the court issues a "scope of employment" order, the court should consider proper service on law enforcement personnel in jurisdictions where the employee might work, if outside the court's jurisdiction.

1. The employer protective order statute puts the initial burden on the petitioner to suggest to the court those law enforcement agencies to whom the order should be delivered. O.C.G.A. § 34-1-7(g).
2. The court has discretion to select among those agencies requested by the petitioner. *Id.*
3. Once the court has determined the appropriate agencies, the court "shall order the petitioner or the petitioner's attorney" to assure proper deliver of the order by the close of the business day on which the order was issued. *Id.*

3.2.9. Dating violence protective order remedies

A. Georgia law provides for fewer remedies in a stalking order than for a family violence order, O.C.G.A. § 19-13A-4(b)(1)-(5). A court may:

1. Direct the respondent to refrain from acts of dating violence
2. Provide for possession of parties' personal property
3. Require the respondent to not harass or interfere with the petitioner
4. Award costs and attorney's fees to either party; and
5. Require the respondent to receive psychiatric, psychological, or educational services as another measure to prevent dating violence from occurring again in the future.

3.2.10. Judicial discretion over remedies:

A. Combination and Selection of Remedies:

1. In family violence, stalking, and dating violence cases, a court has discretion over which remedies to order. The language of the relevant statutes uses permissive, rather than mandatory language. O.C.G.A. §§ 19-13-4(a) ("may"), 16-5-94(d) ("may"), 19-13A-4(b) ("may").

a. A court also has discretion over the duration of the order, which may remain in effect "up to one year", O.C.G.A. §§ 19-13-4(c), 16-5-94(e), 19-13A-4(d).

b. Courts may thus consider how to tailor orders to best meet the proof and the needs of the parties.
c. For example, a court may enter:

(1) protective provisions for the full year,
(2) provisions for possession of a premises for a shorter time,
(3) provisions to transfer personalty within one week.

2. A court does not have discretion in employer protective order cases. If a court finds that the petitioner has met the relevant burden of proof, "an injunction shall issue." O.C.G.A. § 34-1-7(h).

B. Remedies under Other Statutes:

1. The Family Violence Act does not bar petitioners from seeking other legal remedies. "The remedies provided by this article are not exclusive but are additional to any other remedies provided by law." O.C.G.A. § 19-13-5.

a. The stalking order statute incorporates this language by reference. O.C.G.A. § 16-5-94(e).
b. The dating violence statute incorporates this language. O.C.G.A. § 19-13A-5.
c. The employer protective order statute does not so state, but does clarify that it should not "be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons."

2. Other remedies to prevent the occurrence and to cope with the consequences of family violence include:

a. Criminal law: a variety of different crimes, sentences and bonds address the specific demands of those seeking protection from family violence. (See Chapter 4 - Criminal Law).
b. Family law: family law offers a variety of similar remedies, including protection through preliminary relief, custody, child support, and division and disposition of property.
c. Juvenile law: juvenile law offers remedies addressed to protecting children where neither parent can protect them.
d. Tort law: tort law offers causes of action such as assault and battery, providing both injunctive and monetary relief.
e. Federal law: the federal Violence Against Women Act and civil rights acts may offer some relief to petitioners.

3. Petitioners seeking these other specific remedies in the context of a family violence action must satisfy the pleading and proof requirements of those laws:

    a. Properly filed pleadings might permit the superior court to consolidate actions on protective orders with other cases.
    b. However, other Georgia courts may have primary jurisdiction (e.g. juvenile remedies in juvenile court.)

C. Equitable Powers:

1. On occasion, a party may request (or a court might identify the need for) remedies other than those stated either in the protective order statutes or "other law". A question arises about the scope of the court's authority to fashion remedies other than those specifically stated in the relevant statutes.
2. As an initial matter, all four protective order statutes present their remedies in exclusive lists. O.C.G.A. §§ 19-13-4(a), 16-5-94(d), 34-1-7(e), 19-13A-4.

    a. The permissive "may" in the family violence, stalking, and dating violence statutes, and the mandatory "shall" in the employer statutes, each appear before a list of specific remedies.
    b. None of the statutes contain inclusive language, and none contain catchall remedial language at the end of the list.
    c. Well-accepted canons of statutory construction could apply to restrict the remedies to those stated:

        (1) expressio unius est exclusio alterius (the express mention of one thing implies the exclusion of another)
        (2) expressum facit cessare tacitum (if some things are expressly mentioned, the inference is stronger that those omitted were intended to be excluded).

3. On the other hand, when acting under the protective order statutes, the superior court most likely acts as a court of equity, with equitable powers.

    a. The central remedy of all three statutes, an injunction, is equitable in nature.
    b. A superior court has authority to adjust its decrees in response to the circumstances of each case:

        (1) "the superior court may mold the verdict so as to do full justice to the parties in the same manner as a decree in equity." O.C.G.A. § 9-12-5.
        (2) "A superior court shall have full power to mold its decrees so as to meet the exigencies of each case." O.C.G.A. § 23-4-1.

(3) See *Aycock v. Aycock,* 251 Ga. 104, 303 S.E.2d 456 (1983) (affirming a trial court order, requiring that rental property be held in trust for children as a form of child support.)

c. The protective order statutes deal with the same subject matter as, and offer similar remedies to, divorce actions. "Proceedings for a divorce … have always, under the practice in this State, been regarded as equitable." *Rogers v. Rogers,* 103 Ga. 763, 765, 30 S.E. 659 (1898)." *Allen v. Allen,* 260 Ga. 777, 778, 400 S.E.2d 15 (1991)(requiring a trial court to rule on the enforceability of a settlement.)

d. However, in exercising equitable authority, a court may not issue the requested relief if the party can obtain the same relief through some other adequate remedy at law.

e. See also *Davis-Redding v. Redding,* 246 Ga. App. 792, 794, 542 S.E.2d 197, 199 (2000): "'divorce cases are different from other cases, requiring some flexibility in the application of our jurisdictional and venue rules.' [citation omitted] We realize this is a family violence case rather than a divorce case; however, even more flexibility may be required in cases filed to bring about an end to family violence."

4. Delimiting judicial discretion on remedies:

a. The protective order statutes have clearly stated standards by which a court must exercise its remedial authority:

(1) The family violence statute requires that the court seek "to bring about a cessation of acts of family violence." O.C.G.A. § 19-13-4(a).
(2) The stalking statute requires that the court seek "to bring about a cessation of conduct constituting stalking." O.C.G.A. § 16-5-94(d).
(3) The dating violence statute requires that the court seek "to bring about a cessation of acts of dating violence." O.C.G.A. § 19-13A4(b).

b. The general purpose of an employer protective order is to prohibit "further unlawful violence or threats of violence." O.C.G.A. § 34-1-7(b).

(1) Judicial flexibility seems most appropriate when:
(2) Specifically linked to the language of one of the remedial clauses of the statute; and
(3) Logically connected to the stated purpose of the relevant statute; and

c. Stated on the record with support in specific findings of fact.

3.3. Settlements and Waiver of Remedies

3.3.1. Consent Decrees:

A. Consent agreements permitted: A superior court may approve consent agreements by the parties as the basis for its order in family violence, stalking, and dating violence proceedings. O.C.G.A. § 19-13-4(a) (family violence order), O.C.G.A. § 16-5-94 (d) (stalking orders), O.C.G.A. § 19-13A-4(b) (dating violence orders). Although no similar, explicit provision appears in the employer protective order statute, see O.C.G.A. § 34-1-7 (e), general Georgia law permits the entry of consent decrees upon submission of a settlement agreement to the court for approval. When a court approves a consent decree, the decree operates as a waiver of any claims addressed by that decree. *Hargraves v. Lewis,* 3 Ga. 162 (1847).

B. Limits on consent agreements: The Superior Court has the authority to revise or reject the parties' agreement in protective order cases.

    1. Superior Court shall not have the authority to approve a consent-mutual protective order unless the statutory requires of a counterpetition have been satisfied. O.C.G.A. §§ 19-13-4(a), 19-13A-4(b).
    2. As to family violence, stalking, and dating violence protective orders, the statutes indicate that the superior court "may approve a consent agreement"; nothing in either statute mandates that a court accept the parties' proposed settlement. O.C.G.A. § 19-13-4(a) (family violence order), O.C.G.A. § 16-5-94 (d) (stalking orders), O.C.G.A. § 19-13A-4(b) (dating violence order). No Georgia case has determined the scope of a superior court's authority to revise or reject proposed consent decrees in violence protective order cases.
    3. With respect to certain remedies, at least, the superior court's authority is clearer:

        a. With respect to child custody and child support issues, in divorce cases, the court may review, revise or reject any settlement agreement relating to these issues. See *Arrington v. Arrington*, 261 Ga. 547 (1991) (child support), *Crisp v. McGill,* 229 Ga. 389 (1972) (child custody).
        b. The same principles would appear to apply, for family violence orders involving child custody or child support.

    4. For potential dangers concerning alternative orders to TPOs see: www.gcfv.org/files/TPOstatement.pdf

C. Consent without admissions by respondent:

    1. On occasion, respondents may face criminal (or other) charges arising out of the events, which gave rise to the civil petition.
    2. In order to obtain stipulated agreements, a practice has arisen through which petitioner and respondent:

        a. stipulate to the court's authority to enter into the order,

b. waive findings of fact on the occurrence of abuse, and
c. state that the respondent has made no admissions of fact with respect to the underlying events.

3. These provisions seek to minimize the risks that the civil order may be used against the respondent in the later criminal case:

a. Stipulations to authority: such a provision bars later challenges to the validity of the order by the respondent. In general, parties may stipulate to the court's authority over their persons; however, objections to service of process might survive such a stipulation.
b. Waiver of findings of fact: parties may waive findings of fact, even on facts otherwise necessary to the underlying judgment.

(1) Such a stipulation reduces the risk that prosecution might successfully admit the order on the issue of abuse in the later criminal case.
(2) A general Georgia rule exists that "'[t]he judgment in a civil action is not admissible in a criminal action to prove any fact determined in the civil action.'" *Flynt v. State*, 153 Ga. App. 232, 243, 264 S.E.2d 669 (1980)."

c. No admissions: such a provision benefits the respondent by avoiding an admission *in judicio* that could be used against him in the later criminal trial.

4. Such orders may or may not prevent later evidentiary use of the events underlying the order. Compare

a. *Johnson v. State*, 231 Ga. App. 823, 499 S.E.2d 145 (1998): reversing a conviction where trial court admitted a prior family violence order. The Court of Appeals reviewed the circumstances of the stipulated order, noted that the defendant has not been represented and lacked adequate opportunity to review the terms of the order, and held that the stipulated order could not be treated as an admission.
b. *Murden v. State*, 258 Ga. App. 585, 574 S.E.2d 657 (2003): refusing to apply Johnson, where the prosecution sought to introduce prior family violence orders to establish "course of conduct."

3.3.2. Waiver:

A. Methods of waiver: Waiver of claims and remedies may occur in at least two different ways: by consent decree or by dismissal. As discussed above, Georgia law permits courts to approve consent decrees, and also permits petitioners to dismiss claims against respondents.
B. Limits on waiver: Parties may have a limited ability to waive certain remedies:

1. Child support: a party's agreement to waive the right to collect child support is subject to the same conditions as apply to child support in other actions. O.C.G.A. § 19-13-4 (a)(6). A Georgia court need not accept a purported waiver of the right to collect child support, but may review the parties' agreement to determine what the welfare of the child requires. *Collins v. Collins,* 172 Ga. App. 748, 749 (1984); *Barrow v. State,* 87 Ga. App. 572, 575-576 (1953).
2. Child custody: a superior court may also reject a party's waiver of claims with respect to child custody in divorce cases, if against the best interest of the children. *Stanton v. Stanton,* 213 Ga. 545, 549 (1957); *Mock v. Mock,* 369 S.E.2d 255, 258 Ga. 407, 407 (1988). The rationale underlying these cases, appear to apply to family violence cases.
3. Family Violence Intervention Programs (FVIP): Georgia law mandates that a superior court order the respondent to an FVIP program: "a court … shall order the defendant to participate in a family violence intervention program." O.C.G.A. § 19-13-16 (a). A court may determine that participation in FVIP is "not appropriate", but if so, it must state its reasons on the record. This language appears to prevent the waiver of FVIP participation by any party to a family violence protective order.

3.4. Mediation

3.4.1. The Georgia Commission on Dispute Resolution, the Georgia Supreme Court's policy-making body for court-connected ADR processes, has issued guidelines concerning domestic violence issues in mediation. Those guidelines provide that mediation is not appropriate in cases arising solely under the Family Violence Act, that those cases should not be referred to mediation, and that issues related to protection from family violence are not an appropriate subject of negotiation.

3.4.2. Because domestic violence allegations arise in other civil cases that are often referred to mediation, the Georgia Commission on Dispute Resolution has issued Guidelines for Mediation in Cases Involving Issues of Domestic Violence. These guidelines apply to court-connected ADR programs. These guidelines apply to the various kinds of domestic relations cases such as divorce, custody, modification, or paternity that may involve allegations of domestic violence. The Commission's policy is that, in domestic relations cases, which would otherwise be referred to mediation, the alleging party should not be automatically denied the opportunity to mediate when there are allegations of domestic violence. At the same time, the guidelines permit the alleging party to choose not to mediate where these allegations exist. To these ends, the Commission requires that domestic relations cases be screened for domestic violence allegations; where those allegations are present, the alleging party must be provided with information about mediation and the opportunity to make an informed decision as to whether to decline or proceed with mediation. However, if the party chooses to mediate, issues concerning abusive or violent behavior are not subject to negotiation. In general, these guidelines:

A. state that all domestic relations cases referred to mediation must be screened for allegations of domestic violence;
B. state that a party alleging domestic violence must be provided with detailed information about the mediation process, must be interviewed to discuss the particular circumstances of the case, and that the alleging party then be allowed to make a decision based on informed consent as to whether she or he wishes to participate in mediation;
C. Specify screening procedures for use in domestic relations cases and training requirements for screening personnel;
D. Define domestic violence for purposes of the guidelines;
E. Prohibit mediation in criminal cases involving domestic violence;
F. Provide that only mediators who have received specialized training may mediate these cases;
G. Specify protocols for ADR programs and mediators to follow when mediating cases involving domestic violence; and
H. Describe protocols for maintaining confidentiality of information about domestic violence elicited during screening or mediation.

3.4.3. The full text of these guidelines appears in Appendix K, Mediation to this section of the benchbook.

3.5. Orders

3.5.1. This section deals with

A. service of Georgia protective orders,
B. their duration and extension,

C. their enforceability within and outside Georgia, and
D. remedies for violating them.

3.5.2. Service of Orders

A. None of the protective order statutes explicitly require service of the protective order on the respondent; however, basic principles of due process impose such an obligation. See also O.C.G.A. § 9-11-5 ("every order required by its terms to be served … shall be served upon each of the parties.")
B. All three protective order statutes mandate delivery of a copy of a protective order to certain law enforcement agencies, although the statutes provide different methods:

    1. For family violence, stalking, and dating violence protective orders, the clerk of the superior court shall issue a copy of the order to the sheriff of the county in which the order was entered. O.C.G.A. §§ 19-13-4(b) (family violence order), 16-5-94(e) (stalking orders, cross-referencing the family violence statute), 19-13A-4(c) (dating violence order). The sheriff in that county shall retain the order "as long as that order shall remain in effect", presumably including any extensions.
    2. For employer protective orders, the court must order the employer or the employer's attorney to deliver the order (including modifications or terminations of the order) to those "law enforcement agencies … as are requested by the petitioner." O.C.G.A. § 34-1-7(g). The court has discretion to review and revise the list of such agencies. *Id.* Every law enforcement agency that receives such an order must assure that information about the order and its status be made available to "officers responding to the scene of reported unlawful violence or a credible threat of violence."

3.5.3. Duration and Extension of Orders

A. Duration:

    1. Family violence, stalking, and dating violence protective orders may remain in effect for up to one year unless extended. O.C.G.A. §§ 19-13-4(c) (family violence), 16-5-94 (stalking, incorporating the family violence provisions), 19-13A-4(d) (dating violence).

        a. The language "up to one year" permits the issuance of orders for shorter periods. *Id.*
        b. The 30 day period of the Civil Practice Act does not apply to family violence orders. *Carroll v. State*, 224 Ga. App. 543, 481 S.E.2d 562 (1997).

c. Research indicates that Orders of Protection of two- week duration are less effective than no order at all, whereas 12-month orders reduced police-reported physical violence by 80% ((Holt et al, 2002).
d. Because the motivation for most stalking (particularly for intimate stalkers) is control over the abused party, court appearances often reinforce abusers' efforts to harass their victims. The court can counteract this by holding short, timely hearings and by providing a separate waiting room for the abused party, thereby limiting their time in the courtroom with the abuser. See also O.C.G.A. § 17-17-9.

2. Employer protective orders may remain in effect for not more than three years but may be extended for an additional period. O.C.G.A. § 34-1-7(e).

B. Extension:

1. Family violence, stalking, and dating violence protective orders: The petitioner may move to extend a family violence, stalking or dating violence order by filing a motion with the court, requesting such an extension. O.C.G.A. § 19-13-4(c); O.C.G.A. § 16-5-94(e); O.C.G.A. § 19-13A-4(d). *Reynolds v. Kresge,* 269 Ga. App. 767, 605 S.E. 2d 379 (2004).

a. The court may not act on such a motion ex parte: the respondent must receive notice, and the court must hold a hearing on the motion. *Id.*
b. The court may deny the request, but may also convert the order into "an order effective for not more than three years or to a permanent order." *Id.*

(1) The language "not more than three years" permits the conversion of the initial one-year order into an order for an additional period less than three years or a permanent order.

c. The petitioner must file the motion within the time period designated by the original order.

(1) The court should attempt to hear and rule on that motion within that time period.
(2) Where the court can start, but cannot complete a hearing within the original time period, the court has limited authority to extend the original order long enough to complete the hearing. *Duggan v. Duggan-Schlitz*, 246 Ga. App. 127, 128, 539 S.E.2d 840, 842 (2000) (hearing scheduled and started within original six month period, but no evidence taken; evidence completed at a later date; held, authorized by the Family Violence Act.)

(3) In *Nguyen v. Dinh*, 278 Ga. 887 (2005), the Georgia Supreme Court held that the request for the permanent order only has to be initiated during the time the original order is in effect. It is immaterial that the order had expired by the time the court granted the request.

2. Employer protective orders may remain in effect for not more than three years. O.C.G.A. § 34-1-7(e).

    a. The employer may apply for "a renewal" of the order "by filing a new petition for an injunction pursuant to this Code section." *Id.*
    b. The language "renewal" implies that, should the court grant the request, the order can last for up to an additional three years.

3.5.4. Termination of Orders

A. Termination

1. Family violence and dating violence protective orders can be modified based on changing conditions and circumstances. O.C.G.A. §§ 19-13-4 (c), 19-13A-4(d).
2. In *Mandt v. Lovell*, 293 Ga. 807, 750 S.E.2d 134 (2013), the Georgia Supreme Court found that the Court has the discretion to decrease the duration of an order when appropriate.
3. In order to terminate a permanent protective order, a restrained party "must prove by a preponderance of the evidence that a material change in circumstances has occurred, such that the resumption of family violence is not likely and justice would be served by termination of the order. *Mandt v. Lovell*, 293 Ga. 807.750 S.E.2d 134(2013).
4. In considering a motion to terminate a permanent protective order, a court should consider the totality of the circumstances. *Id.*

B. Changes in Circumstances

1. The court in *Mandt v. Lovell*, 293 Ga. 807, 750 S.E.2d 134(2013) found that circumstantial changes that support the modification or termination of a permanent protective order include:

    a. Present nature of the parties' relationship
    b. Proximity of parties' residences
    c. Shared parental responsibilities
    d. History of compliance with the order
    e. History of violence
    f. Counseling or rehabilitation
    g. Age and health of restrained party
    h. Undue hardships as a result of the order

i. Victim's objections to termination

3.5.5. Enforcement of Orders

A. Enforcement within Georgia:

1. Once issued, family violence orders, stalking protective orders, and dating violence protective orders "apply and shall be effective throughout this state." O.C.G.A. §§ 19-13-4(d), 16-4-94(e), 19-13A-4(e).
2. These statutes impose a duty to enforce valid orders; the duty applies to "every superior court, … sheriff, … deputy sheriff, … state, county or municipal law enforcement officer within this state." *Id.*
3. No similar statewide provisions appear in the employer protective order statute. See O.C.G.A. § 34-1-7(e).

a. When issued, employer protective orders become effective "at the employee's workplace" or "while the employee is acting within the course and scope of employment with the employer." *Id.*
b. In addition, the petitioner must deliver the employer protective order to such law enforcement agencies as the court, in its discretion and upon request by the petitioner, may designate. O.C.G.A. § 34-1-7(g).

B. Georgia Protective Order Registry:

1. Purpose and operation of registry: The Georgia Protective Order Registry (GPOR) "is intended to enhance victim safety by providing [enforcement officials] access to protective orders issued by the courts of this state and foreign courts 24 hours of the day and seven days of the week." O.C.G.A. § 19-13-52(a). (See Appendix M - Georgia Protective Order Registry). "Access to the registry is intended to aid law enforcement officers, prosecuting attorneys, and the courts in the enforcement of protective orders and the protection to. Effective July 1, 2015 criminal orders such as bond and probation conditions are to be included in the Georgia Protective Order Registry.

a. The Registry "shall include a complete and systematic record and index of all protective orders and modifications," Id, § 19-13-52(c), and "shall be linked to the National Crime Information Center Network (NCIC)." Id, § 19-13-52(d).

b. The Georgia Crime Information Center (GCIC) maintains the Registry. The Georgia Commission on Family Violence may consult with the GCIC regarding the effectiveness of the registry in enhancing the safety of victims. O.C.G.A. § 19-13-52(b); GCIC also collaborates with the Georgia Superior Court Clerks' Cooperative Authority on the creation of forms. Id, § 19-13-53 (a).
c. "Given the mandatory language of the Act, it is clear that the legislature intended all family violence protective orders be transmitted to the Registry, without exception. *Birchby v. Carboy,* 311 Ga.App. 538 (2011).

2. **Transmittal and entry of Georgia orders**: The Superior Court clerk's office must transmit a copy of the protective order, or a modification of the protective order, to the registry no later than the close of the next business day after the order is filed with the clerk of court. O.C.G.A. § 19-13-53(b). Transmittal should occur electronically, or, if electronic means fail, in a manner designated by the GCIC. *Id.* GCIC will ensure that all protective order information is entered into the registry within 24 hours of receipt from the court. O.C.G.A. § 19-13-53(c). The order continues in force throughout this period: "entry of a protective order in the registry shall not be a prerequisite for enforcement of a protective order." O.C.G.A. § 19-13-53(e).
3. **Full Access to Georgia Orders**: The Georgia Protective Order Registry is a comprehensive web site that is available to law enforcement officials and the courts. The Georgia Protective Order Registry accepts 100% of all orders filed in Georgia. The Georgia registry will attempt to transmit all orders to NCIC for inclusion in the National Protective Order file. Currently 82% to 83% of all orders received from the Georgia registry are successfully transmitted to NCIC. Approximately 20% are rejected by NCIC due to lack of required information – information that many petitioners, particularly stalking victims may not have. Protective order information will remain on the Georgia Registry and NCIC for the remainder of the year in which the order expires plus five years.
4. Used together NCIC and Georgia's Registry provide a comprehensive resource for the court.
5. Judicial access through the Sidebar is not available at this time. While this method of access is being explored, judicial officers may gain access similar to other agencies:

    a. Obtain a user ID/password form from GCIC1
    b. Fill out form and return to GCIC
    c. GCIC will assign a user ID/password
    d. Confirmation form will be faxed/emailed back to the user

6. **Approval and entry of foreign orders**: a person with a foreign protective order may file it with the Registry by filing a certified copy of the order with any Georgia Superior Court Clerk. O.C.G.A. § 19-13-54(a). No fee or cost may be charged for this service. Id, § 19-13-54(b). Upon filing, the clerk must give the petitioner a receipt as proof of submission. Id, § 19-13-54(c). The clerk must then transmit the information in the same way as for a Georgia order, although the foreign order need not be in the same form as a domestic order. Id, §§ 19-13-54(d), (e). Entry in the Registry is not a prerequisite for enforcement of a valid foreign order. Id, § 19-13-54(f); see also 18 U.S.C.A. § 2265 (d) (according foreign protective orders full faith and credit whether or not registration in the state of enforcement has occurred.)
7. **Access, confidentiality, and liability**: Only law enforcement officers and the courts shall have access to the Registry. O.C.G.A. § 19-13-52(c). "Law enforcement officers" include any state agent or officer "with authority to enforce the criminal or traffic laws and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime", O.C.G.A. § 19-13-51(4). The term includes state or local officers, sheriffs, deputy sheriffs, dispatchers, 911 operators, police officers, prosecuting attorneys, members, hearing officers or parole officers of the State Board of Pardons and Paroles, and probation officers with the Department of Corrections. *Id.* Information obtained from the Registry must remain confidential, and may not be disclosed except as provided by law; breach of this obligation is a misdemeanor. O.C.G.A. § 19-13-55. Law enforcement officers, court officials and registry officials are held harmless for any delay or failure in getting information into the Registry, or for any reliance on information contained in the Registry. O.C.G.A. § 19-13-56.
8. **Forms**: Forms for use in transmitting Georgia orders or modifications are promulgated under the Uniform Superior Court Rules, and are subject to the approval of GCIC and the Georgia Superior Court Clerks' Cooperative Authority as to form and format. O.C.G.A. § 19-13-53(a). These forms must at a minimum all the information required for entry into the Registry and the NCIC Protection Order file. *Id.* "A court may modify a standardized form to comply with the court's application of the law and facts to an individual case." *Id.*

C. Enforcement outside of Georgia:

1. A federal statute provides that a Georgia protective order, which meets certain requirements will receive full faith and credit in any other state or tribal court. 18 U.S.C.A. § 2265(a).

    a. The statute requires that the Georgia protective order has been issued by a court with jurisdiction over the parties and the matter under Georgia law.

b. The statute also requires that the respondent have received notice and an opportunity to be heard on the issuance of the order. Id, § 2265(b). In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State. *Id.*
c. Any validly issued Georgia family violence, stalking or employer protective order would appear to satisfy the provisions of this act.

2. Mutual orders: The same federal statute indicates that a protective order which provides for protection of the respondent against the petitioner may not receive full faith and credit if: 1) "no cross or counter petition, complaint, or other written pleading was filed" against the petitioner; or 2) such a cross or counter petition was filed, but the court failed to "make specific findings that each party was entitled to such an order." 18 U.S.C.A. § 2265 (c). Thus, to enforce a restraining order issued against the petitioner outside of Georgia, the respondent must have filed a petition or pleading requesting that relief, and the court must have made specific findings that the respondent was entitled to that relief under the relevant statute.

3.5.6. Contempt:

A. A superior court may punish a violation of a family violence protective order or a dating violence protective order through contempt. O.C.G.A. §§ 19-13-6, 19-13A-6. No similar specific statutory section exists for stalking protective orders, or for employer protective orders. However, the superior court has inherent authority to use contempt for breach of its orders, O.C.G.A. § 15-6-8 (5) and O.C.G.A. § 15-1-4. This would seem to permit orders of contempt to issue for violations of these latter types of orders.
B. Civil Contempt distinguished from Criminal Contempt: Contempt may be either civil or criminal; the difference rests on the nature of the penalty imposed by the court. If the court imposes unconditional incarceration, the contempt is criminal. If it imposes conditional punishment, in an effort to force future compliance with the order, the contempt is civil.
C. Civil Contempt:

1. Findings of Contempt: Contempt consists of a party's willful disobedience of a court's order, *Davis v. Davis*, 250 Ga. 206, 207, 296 S.E.2d 722, 723 (1980). The court recognizes three defenses to contempt actions. "The defenses to both civil and criminal contempt are that

a. the order was not sufficiently definite and certain,
b. was not violated, or
c. that the violation was not willful (e.g., inability to pay or comply)."
d. Schiselman v. Trust Co. Bank, 246 Ga. 274, 277, 271 S.E.2d 183, 186 (1980).

2. A superior court has broad discretion to determine whether the original order has been violated; the court's findings will not be disturbed unless there is no evidence on which the order could rest. *Davis v. Davis,* 250 Ga. 206 at 207 (1982); *Kaufman v. Kaufman,* 246 Ga. 266, 269, 271 S.E.2d 175, 178 (1980).
3. Contempt Remedies: as remedy for a finding of contempt, the court may impose unconditional incarceration, conditional incarceration, fines, or a reassertion or clarification of its original order:

    a. Conditional incarceration: A court may also use contempt to secure performance in the future, and can condition incarceration upon the performance of an act. The punished party can purge the contempt by performing the act. Such an order would render the contempt civil. In Re Harvey, 219 Ga. App. 76, 79, 464 S.E.2d 34, 36 (1996). The act required may involve the payment of money, including the payment of child support, *Floyd v. Floyd,* 247 Ga. 551, 552 (1981), but it may also require the performance of some other act. See *In Re Harvey*, 219 Ga. App. 76 (requiring production of certain photographs as evidence.)
    b. Conditional Fines: a court may punish contempt by imposing a fine, not to exceed $500 for a single act of contempt. O.C.G.A. § 15-6-8(5).
    c. Reassertion of original order: the court may enforce a finding of contempt by reasserting the provisions of its original order. If that original order requires interpretation or clarification, a court may interpret or clarify it in the course of imposing a contempt sanction. *Davis v. Davis,* 250 Ga. 206, 207, 296 S.E.2d 722, 723 (1982). At the same time, a court may not modify the original decree in the course of issuing a contempt decree: "the decree must stand as written." *Gallit v. Buckley,* 240 Ga. 621, 626, 242 S.E.2d 89, 93 (1978). "The test to determine whether an order is clarified or modified is whether the clarification is reasonable or whether it is so contrary to the apparent intention of the original order as to amount to a modification." Davis, 250 Ga. at 207.

4. Double Jeopardy: In *Tanks v. State*, 292 Ga. App. 177, 663 S.E. 2d 812 (2008) the Court of Appeal vacated the judgment in the criminal proceeding and remanded the case for determination of whether jeopardy had attached before the prior contempt proceeding was suspended. The respondent had been indicted for aggravated stalking in March 2006. In April 2006, the petitioner moved for contempt. A hearing was begun in May 2006 but the proceeding was stayed pending the outcome of the criminal prosecution. Both proceedings contained the same elements.
5. Contempt Against Petitioners: in many if not most cases, protective orders restrain the respondent from coming into contact with the petitioner.

a. On occasion, however, the petitioner may voluntarily initiate contact with the respondent. (See Appendix A - Dynamics of Domestic Violence) No Georgia case has expressly ruled whether such voluntary contact would subject the petitioner to a finding of contempt.
b. One Georgia Court of Appeals case suggests that it would not. *Salter v. Greene*, 226 Ga. App. 384, 386, 486 S.E.2d 650, 652 (1997). In that case, a defendant in a family violence battery prosecution was released with a bond specifying that he was not to have contact with his ex-wife. Later, the ex-wife initiated contact with the defendant, and voluntarily traveled to Florida with him. The Court of Appeals reversed a finding of contempt against the ex-wife, reasoning that the bond condition applied only to the defendant, that it did not apply to the ex-wife, and that it was "issued for her protection." *Id.*; In *Bradley v. State*, 252 Ga. App. 293(2001), the victim had previously consented to contact by the respondent but the Court upheld his conviction for aggravated stalking because he did not have permission on the date he entered the house.

D. Criminal Contempt:

1. Criminal contempt differs both substantively and procedurally from civil contempt:

   a. Criminal contempt permits the court to impose unconditional punishment, including both fines and incarceration.
   b. At the same time, criminal contempt proceedings may require greater procedural protections than civil contempt.

2. Procedural requirements:

   a. Georgia law requires proof of criminal contempt beyond a reasonable doubt; by contrast, proof of civil contempt need only be by a preponderance of the evidence. *Schmidt v. Schmidt*, 270 Ga. 461, 463, 510 S.E.2d 810, 812 (1999).
   b. Great variations exist in the other procedural requirements required to impose criminal contempt:

      (1) One position would treat criminal contempt as similar to any other criminal charge, requiring proper accusation (through indictment or information), right to counsel, and other provisions of criminal procedure.
      (2) Another position would find that, other than the mandatory burden of proof, criminal contempt may be handled through process similar to civil contempt.

c. Other than the burden of proof, Georgia law does not specify the degree of procedural protection necessary for the imposition of criminal contempt.

3. **Alternatives to criminal contempt**:

a. aggravated stalking.
b. misdemeanor violation of protective order.

4. **Unconditional incarceration**: as noted above, a court may impose unconditional incarceration as a penalty for contempt, provided it finds that contempt has occurred beyond a reasonable doubt; such an order would render the contempt criminal. Georgia statute authorizes a superior court to imprison for a single act of contempt for no longer than 20 days, O.C.G.A. § 15-6-8 (5). A court may order incarceration for longer periods, but only if determines that multiple acts of contempt have occurred, and only if it makes specific findings as to the separate acts of contempt that account for each 20 day period. *Gay v. Gay*, 268 Ga. 106, 107, 485 S.E.2d 187, 188-189 (1997).

3.5.7. **Criminal violation of protective orders**: in addition to criminal contempt, Georgia law recognizes two other kinds of crimes resulting from violation of restraining orders.

A. Georgia law recognizes a separate misdemeanor of "violating a famiy violence protective order." O.C.G.A. § 16-5-95.

1. This statute applies when a violation of an order occurs both "knowingly" and "in a non-violent manner." Id, § 16-5-95 (a).
2. The statute applies only to family violence protective orders, and only to the terms of such orders which apply to:

a. excluding respondent from a residence. Id, (a)(1)
b. directing respondent to stay away from a residence, workplace or school. Id, (a)(2).
c. keeping respondent from approaching within a specific distance of petitioner. Id, (a)(3).
d. restricting communication with the respondent. Id, (a)(4).

3. Violation of this section does not prevent prosecution for "stalking" or "aggravated stalking." Id, § 16-5-95(c).
4. By its terms, the statute applies only to violations "in a non-violent manner"; it does not apply to acts of further violence.
5. Violations of the original order, which involve violent behavior, may justify prosecution for other criminal charges, i.e.: aggravated stalking, a finding of contempt or an additional restraining order. (See above Section 3.5.5 - Contempt).

B. In addition, the crimes of "stalking" and "aggravated stalking" each contain definitions which focus on violations of various different kinds of restraining orders:

1. "Stalking" includes a requirement of proof that the defendant violated a restraining order by publishing or broadcasting the "picture, name, address, or phone number" of the protected person in such a way as to harass or intimidate the person. O.C.G.A. § 16-5-90(a)(2).
2. "Aggravated stalking" requires a violation of an existing order that prevents stalking behavior by engaging in further stalking conduct towards the protected person. O.C.G.A. § 16-5-91(a).

    a. Aggravated stalking requires that the violation of the order be without the consent of the other person, and be for the purpose of harassing and intimidating. In order to prove the purpose of harassing and intimidating, a single violation of the order is not sufficient and there must be a pattern of behavior. *State v. Burke,* 287 Ga. 377 (2010). Distinguished by *Louisyr v. State,* 307 Ga. App. 724 (2011), in which a multiple order violations are not required to find a pattern of intimidation and harassment, but rather that a single violation must be part of a pattern of harassment and intimidation, as determined by the jury when considering a variety of factors, such as the prior history between the parties, *Herbert v. State,* 311 Ga. App. 396 (2011) in which only one contact was sufficient to prove violation of the order, *Hervey v. State,* 308 Ga. App. 290 (2011), in which an extensive history of harassment and intimidation can be considered, as well as repeated *Oliver v. State,* 325 Ga.App. 649; 753 S.E.2d 468 (2014), in which a single violation of the order is prohibited, if the violation is part of a pattern of harassment and intimidation, and the jury can consider additional factors, including the prior history between the parties.

3. Both of these statutes punish violations not just of civil stalking orders, but also of other types of orders, including:

    a. a bond to keep the peace.
    b. a temporary restraining order, and other forms of temporary or permanent equitable injunctions.
    c. a family violence order.
    d. an employer protective order.
    e. conditions of pre-trial release, probation, or parole.

Chapter 4 CRIMINAL LAW

4.1. Family Violence Act.

The Family Violence Act, O.C.G.A. § 19-13-1 et seq., is principally designed to afford civil remedies, e.g., temporary protective orders, to victims of domestic abuse. However, because this Act defines "family violence" by making reference to codified criminal offenses, it is summarized here.

4.1.1. Applicable predicate acts. O.C.G.A. § 19-13-1 provides that the following acts may constitute "acts of family violence":

A. Any felony; or
B. Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

4.1.2. Inapplicable predicate acts. O.C.G.A. § 19-13-1 provides that 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.

A. *Buchheit v. Stinson*, 260 Ga. App. 450, 455-456 (2003) (mother's action of slapping minor child in response to child's disrespectful behavior constituted reasonable discipline administered in form of corporal punishment).
B. *Bowers v. State,* 241 Ga. App. 122, 123 (1999) (beating child with a metal-studded leather belt was not reasonable parental discipline).
C. *Bearden v. State,* 163 Ga. App. 434 (1982) (defendant's requested jury charge on "justification for reasonable discipline" properly denied where evidence showed that defendant's 5-year old stepdaughter had visible bruises on 75% of her face and on 25% of her body).
D. *Taylor v. State*, 155 Ga. App. 11 (1980) (pouring gasoline on child and threatening her with a lighted match was not reasonable parental discipline).

4.1.3. Applicable offender/victim relationships. O.C.G.A. § 19-13-1 provides that one of the following relationships must exist before an offense will qualify as an act of family violence:

A. past or present spouses,
B. persons who are parents of the same child,
C. parents and children,
D. stepparents and stepchildren,
E. foster parents and foster children, or
F. other persons living or formerly living in the same household.

1. *Gillespie v. State,* 280 Ga. App. 243, 245 (2006) (if a pregnancy results from a single indiscretion between veritable strangers, the mere fact of pregnancy is not sufficient to create a "family" relationship for purposes of enhanced punishment for “family violence”).
2. *Allen v. Clerk,* 273 Ga. App. 896 (2005) (trial court held that an uncle who has never lived in the same household as the victim does not meet the criteria for the applicability of the Act).
3. *State v. Barnett,* 268 Ga. App. 900, 901 (2004) (defendant sufficiently apprised of a “family violence” charge when aggravated assault indictment alleged that defendant and victim were “parents of the same child”).
4. *Holland v. State,* 239 Ga. App. 436 (1999) (upholding conviction for family violence battery when victim was a “female friend with whom [the defendant] was residing”).
5. *McCracken v. State,* 224 Ga. App. 356 (1997) (victim was defendant’s live-in girlfriend).

4.2. Domestic Violence Crimes

The following is a partial list of criminal offenses that may constitute “acts of family violence” under the Family Violence Act, O.C.G.A. § 19-13-1, et seq. Moreover, if such crimes involve persons who are related and/or reside or formerly resided in the same household, enhanced criminal penalties may be available. (See Section 4.3., Domestic Violence Sentences below.)

4.2.1. Felony Crimes (O.C.G.A. § 19-13-1(1)). Below is a partial list of felony offenses that would qualify as “acts of family violence” if the qualifying relationship between the offender and the victim exists under O.C.G.A. § 19-13-1.

A. Crimes Against Persons (Title 16, Article 5)

1. Murder, Felony Murder (O.C.G.A. § 16-5-1).

    a. *FinFBridges v. State,* 279 Ga. 351, 352 (2005) (motivated to collect insurance benefits and to reunite with his first wife, defendant murdered his wife by stabbing and severely beating her).
    b. *Lewis v. State,* 255 Ga. 101 (1985) (police had probable cause to arrest mother for malice murder of her ten-month-old infant daughter based on information that child died from severe abuse and pneumonia secondary to malnutrition from weeks or months of neglect, that mother had bound infant with belts, taped her eyes and mouth shut, and whipped the baby with a belt).

2. Voluntary Manslaughter (O.C.G.A. § 16-5-2).

a. *Fuller v. State,* 265 Ga. App. 271, 272 (2004) (defendant became enraged and shot his wife while the two were engaged in a domestic argument over his handling of the family's money and his cocaine habit).

3. Involuntary Manslaughter (O.C.G.A. § 16-5-3).

   a. *Early v. State,* 170 Ga. App. 158, 163-164 (1984) (defendant's conviction for involuntary manslaughter upheld where his act of beating his wife with a piece of wood materially contributed to her death).

4. Aggravated Assault (O.C.G.A. § 16-5-21).

   a. *Lord v. State,* 297 Ga. App. 88 (2009)(defendant punched and bashed his live-in girlfriend's head into a car dashboard and shoved a curling iron down her throat).
   b. *Gilbert v. State,* 209 Ga. App. 483, 484 (1993) (defendant drove his wife into the woods, ordered her at knife-point to exit the vehicle and remove her clothes, then chased her through the woods).
   c. HB 911, passed in 2014, adds specific language on strangulation to O.C.G.A. § 16-5-21. 12(a) provides that, "As used in this Code section, the term 'strangulation' means impeding the normal breathing or circulation of blood of another person by applying pressure to the throat or neck of such person or by obstructing the nose or mouth of such person." 12(b)(3) states that a person commits the offense of aggravated assault by assaulting, "With any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in strangulation."

5. Aggravated Battery (O.C.G.A. § 16-5-24).

   a. *Biggins v. State,* 299 Ga. App. 554 (2009) (defendant struck live-in girlfriend's ear with a stereo speaker causing her to suffer at least temporary hearing loss).
   b. *Johnson v. State,* 260 Ga. App. 413, 415 (2003) (defendant grabbed and twisted his estranged wife's wrist rendering it useless for several weeks and punched and broke her nose).

6. Kidnapping (O.C.G.A. § 16-5-40).

   a. *Dixon v. State,* 303 Ga. App. 517 (2010) (asportation element of crime of kidnapping was proven where the victim was halfway out the door of a hotel room when the defendant pulled her back into the room, and that action was sufficiently independent from the subsequent aggravated assault and rape against the victim)

b. *Hargrove v. State,* 299 Ga. App. 27 (2009) (asportation element of crime of kidnapping was not proven where defendant's dragging of his live-in girlfriend from one room of duplex to another was not sufficiently independent of his DV aggravated battery upon her); see also *Horne v. State,* 298 Ga. App. 601 (2009).
c. *Carter v. State,* 268 Ga. App. 688, 690 (2004) (defendant forced his wife into a car against her will and backhanded her several times leaving her face swollen and bruised).

7. False Imprisonment (O.C.G.A. § 16-5-41). False Imprisonment, a felony, involves the unlawful restraint of another in violation of his or her personal liberty. (See Section 4.1.1.B., above - Unlawful Restraint).

    a. *Pitts v. State,* 272 Ga. App. 182, 187 (2005), aff'd 280 Ga. 288 (2006) (defendant held his wife down on a bed as she screamed and blocked her bedroom door preventing her escape).

8. Reckless Conduct (HIV infected persons) (O.C.G.A. § 16-5-60(c)).

    a. *Burk v. State,* 223 Ga. App. 530, 530-531 (1996) (conviction for the lesser-included offense of reckless endangerment sustained in this non-domestic violence case).

9. Cruelty to Children (O.C.G.A. § 16-5-70).

    a. *Yearwood v. State,* 297 Ga. App. 633 (2009) (mother's spanking of two-year old child resulted in multiple bruises and a skull fracture).
    b. *Bowers v. State,* 241 Ga. App. 122, 123 (1999) (defendant beat his daughter with a metal-studded leather belt).

10. Stalking (2nd or subsequent offense) (O.C.G.A. § 16-5-90(c)). O.C.G.A. § 16-5-90(a)(1) provides that a person commits stalking when he "contacts another person … for the purpose of harassing and intimidating the other person."

    a. Harassing and Intimidating. O.C.G.A. § 16-5-90(a)(1) provides that "harassing and intimidating" means conduct 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." The statute does not require actual physical injury or even an overt threat of physical injury.
    b. Reasonable fear: Studies show that some stalking victims may deny the existence of fear as a way of coping with the danger and lack of control they experience. (Herman, 1992) To reveal such hidden fears, a victim might be asked whether she believes that the defendant is capable of hurting her or her family. (Hunter, 2002)

11. Aggravated Stalking (O.C.G.A. § 16-5-91). O.C.G.A. § 16-5-91(a) provides that a person commits aggravating stalking when he "follows, places under surveillance, or contacts another person …without the consent of the other person for the purpose of harassing and intimidating the other person" in violation of one of the following:

    a. a bond to keep the peace;
    b. a temporary restraining order;
    c. a temporary protective order;
    d. a permanent restraining order;
    e. a permanent protective order;
    f. a preliminary injunction;
    g. a good behavior bond;
    h. a permanent injunction;
    i. a condition of pretrial release;
    j. a condition of probation; or
    k. a condition of parole.

        (1) *Gates v. State,* 322 Ga. App. 383 (2013) (evidence was sufficient to establish that the defendant's actions placed the victim in reasonable fear for her safety, even though there had been prior consensual contact between the parties, because the victim did not consent to the contact that comprised aggravated stalking).
        (2) *Louisyr v. State,* 307 Ga. App. 724 (2011) (A single violation of a protective order can be sufficient to prove aggravated stalking if the single violation is part of a pattern of behavior. The jury can consider a number of factors, including prior history between the parties, and the defendant's attempts to contact or communicate with the victim.)
        (3) *State v. Burke,* 287 Ga. 377 (2010)(A single violation of a protective order is not sufficient to prove aggravated stalking. The violation must be without the consent of the other person, for the purpose of harassing and intimidating, which is established by a pattern of behavior.)
        (4) *Wright v. State,* 292 Ga. App. 673 (2008)(evidence failed to establish that defendant's actions placed his ex-wife in reasonable fear for her safety).

            i. Note: "Harrassing and intimidating" has the same meaning as in O.C.G.A. § 16-5-90(a)(1)(misdemeanor stalking). Wright, supra at 676.

        (5) *Holmes v. State,* 291 Ga. App. 196 (2008)(defendant violated a family violence protective order by making repeated phone calls to and sending emails to his estranged wife causing her to fear for her safety).

(6) *Newsome v. State*, 289 Ga. App. 590 (2008)(defendant violated family violence protection order by contacting his estranged wife and their infant child at their home and wounding both with a firearm).
(7) *Bragg v. State*, 285 Ga. App. 408 (2007)(despite a no contact provision in his probated sentence for family violence battery, husband not guilty of aggravated stalking when she arranged and consented to their subsequent meeting).
(8) *Ford v. State*, 283 Ga. App. 460, 461 (2007) (by confronting his wife and her male companion with a gun in a public park, defendant violated a temporary protective order which enjoined him from approaching within 100 yards of his wife).
(9) *Revere v. State*, 277 Ga. App. 393 (2006) (victim's previous consent to contact after a no contact order was issued does not alter the fact that, on this occasion, she did not consent).

12. Cruelty to a Person 65 Years of Age or Older (O.C.G.A. § 16-5-100).

    a. *Wood v. State*, 279 Ga. 667, 668-670 (2005) (defendant and his girlfriend removed her mother from nursing home in order to receive victim's social security checks and their inattentive care led to her death).

B. Sexual Crimes (Title 16, Article 6).

1. Rape (O.C.G.A. § 16-6-1). O.C.G.A. § 16-6-1(a) provides that "[t]he fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape."

    a. *Childs v. State*, 257 Ga. 243, 252 (1987) (jury was authorized to conclude that defendant raped his wife despite his contention that the intercourse was consensual).
    b. *Warren v. State*, 255 Ga. 151, 156 (1985) (there is no "implicit marital exclusion" under Georgia's rape statute that would preclude prosecution of a husband for raping his wife).

2. Aggravated Sodomy (O.C.G.A. § 16-6-2). O.C.G.A. § 16-6-2(a) provides that "[t]he fact that the person allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated sodomy."

    a. *Warren v. State*, 255 Ga. 151, 157 (1985) (there is no "implicit marital exclusion" under Georgia's aggravated sodomy statute that would preclude prosecution of a husband from forcibly sodomizing his wife).

3. Child Molestation (O.C.G.A. § 16-6-4(a)).

a. *Perdue v. State,* 250 Ga. App. 201 (2001) (defendant routinely entered his stepdaughter's room at night where he fondled and engaged in sexual intercourse with her).

4. Aggravated Child Molestation (O.C.G.A. § 16-6-4(c)).

a. *Perdue v. State,* 250 Ga. App. 201 (2001) (defendant routinely entered his stepdaughter's room at night where he engaged in mutual oral sodomy with her).

5. Incest (O.C.G.A. § 16-6-22).

a. *Benton v. State,* 265 Ga. 648, 648-649 (1995) (rejecting defendant's claim of a constitutional right to have intercourse with a non-blood relative where defendant repeatedly engaged in consensual sexual intercourse with his adult stepdaughter).

6. Aggravated Sexual Battery (O.C.G.A. § 16-6-22.2).

a. *Temple v. State,* 238 Ga. App. 146, 147 (1999) (defendant beat his wife in the head with a gun before sexually penetrating her with the barrel of the gun).

C. Property Crimes (Title 16, Article 7).

1. Criminal Damage to Property, 2nd Degree (O.C.G.A. § 16-7-23). Criminal Damage to Property, a felony, involves the intentional damaging of another's property without consent in an amount greater than $500. (See Section 4.1.1.B. above - Criminal Damage to Property.)

a. *Gooch v. State,* 289 Ga. App. 74(1) (2007)(citing *Ginn v. State,* 251 Ga. App. 159(2)(2001))(suggesting that "property of another" includes marital or family property jointly owned by the defendant and his spouse).
b. *Johnson v. State,* 260 Ga. App. 413, 415 (2003) (defendant keyed his estranged wife's car causing damage in excess of $500).

2. Arson, 1st, 2nd, 3rd Degrees (O.C.G.A. § 16-7-60, 61, and 63).

a. *Senior v. State,* 273 Ga. App. 383 (2005) (defendant set his girlfriend's car on fire following an argument).
b. *Lathan v. State,* 241 Ga. App. 750 (1999) (defendant set fire to a house owned by his ex-wife after attempts at reconciliation with her had failed).

D. offenses Against Public Order (Title 16, Article 11).

1. Terroristic Threats and Acts (O.C.G.A. § 16-11-37).

a. *Mullins v. State,* 298 Ga. App. 368 (2009)(victim's claimed lack of memory at trial regarding the defendant's alleged threats no obstacle to conviction because there is "no requirement that the victim testify for there to be sufficient evidence to sustain a conviction for terroristic threats").
b. *Johnson v. State,* 260 Ga. App. 413, 416 (2003) (defendant's words to his estranged wife that she "didn't have long to live" could reasonably be inferred as a threat to kill).

4.2.2. Misdemeanor Crimes (O.C.G.A. § 19-13-1(2)). Below is a list of misdemeanor offenses, set forth in O.C.G.A. § 19-13-1, that qualify as "acts of family violence", if the qualifying relationship between the offender and the victim exists under O.C.G.A. § 19-13-1.

A. Crimes Against Persons (Title 16, Article 5).

1. Simple Assault (O.C.G.A. § 16-5-20).

a. *Bearden v. State,* 291 Ga. App. 805 (2008) (defendant's violent outburst placed his daughter in reasonable fear of injury).
b. *Johnson v. State,* 260 Ga. App. 413, 414-415 (2003) (defendant's aggressive driving toward his estranged wife's car held sufficient).

2. Simple Battery (O.C.G.A. § 16-5-23).

a. *Pitts v. State,* 272 Ga. App. 182, 187-188 (2005), aff'd 280 Ga. 288 (2006) (officer's testimony that he saw defendant holding his wife down on a bed while she screamed sufficient to establish simple battery and false imprisonment, even without the victim's testimony).
b. *Shaw v. State,* 247 Ga. App. 867, 871 (2001) (testimony that defendant grabbed victim by throat and shoved her against the wall, coupled with officer's observation of red marks on her neck, sufficient to uphold simple battery verdict).
c. *Watkins v. State,* 183 Ga. App. 778 (1987) (victim's statement that defendant beat his wife with a chair, threatened her with a gun, and stabbed her with a pair of scissors, plus the presence of a stab wound on the victim's back, the presence of several weapons, and the disordered condition of the scene provided officers with probable cause to believe that an act of family violence had occurred).

3. Battery (O.C.G.A. § 16-5-23.1).

a. *Thompson v. State,* 291 Ga. App. 355 (2008)(responding officer found victim bleeding profusely from her mouth and had one eye swollen shut).

b. *Simmons v. State*, 285 Ga. App. 129 (2007)(defendant hit his live-in girlfriend in the head with his fists causing her head to bleed).
c. *Southern v. State*, 269 Ga. App. 556 (2004) (defendant hit his girlfriend, with whom he had two children, leaving her with a bloody nose).
d. *Rigo v. State*, 269 Ga. App. 383, 384 (2004) (defendant bruised his wife's throat by strangling her).

    (1) Lee Wilbur, et. al., "Survey Results of Women Who Have Been Strangled While In An Abusive Relationship," Journal of Emergency Medicine, Vol. 21, no. 3 (Oct. 2001) (study found that strangulation as a method of abuse is common in women seeking safe shelter and/or medical assistance and noted that it "occurs late in the abusive relationship; thus, women presenting with complaints consistent with strangulation probably represent women at higher risk for major morbidity or mortality.").
    (2) Unfortunately, 50% of victims who were strangled and survived had no visible markings on the neck and 35% had only very minor injuries thus making physical evidence virtually non-existent (Strack, et al, 2003). In light of this new medical information, five states have now made strangulation a felony. (See Appendix B – Assessing for Lethality)

e. *Spinner v. State*, 263 Ga. App. 802 (2003) (defendant placed his hands around his wife's neck and began to choke her).
f. *Johnson v. State*, 260 Ga. App. 413, 414 (2003) (defendant struck, choked, and threw his wife against a wall leaving visible scrapes and bruises).
g. *Cobble v. State*, 259 Ga. App. 236, 237, 576 S.E.2d 623 (2003) (defendant attacked his mother with car keys, pulled her hair out and left her scalp bloodied).
h. *Cox v. State*, 243 Ga. App. 582 (2000) (defendant's act of splashing beer on his estranged wife's clothes insufficient to satisfy element of "substantial physical harm or visible harm").
i. *Bowers v. State*, 241 Ga. App. 122, 123 (1999) (defendant committed family violence battery when he struck and bruised his 12-year old son's face).

4. Stalking (1st offense) (O.C.G.A. § 16-5-90(a)).

    a. *anderson v. Deas*, 273 Ga. App. 770 (2005) ("As used in the [Family Violence Act], the term 'family violence' … include[s] stalking).
    b. *Johnson v. State*, 260 Ga. App. 413, 414 (2003) (defendant appeared uninvited and harassed his estranged wife at her doctor's office).
    c. See Section 4.2.1.A.10- Stalking above, for additional discussion.

B. Property Crimes (Title 16, Article 7).

1. Criminal Trespass (O.C.G.A. § 16-7-21). Criminal Trespass, a misdemeanor, involves the intentional damaging of another's property without consent in an amount equal to or less than $500, or the entry without authority upon the property of another. (See Section 4.1.1.B. above - Criminal Trespass).

   a. *Ginn v. State,* 251 Ga. App. 159(2)(2001) (defendant guilty of criminal trespass when he destroyed a computer keyboard during an argument with his wife even if the keyboard was their joint marital property).
   b. *Cox v. State,* 243 Ga. App. 582, 582-583 (2000) (defendant committed criminal trespass when he damaged an exterior light fixture belonging to his estranged wife).

4.2.3. Miscellaneous Crimes / Civil Contempt of Court.

A. Violation of Family Violence Order (O.C.G.A. § 16-5-95). The crime created by this code section can be viewed as an alternative to a charge of stalking (O.C.G.A. § 16-5-90) or aggravated stalking (O.C.G.A. § 16-5-91) which, unlike this crime, each contain an element requiring that the prohibited contact be "without the consent of the other person for the purpose of harassing and intimidating the other person." This section criminalizes acts (such as no contact) which previously may only have been redressed through a civil contempt action brought by the domestic violence victim.
B. O.C.G.A. § 16-5-95(a)(1), defines a civil family violence order as "any temporary protective order or permanent protective order issued pursuant to Article 1 of Chapter 13 of Title 19."Section (a)(2) defines a criminal family violence order as "any order of pretrial release issued as a result of an arrest for an act of family violence;" or "any order of probation issued as a result of a conviction or plea of guilty, nolo contendere, or first offender to an act of family violence."
C. O.C.G.A. § 16-5-95(b) provides that "A person commits the offense of violating a civil family violence order or criminal family violence order when such person knowingly and in a nonviolent manner violates the terms of such order issued against that personwhich (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 or another person; or (4) Restricts the person from having any contact, direct or indirect, by telephone, pager, facsimile, email, or any other means of communication with another person, except as specified in such order."
D. The expansion of this code section to include criminal family violence orders occurred in 2013, and streamlines the process for holding an offender accountable for such violations. Rather than the prosecuting attorney filing a motion to revoke bond or probation, a law enforcement officer may now make an arrest or present a warrant to a judge for arrest at a later time.

E. Keeping track of active conditions of bond orders, in particular, may pose a challenge as no centralized system comparable to the TPO registry exists for such conditions. Communities must devise their own systems to ensure that law enforcement and courts have access to accurate information.
F. O.C.G.A. § 16-5-95(d) provides that "[n]othing 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 [Stalking] or 16-5-91 [Aggravated Stalking] that arose out of the same course of conduct."

    1. *Newsome v. State,* 296 Ga. App. 490 (2009)(accusation charging this offense must set forth the terms of the order alleged to have been violated).

G. Disclosure of Location of Family Violence Shelter (O.C.G.A. § 19-13-23). This code section provides that "[a]ny person who knowingly …discloses the location of a family violence shelter is guilty of a misdemeanor."
H. Disclosure of Family Violence and Stalking Protective Order Registry Information (O.C.G.A. § 19-13-55). O.C.G.A 19-13-55 provides that "[a]ny individual, agency, or court which obtains information from the registry shall keep such information or parts thereof confidential. …Violation of this Code section shall be a misdemeanor."
I. Contempt of Court (O.C.G.A. § 19-13-6). This code section recognizes civil contempt as an alternative to criminal prosecution under O.C.G.A. § 16-5-95. O.C.G.A. §§ 19-13-6 and 19-13A-6 provides that "[a] violation of an order issued pursuant to [the Family Violence Act or the Dating Violence Act] may be punished by an action for contempt or criminally punished as provided in Article 7 of Chapter 5 of Title 16."

    1. *Tanks v. State,* 292 Ga. App. 177 (2008)(non-summary criminal contempt proceedings can trigger the Fifth Amendment's double jeopardy bar to subsequent prosecution predicated on the same act allegedly violating a protective order).
    2. *Schmidt v. Schmidt,* 270 Ga. 461, 463 (1999) (court must apply the reasonable doubt standard of proof to violations of orders under the Family Violence Act, rather than the preponderance standard, when imposing unconditional incarceration as punishment for criminal contempt).
    3. *Salter v. Greene,* 226 Ga. App. 384, 386 (1997) (a wife cannot be held in contempt for voluntarily contacting her husband merely because his bond condition barred him from having contact with her).
    4. *Kinney v. State,* 223 Ga. App. 418, 420-421 (1996) (the state may not prosecute a defendant for aggravated stalking based upon the same set of facts previously used to prosecute the same defendant for a violation of a domestic violence order).

4.3. Domestic Violence Sentences

In special recognition of the societal harm caused by domestic violence, the legislature has adopted a number of sentencing enhancement provisions applicable to offenders convicted of domestic violence offenses. These provisions are summarized below.

4.3.1. Domestic Violence Sentencing – First offenses.

A. **Simple Assault**. O.C.G.A. § 16-5-20(d) provides that "[i]f the offense of simple assault is committed 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 excluding siblings living or formerly living in the same household, the defendant shall be punished for a misdemeanor of a high and aggravated nature. In no event shall this subsection be applicable to corporal punishment administered by a parent or guardian to a child or administered by a person acting in loco parentis." (Note: Siblings are not excluded from the definition of "family violence" set forth in § 19-13-1.)

B. **Aggravated Assault**. O.C.G.A. § 16-5-21(j) provides that "[i]f the offense of aggravated assault is committed 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 excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years." (Note: Siblings are not excluded from the definition of "family violence" set forth in § 19-13-1.)

C. **Simple Battery**. O.C.G.A. § 16-5-23(f) provides that "[i]f the offense of simple battery is committed 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 excluding siblings living or formerly living in the same household, the defendant shall be punished for a misdemeanor of a high and aggravated nature. In no event shall this subsection be applicable to corporal punishment administered by a parent or guardian to a child or administered by a person acting in loco parentis." (Note: Siblings are not excluded from the definition of "family violence" set forth in § 19-13-1.)

D. **Battery**. O.C.G.A. § 16-5-23.1(f), amended in 2016, provides that (1) "As used in this subsection, the term 'household member' means 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. (2) If the offense of battery is committed between household members, it shall constitute the offense of family violence battery and shall be punished as follows:"

1. "Upon a first conviction of family violence battery, the defendant shall be guilty of and punished for a misdemeanor; provided, however, that if the defendant has previously been convicted of a forcible felony committed between household members under the laws of this state, of the United States, including the laws of its territories, possessions, or dominions, or any of the several states, or of any foreign nation recognized by the United States, which if committed in this state would have constituted a forcible felony committed between household members, he or she shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years; and
2. The 2016 amendment ensures that any previous family violence battery or "forcible felony committed between household members", even if committed in another state or country, would result in a subsequent conviction being punished as a felony.
3. The misdemeanor penalty for a first offense family violence battery seems anomalous in light of the stiffer penalty (misdemeanor of a high and aggravated nature) for a first time simple assault or simple battery offense involving similarly situated persons. This may be the result of a legislative oversight.
4. The offense of family violence battery includes siblings among its possible victims whereas siblings as victims are specifically excluded from the definition of the lesser offenses of simple assault and simple battery and the greater offenses of aggravated assault and aggravated battery. This may also be the result of a legislative oversight.
5. See Section 4.2.2.A.3 -Battery, above, for additional discussion.

E. **Aggravated Battery**. O.C.G.A. § 16-5-24(h) provides that "[i]f the offense of aggravated battery is committed 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 excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years." (Note: Siblings are not excluded from the definition of "family violence" set forth in § 19-13-1.)

4.3.2. Domestic Violence Sentencing - Second or Subsequent offenses.

A. **Battery**. O.C.G.A. § 16-5-23.1(f) provides that "[i]f the offense of battery is committed 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, then such offense shall constitute the offense of family violence battery and shall be punished as follows:
B. Upon a second or subsequent conviction of family violence battery against the same or another victim, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years. In no

event shall this subsection be applicable to reasonable corporal punishment administered by parent to child."

1. *Spinner v. State*, 263 Ga. App. 802, 803-804 (2003) (a nolo contendere plea to a prior battery involving a family member can be considered a prior conviction for purposes of O.C.G.A. § 16-5-23.1(f)(2) which simply enhances the penalty for the newly-committed act).
2. *State v. Dean*, 235 Ga. App. 847, 847-848 (1998) (defendant's prior battery conviction involving his wife could serve as basis for enhanced sentence under O.C.G.A. § 16-5-23.1(f)(2) for second such conviction despite fact that first conviction predated the enactment of that subsection; not ex post facto because penalty for first conviction not increased).
3. Note: The offense of family violence battery includes siblings among its possible victims whereas siblings as victims are specifically excluded from the definition of the lesser offenses of simple assault and simple battery and the greater offenses of aggravated assault and aggravated battery. This may be the result of a legislative oversight.

4.3.3. Proof of Prior Family Violence Act Conviction(s).

A. *Apprendi v. New Jersey*, 530 U.S. 466 (2000) (a criminal defendant's Sixth Amendment right to a jury trial, applied to the states through the Due Process clause of the Fourteenth Amendment, requires that any fact that increases the penalty for a crime beyond the prescribed statutory maximum for that offense, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt).

B. The Apprendi rule seems to require the State to both allege and prove the familial relationship between the victim and defendant in order to authorize a sentencing enhancement for a first offense involving family violence. The sentencing judge is not permitted to make that factual finding on his own.

1. *Grogan v. State*, 297 Ga. App. 251 (2009)(a defendant may not wait until after his second conviction for FVB to challenge on direct appeal the validity of this recidivist felony sentence based upon his first conviction for FVB).

C. The Apprendi rule does not seem to require the State to allege or prove to the trier of fact the existence of a first offense in order to authorize a sentencing enhancement for a second offense involving family violence.

1. *Grogan v. State*, 297 Ga. App. 251 (2009)(trial court properly relied on defendant's prior conviction for FVB in sentencing defendant to felony recidivist punishment).

2. *Spinner v. State,* 263 Ga. App. 802, 803-804 (2003) (O.C.G.A. § 16-5-23.1(f) is a recidivist statute that simply enhances the punishment for repeat offenders of family violence battery, thus proof of a prior conviction is not an element of the crime of felony family violence battery).
3. *State v. Dean,* 235 Ga. App. 847, 847-848 (1998) (defendant's prior conviction for battery against wife properly served as basis for enhanced sentence under O.C.G.A. § 16-5-23.1(f)(2)).

4.3.4. Special Conditions of Probation.

A. . **Psychological evaluation and treatment**. O.C.G.A. § 16-5-90(d) provides that "[b]efore sentencing a defendant for any conviction of stalking under Code Section 16-5-90 or aggravated stalking under Code Section 16-5-91, the sentencing judge may require psychological evaluation of the offender…. At the time of sentencing, 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."

1. *Benton v. State,* 256 Ga. App. 620, 623(fn.9) (2002) (trial court did not abuse its discretion in imposing family counseling as a condition of defendant's probation following his conviction for stalking his own daughter).

B. **Permanent restraining orders**. O.C.G.A. § 16-5-90(d) provides that "[a]t the time of sentencing [for any conviction of stalking under Code Section 16-5-90 or aggravated stalking under Code Section 16-5-91], 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."
C. No contact with victim/Stay away provisions.

1. *Talley v. State,* 269 Ga. App. 712, 714-715 (2004) (upheld condition of probation barring defendant from having contact with his ex-wives and his own children after defendant used threats to kill his children to manipulate his ex-wives).
2. *Benton v. State,* 256 Ga. App. 620, 623 (2002) (trial court did not abuse its discretion in restraining defendant from contacting his daughter and her family following his stalking conviction based on "ample basis for the victim's concern").

D. **Mandatory family violence intervention programs**. O.C.G.A. § 19-13-16(a) provides that "[a] court, in addition to imposing any penalty provided by law, when sentencing a defendant or revoking a defendant's probation for an offense involving family violence, or when imposing a protective order against family violence, shall order the defendant to participate in a family violence intervention program, whether a certified program pursuant to this article or a program

operated pursuant to Code Section 19-13-15, unless the court determines and states on the record why participation in such a program is not appropriate."

1. See Appendix G – Differences Between Anger Management and Family Violence Intervention Programs.

4.3.5. Additional Consequences of Domestic Violence Sentencing.

A. **Felony Domestic Violence offenses**. A person convicted of any felony offense, including domestic violence offenses, is prohibited by law from receiving, possessing, or transporting any firearm. O.C.G.A. §16-11-131(b).
B. **Misdemeanor Domestic Violence offenses**. Federal law (Gun Control Act of 1968, as amended) prohibits persons convicted of certain qualifying domestic violence misdemeanor offenses from receiving or possessing any firearms. 18 U.S.C. 922(g)(9). See http://www.atf.gov/firearms/faq/misdemeanor-domestic-violence.html for a more detailed definition of these qualifying domestic violence misdemeanors.

1. **Note**: Sentencing judges should advise persons being sentenced for domestic violence misdemeanors that federal law may prohibit such persons from thereafter receiving or possessing any firearms. [This notification is a requirement for those states receiving federal funding from the US Department of Justice, Violence Against Women Act STOP grant program.]

4.4. Domestic Violence Arrests

It was formerly the law in Georgia that a police officer could not make an arrest for a misdemeanor offense unless that offense occurred in the officer's presence. When responding to domestic violence calls, this often resulted in officers being unable to make contemporaneous arrests. If victims of domestic violence desired to prosecute their abusers, they were told that they would have to swear out their own criminal warrant. To remedy this situation, Georgia's arrest statute was amended in 1988 to permit police officers to make family violence arrests based upon probable cause, whether or not the officer personally witnessed the crime.

4.4.1. Powers of Arrest, in General (O.C.G.A. § 17-4-20). O.C.G.A. § 17-4-20 delineates circumstances justifying an arrest by a law enforcement officer under Georgia law.

A. *Hight v. State*, 293 Ga. App. 254(1)(2008) (any arrest that is constitutional under federal law is also permissible under Georgia law, even if not specifically authorized by this code section); *Quick v. State*, 166 Ga. App. 492, 494 (1983)(same).

4.4.2. Authority to arrest for family violence offenses. O.C.G.A. § 17-4-20(a) provides that an officer may make an arrest with or without a warrant "if the officer has probable cause to believe that an act of family violence, as defined in Code Section 19-13-1, has been committed."

A. *Wright v. State,* 276 Ga. 454, 460 (2003) (arrest without warrant justified following the mysterious disappearance of defendant's estranged wife).
B. *McCracken v. State,* 224 Ga. App. 356, 358 (1997) (warrantless arrest properly based upon victim's on-the-scene accusation that her former boyfriend had beaten her and officer's observation of visible bodily harm, specifically victim's eye which was almost completely swollen shut).

4.4.3. **Victim need not press charges.** O.C.G.A. § 17-4-20.1(a) provides that "[w]henever a law enforcement officer responds to an incident in which an act of family violence, as defined in Code Section 19-13-1, has been committed, the officer shall not base the decision of whether to arrest and charge a person on the specific consent of the victim…."

A. *Shaw v. State,* 247 Ga. App. 867, 867-868 (2001) (police authorized to make warrantless arrest despite visibly injured victim's expressed desire not to prosecute).
B. *Holland v. State,* 239 Ga. App. 436, 436-437 (1999) (despite victim's claim that the defendant never struck her, evidence supported the arrest and subsequent conviction of defendant based on eyewitness accounts of defendant's attack upon her).

4.4.4. **Officer shall not threaten to arrest victim**. O.C.G.A. § 17-4-20.1(a) provides that "[n]o officer investigating an incident of family violence shall threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention."

A. *Harrison v. State,* 238 Ga. App. 485 (1999) (responding officer concluded that probable cause existed to arrest both the husband and the wife for simple battery committed upon one another).

4.4.5. **Discretion to arrest the** "**predominant aggressor**". Effective January 2021, O.C.G.A. § 17-4-20.1 was amended to substitute the term "predominant aggressor" for the previous term, "primary aggressor". Predominant aggressor means the individual who poses the most serious, ongoing threat, which may not be the initial aggressor in a specific incident. "[w]hen complaints of family violence are received from two or more opposing parties, or if both have injuries, the officer shall evaluate each complaint separately to attempt to determine who was the predominant aggressor. If the officer determines that one of the parties was the predominant physical aggressor, the officer shall not be required to arrest any other person believed to have committed an act of family violence during the incident. In determining whether a person is a predominant physical aggressor, an officer shall consider:

A. Prior family violence involving either party;
B. The relative severity of the injuries inflicted on each person; including whether the injuries are offensive versus defensive in nature
C. Threats that created the fear of physical injury;
D. The potential for future injury;
E. Whether one of the parties acted in self-defense or defense of a third party;
F. Prior complaints of family violence; and
G. Whether the person had reasonable cause to believe that he or she was in imminent danger of becoming a victim of any act of family violence."

1. *McCracken v. State*, 224 Ga. App. 356, 358 (1997) (responding officer was authorized to make a warrantless arrest based upon the victim's statement and her visible injuries without first investigating the defendant's explanation that she had thrown a bowl of hot chili on him).

4.4.6. **Family violence reports**. O.C.G.A. § 17-4-20.1 (c) provides that "[w]henever a law enforcement officer investigates an incident of family violence, whether or not an arrest is made, the officer shall prepare and submit to the supervisor or other designated person a written report of the incident entitled 'Family Violence Report.' Forms for such reports shall be designed and provided by the Georgia Bureau of Investigation. The report shall include the following:

A. Name of the parties;
B. Relationship of the parties;
C. Sex of the parties;
D. Date of birth of the parties;
E. Time, place, and date of the incident;
F. Whether children were involved or whether the act of family violence was committed in the presence of children;
G. Type and extent of the alleged abuse;
H. Existence of substance abuse;

I. Number and types of weapons involved;
J. Existence of any prior court orders;
K. Type of police action taken in disposition of case, the reasons for the officer's determination that one party was the primary physical aggressor, and mitigating circumstances for why an arrest was not made;
L. Whether the victim was apprised of available remedies and services; and
M. Any other information that may be pertinent.

1. *Meagher v. Quick,* 264 Ga. App. 639, 643 (2003) (whenever an incident of possible family violence is investigated by police, whether the complaint is founded or unfounded, preparation of a written Family Violence Report is mandatory).

4.4.7. Entry into home without arrest/search warrant.

A. *State v. Driggers,* 306 Ga. App. 849 (2010) (warrantless entry after arrest for the purpose of taking a victim's statement is illegal. Upon arrest, the exigent circumstances that justified the warrantless entry had expired, as the victim was not in need of assistance and was no longer in danger).
B. *Randolph v. State,* 278 Ga. 614, 614-615 (2004); aff'd *Georgia v. Randolph,* 547 U.S. 103 (2006) (police officers lacked authority to search marital residence, even though wife consented to the search, where defendant, husband, unequivocally declined to grant officers such consent).
C. *Chambers v. State,* 252 Ga. App.190 (2001) (a victim may invite police into her residence to investigate a claim of domestic violence and thereby authorize a subsequent warrantless arrest).
D. *Shaw v. State,* 247 Ga. App. 867, 870-871 (2001) (a warrantless entry by police to ask questions or to make an arrest, absent invitation or exigent circumstances, may be unconstitutional).
E. *Lord v. State,* 297 Ga. App. 88(1)(a)(2009) (exigent circumstances may authorize police to make a warrantless entry into a home following a report of domestic violence and to photograph or seize evidence in plain view); see also *McCauley v. State,* 222 Ga. App. 600, 601 (1996)(exigent circumstances).
F. *Duitsman v. State,* 212 Ga. App. 348, 349 (1994) (officers may pursue in "hot pursuit" a fleeing suspect into his home after witnessing an act of family violence).

4.4.8. Act of family violence need not occur at home.

A. *Holland v. State,* 239 Ga. App. 436 (1999) (a physical altercation took place in public outside the residence).
B. *Gilbert v. State,* 209 Ga. App. 483, 483-484 (1993) (officer authorized to make warrantless arrest for act of family violence despite the fact that the incident occurred on a dirt road far away from the family residence).

4.5. Domestic Violence Bonds

4.5.1. When a person is arrested and released on bond for a domestic violence offense, there is a strong likelihood that he will return to the scene of his crime, i.e., the home he shares with the victim. To minimize the risk of escalating violence in these cases, courts are authorized to delay the setting of bond for such offenders and to impose restrictive conditions of bond once set.

A. Victims of domestic violence are at grave risk for retribution once their abuser is released from jail. Restrictive bond conditions may contribute significantly to enhancing the safety of the victim and the victim's other family members.
B. Solid authority indicates the critical importance of limiting gun possession and use in family violence situations. Leaving an abuser with access to a gun increases the risk that later incidents of violence will turn lethal. A study of intimate partner assaults in Atlanta found that assaults were twelve times more likely to result in death to the victim if a firearm was present. Linda E. Saltzman, PhD, et al., "Weapon Involvement and Injury Outcomes in Family and Intimate Assaults," Journal of the American Medical Association, vol. 267, no. 22 (1992). From 1990 to 2002, over two-thirds of the spouse or ex-spouse victims, killed as a result of domestic violence, were killed by guns. (Bureau of Justice Statistics, 2005) (See Appendix E, Paragraph B - Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions) (See Section 3.2.2.B - Firearms and Appendix B - Assessing for Lethality)
C. In addition to physical retribution, immigrant and refugee victims are at special risk when their batterers use such victim's documentation and immigration status as a tool of family violence. (See Appendix H – Immigrants and Refugees)

4.5.2. **offenses bondable only before a superior court judge**. Many common domestic violence offenses are bailable only before a judge of the superior court. O.C.G.A. § 17-6-1(a) provides that "[t]he following offenses are bailable only before a judge of the superior court:

A. Treason;
B. Murder;
C. Rape;
D. Aggravated sodomy;
E. Armed robbery;
F. Aircraft hijacking and hijacking a motor vehicle;
G. Aggravated child molestation;
H. Aggravated sexual battery;
I. Manufacturing, distributing, delivering, dispensing, administering, or selling any controlled substance classified under Code Section 16-13-25 as Schedule I or under Code Section 16-13-26 as Schedule II;
J. Violating Code Sections 16-13-31 or 16-13-31.1 [drug trafficking];

K. Kidnapping, arson, aggravated assault, or burglary if the person, at the time of the alleged kidnapping, arson, aggravated assault, or burglary, had previously been convicted of, was on probation or parole with respect to, or was on bail for kidnapping, arson, aggravated assault, burglary, or one or more of the offenses listed in paragraphs (1) through (10) of this subsection; and
L. Aggravated stalking."

4.5.3. All other offenses bondable before a court of inquiry. O.C.G.A. § 17-6-1(b)(1) provides that "[a]ll offenses not included in subsection (a) of this Code section are bailable by a court of inquiry."

4.5.4. No person charged with a misdemeanor shall be refused bail.

A. A person charged with committing a misdemeanor domestic violence offense will generally be entitled to bail provided that special eligibility provisions may apply authorizing a court to deny bail or impose special conditions of bond. (See Sections 4.5.5 thru 4.5.8, below.)
B. O.C.G.A. § 17-6-1(b)(1) provides that "[e]xcept as provided in subsection (g) of this Code section [relating to appeal bonds], at no time, either before a court of inquiry, when indicted or accused, after a motion for new trial is made, or while an appeal is pending, shall any person charged with a misdemeanor be refused bail."

4.5.5. Eligibility for bail for family violence offenses. O.C.G.A. § 17-6-1(b)(2)(B) provides that "[w]hen an arrest is made by a law enforcement officer without a warrant upon an act of family violence pursuant to Code Section 17-4-20, the person charged with the offense shall not be eligible for bail prior to the arresting officer or some other law enforcement officer taking the arrested person before a judicial officer pursuant to Code Section 17-4-21."

4.5.6. Stalking offenses / special conditions of bail. O.C.G.A. § 17-6-1(b)(3) provides that:

A. Notwithstanding any other provision of law, a judge of a court of inquiry may, as a condition of bail or other pretrial release of a person who is charged with violating Code Section 16-5-90 [Stalking] or 16-5-91 [Aggravated Stalking], prohibit the defendant from entering or remaining present at the victim's school, place of employment, or other specified places at times when the victim is present or intentionally following such person.
B. If the evidence shows that the defendant has previously violated the conditions of pretrial release or probation or parole which arose out of a violation of Code Section 16-5-90 [Stalking] or 16-5-91 [Aggravated Stalking], the judge of a court of inquiry may impose such restrictions on the defendant which may be necessary to deter further stalking of the victim, including but not limited to denying bail or pretrial release. (See Section 4.5.1A, B & C, above, on Retribution.)

4.5.7. Schedule of bails for offenses bondable by courts of inquiry. O.C.G.A. § 17-6-1(f) provides that:

A. Except as provided in subsection (a) of this Code section or as otherwise provided in this subsection, the judge of any court of inquiry may by written order establish a schedule of bails and unless otherwise ordered by the judge of any court, a person charged with committing any offense shall be released from custody upon posting bail as fixed in the schedule.

B. For offenses involving an act of family violence, as defined in Code Section 19-13-1, the schedule of bails provided for in paragraph (A) of this subsection shall require increased bail and shall include a listing of specific conditions which shall include, but not be limited to, having no contact of any kind or character with the victim or any member of the victim's family or household, not physically abusing or threatening to physically abuse the victim, the immediate enrollment in and participation in domestic violence counseling (experts in this field warn against counseling – See Section 3.2.5 - Counseling and Family Violence Intervention Programs and Appendix G – Family Violence Intervention Programs) and, substance abuse therapy, or other therapeutic requirements. (See Appendix I – Mental Illness and the Court.)

C. For offenses involving an act of family violence, the judge shall determine whether the schedule of bails and one or more of its specific conditions shall be used, except that any offense involving an act of family violence and serious injury to the victim shall be bailable only before a judge when the judge or the arresting officer is of the opinion that the danger of further violence to or harassment or intimidation of the victim is such as to make it desirable that the consideration of the imposition of additional conditions as authorized in this Code section should be made. Upon setting bail in any case involving family violence, the judge shall give particular consideration to the exigencies of the case at hand and shall impose any specific conditions as he or she may deem necessary. As used in this Code section, the term "serious injury" means bodily harm capable of being perceived by a person other than the victim and may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, substantial bruises to body parts, fractured bones, or permanent disfigurements and wounds inflicted by deadly weapons or any other objects which, when used offensively against a person, are capable of causing serious bodily injury. (See Appendix B – Assessing for Lethality). In 2021, O.C.G.A. § 17-6-12 was revised to add misdemeanor stalking and family violence to the list of bail restricted offenses for which unsecured judicial release is not available.

4.5.8. **No appeal bond for certain crimes**. O.C.G.A. § 17-6-1(g) provides that "[n]o appeal bond shall be granted to any person who has been convicted of murder, rape, aggravated sodomy, armed robbery, aggravated child molestation, child molestation, kidnapping, trafficking in cocaine or marijuana, aggravated stalking, or aircraft hijacking and who has been sentenced to serve a period of incarceration of five years or more. The granting of an appeal bond to a person who has been convicted of any other felony offense or of any misdemeanor offense involving an act of family violence as defined in Code Section 19-13-1, or of any offense delineated as a high and aggravated misdemeanor or of any offense set forth in Code Section 40-6-391, shall be in the discretion of the convicting court. Appeal bonds shall terminate when the right of appeal terminates, and such bonds shall not be effective as to any petition or application for writ of certiorari unless the court in which the petition or application is filed so specifies."

A. *Brooks v. State,* 232 Ga. App. 115, 129 (1998) (the burden of seeking an appeal bond is on the convicted applicant and the decision whether to grant an appeal bond is a matter within the discretion of the trial judge).

4.5.9. Bond conditions.

A. *Camphor v. State,* 272 Ga. 408, 410 (2000) (when a defendant is charged with a violent crime against a specific victim, it is within the trial court's inherent powers to require that the defendant avoid any contact with the victim as a condition of remaining free pending trial).
B. *Clarke v. State,* 228 Ga. App. 219, 220 (1997) (a trial court has inherent authority to set conditions for bonds, even misdemeanor bonds, and such conditions will be upheld by the appellate courts absent an abuse of discretion).
C. Effective July 1, 2015 the Georgia Protective Order Registry includes criminal no contact orders as conditions of bond or probation.

4.5.10. Amendment of bond conditions. O.C.G.A. § 17-6-18 provides that "[a]ll bonds taken under requisition of law in the course of a judicial proceeding may be amended and new security given if necessary."

A. *Camphor v. State,* 272 Ga. 408, 409 (2000) (upholding amendment of bond to add a "stay away" condition).

4.5.11. Revocation of bonds.

A. *Hood v. Carsten,* 267 Ga. 579, 581 (1997) (because a bond revocation involves the deprivation of one's liberty, a trial court's decision to revoke bond must comport with at least minimal state and federal due process requirements).

B. *Clarke v. State*, 228 Ga. App. 219, 221 (1997) (a trial court has inherent authority to revoke a defendant's bond if, after a hearing, it finds satisfactory proof that the defendant has violated one or more of its provisions).

Chapter 5 EVIDENCE

The prosecution of domestic violence cases has increased dramatically in recent years. Recurring evidentiary issues raised in such prosecutions have led to a body of case law interpreting and applying general evidentiary principles in the domestic violence context. Effective January 1, 2013, Georgia's rules of evidence underwent a dramatic change. In April 2011, the Georgia legislature voted to completely replace the rules of evidence, Title 24 of the Code, with a new title based very closely on the Federal Rules of Evidence. Several of these commonly recurring evidentiary issues and the new rules that have taken effect, are summarized below.

5.1. Sufficiency of Evidence

5.1.1. No Corroboration Required.

A. O.C.G.A. 24-14-8 provides that "[t]he testimony of a single witness is generally sufficient to establish a fact." (replaced OCGA 24-4-8)

1. *Hartley v. State,* 299 Ga. App. 534 (2009)(written statement of defendant's estranged wife was sufficient to support the verdict of guilty).
2. *Simmons v. State,* 285 Ga. App. 129, 130 (2007)(victim's testimony on direct examination was adequate, standing alone, to sustain the conviction).

5.1.2. Corroboration, In General.

A. Although not required, corroborating evidence may in some domestic violence cases be necessary to meet the State's burden of establishing guilt beyond a reasonable doubt. Some common methods of corroborating a victim's testimony are listed below.

1. Blood splatter.

a. *Peterson v. State,* 274 Ga. 165, 166 (2001) (police observed blood splatters on the walls and blood stains in several places, including where the victim's head had apparently been slammed into a wall).

2. Confessions and admissions.

a. *Miller v. State,* 273 Ga. App. 761, 762 (2005) (defendant testified at trial and admitted a physical altercation with victim).
b. *Demons v. State,* 277 Ga. 724, 725 (2004) (defendant called 911 and informed the dispatcher that he had just killed his housemate).

3. Emails and letters.

a. *Port v. State*, 295 Ga. App. 109(2)(a) (2008)(defendant's emails to his estranged girlfriend expressing his love and affection for her were admissible to show his state of mind).

4. Eyewitness testimony.

    a. *Holland v. State*, 239 Ga. App. 436, 436-437 (1999) (two eyewitnesses testified that they observed defendant standing over the victim and striking her with his fists).
    b. *Simpson v. State*, 214 Ga. App. 587, 588(2) (1994) (testimony of two eyewitnesses sufficient to overcome domestic violence victim's claimed lack of knowledge regarding who had shot her).

5. Medical reports.

    a. *Lewis v. State*, 277 Ga. 534, 535 (2004) (medical examiner testified that defendant's estranged wife had suffered 42 injuries, including 17-20 stab or cut wounds to the neck).
    b. *Carter v. State*, 268 Ga. App. 688, 689 (2004) (medical testimony confirmed that defendant's wife had sustained "quite a bit of head trauma").

6. Photographs of injuries.

    a. *Miller v. State*, 273 Ga. App. 761, 763-763 (2005) (photographs showing extent of victim's injuries inconsistent with defendant's claim of self-defense).
    b. *Bell v. State*, 278 Ga. 69, 72 (2004) (trial court did not err in admitting a pre-autopsy photograph as the body had not been altered by authorities and the photograph was otherwise admissible to demonstrate the nature and location of the victim's wounds).
    c. *Moody v. State*, 277 Ga. 676, 680 (2004) (photographs of victim's partially buried body not overly gruesome and any prejudice was outweighed by their probative value).
    d. *Carter v. State*, 268 Ga. App. 688, 690 (2004) (photographs depicting wife's badly swollen and bruised face admissible to establish "bodily harm" element in this kidnapping with injury case).
    e. *Almond v. State*, 274 Ga. 348, 349 (2001) (properly authenticated digital photographs, i.e., those identified as fair and accurate by one having viewed the scene depicted therein, are admissible).

7. Physician's Medical Exam.

a. *Brown v. State,* 293 Ga. App. 633(1)(c)(2008)(physician who performed rape exam of victim properly permitted to testify that victim's demeanor was consistent with someone who had been sexually assaulted).

8. Police officer observations.

    a. *Horne v. State,* 298 Ga. App. 602 (2009)(investigators testified that the scene was consistent with the victim's story, as were her injuries).
    b. *Mullins v. State,*298 Ga. App. 368 (2009)(it is not improper bolstering for a police officer to express an opinion as to whether objective evidence in the case is consistent with the victim's story).
    c. *Shaw v. State,* 247 Ga. App. 867, 871 (2001) (the responding officer noticed red marks around the victim's throat as well as the defendant's demeanor toward the victim).
    d. *Holland v. State,* 239 Ga. App. 436, 437 (1999) (officer testified that the victim had a bleeding lower lip and some finger marks on her neck).
    e. *Allen v. State,* 213 Ga. App. 290 (1994) (officer testified that the victim's injuries were consistent with her claim of domestic violence and inconsistent with the defendant's accidental fall theory).

9. Property damage.

    a. *Mize v. State,* 262 Ga. App. 486, 489 (2003) (responding officer testified that telephones in the bedroom and living room had been disabled, a vase containing flowers lay broken on the living room floor, and the footboard of a bed was broken off).
    b. *Nasworthy v. State,* 169 Ga. App. 603, 640 (1984) (officer responding to domestic violence call noticed that several potted plants had been overturned in the hallway of the house).

10. Torn clothing.

    a. *Hawks v. State,* 223 Ga. App. 890, 892 (1996) (responding officer testified to observing victim's torn shirt).
    b. *Nasworthy v. State,* 169 Ga. App. 603, 640 (1984) (officer responding to domestic violence call noticed that victim's housedress had been torn at the sleeve).

11. Weapons.

    a. *Mize v. State,* 262 Ga. App. 486, 489 (2003) (responding officer found car washing brush that the defendant had allegedly used to beat his wife).
    b. *Nasworthy v. State,* 169 Ga. App. 603, 640 (1984) (recovery of .22 magnum revolver allegedly used by defendant during a domestic incident).

5.1.3. Intent to Commit Crime, Proof of.

A. O.C.G.A. § 16-2-6 provides that "[a] person will not be presumed to act with criminal intention but the trier of facts may find such intention upon consideration of the words, conduct, demeanor, motive, and all other circumstances connected with the act for which the accused is prosecuted."

1. *Shaw v. State*, 247 Ga. App. 867, 871 (2001) (a jury may infer that a person acted with criminal intent after considering the words, conduct, demeanor, motive, and all other circumstances connected with the act for which the accused is prosecuted).

5.2. Hearsay and Confrontation Issues

5.2.1. Hearsay, In General.

A. Any analysis of hearsay or the applicability of hearsay exceptions in domestic violence cases must include and take into careful consideration the effect of *Crawford v. Washington*, 541 U.S. 36 (2004), which sharply circumscribed hearsay exceptions purporting to dispense with the Confrontation Clause's cross-examination requirement. (See The Confrontation Clause, Section 5.2.2, below.)

B. Hearsay.

1. O.C.G.A. 24-8-801(c) defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." The definition of hearsay is nearly identical to Federal Rule 801(c) and is generally consistent with prior Georgia law.
2. O.C.G.A. § 24-8-807 states that "A statement not specifically covered by any law but having equivalent circumstantial guarantees of trustworthiness shall not be excluded by the hearsay rule, if the court determines that:

a. The statement is offered as evidence of a fact;
b. The statement is more probative on the point for which it is offered than any evidence which the proponent can procure through reasonable efforts; and
c. The general purposes of the rules of evidence and the interests of justice will best be served by admission of the statement into evidence.

3. *Mims v. State,* 314 Ga. App. 170 (2012) Defendant made a motion for a new trial that was denied and appealed that verdict on the ground that the trial court erred in admitting the victim's prior consistent statement over his hearsay objection and in admitting a police officer's allegedly irrelevant testimony. The Court then stated that it was proper to allow the officer's hearsay testimony as prior consistent testimony in light of defendant's questioning.

C. Necessity Exception.

1. O.C.G.A. § 24-3-1(b) provides that "[h]earsay evidence is admitted only in specified cases from necessity."
2. O.C.G.A. § 24-8-807 is consistent with former O.C.G.A. § 24-3-1(b), the statute it replaced, but adds the additional burden on the statement's proponent to make known to the adverse party, sufficiently in advance of trial, the intention to use the statement so as to provide the adverse party "with a fair opportunity to meet it."

    a. To satisfy the necessity exception, the proponent must (1) show a necessity for the evidence, e.g., the declarant is deceased, (2) a circumstantial guaranty of the statement's trustworthiness, and (3) that the hearsay statement is more probative and revealing than other available evidence See *Smith v. State*, 284 Ga. 304(3)(c)(2008); *Brown v. State,* 278 Ga. 810, 811 (2005).
    b. *Wright v. State,* 285 Ga. 57(3)(b)(2009)(child's statements to her grandmother on the day prior to her death that the defendant had caused the scratches to her stomach held admissible under necessity exception).
    c. *Culmer v. State,* 282 Ga. 330(2)(2008) (trustworthiness of deceased victim's statement to her friend shown by the nature of their friendship in which they would often share the intimate details of their lives and relationships).
    d. *McPherson v. State,* 274 Ga. 444 (2001) (deceased's statements to her friends and co-workers to whom she routinely confided about her intended breakup with the defendant held admissible under necessity exception).
    e. *Harrison v. State,* 238 Ga. App. 485, 486 (1999) (state failed to make the requisite showing of necessity when it failed to call other available eyewitnesses to the incident).
    f. *Miller v. State,* 289 Ga.854 (2011) (Testimony by deceased victim's friend that victim told friend she had been previously beaten up by defendant was admissible.

g. *Ward v. State*, 313 Ga. 265 (Ga. 2022): Defendant was convicted of malice murder of and firearms offenses against his on and off girlfriend. The court held that testimony made by the victim's close friends and family about relationship problems between the victim and defendant was admissible under the residual exception to the hearsay rule. The court also held that, if there was any error in admitting witness testimony under the residual exception after the State's untimely notice, the error was harmless.

D. Medical Diagnosis and Treatment.

1. Statements made for the purpose of diagnosis or treatment as well as medical history and information as to the cause or source of an injury are admissible under O.C.G.A. § 24-8-803 (4).

   a. *Payne v. State*, 273 Ga. App 483, 486 (2005) (statements to a treating physician relating to the cause of a victim's injuries were held admissible as being pertinent to diagnosis and treatment in this non-domestic violence case).
   b. *Brown v. State*, 273 Ga. App. 88, 89 (2005) (statements regarding the identity of the attacker and the circumstances surrounding the attack do not fall within this statutory exception if they are not pertinent to diagnosis or treatment).
   c. *Roberson v. State*, 187 Ga. App. 485, 486 (1988) (child's statements relating her medical history in this molestation case were properly admitted, but statements identifying her molester were not).

E. Prior Consistent Statements.

1. O.C.G.A. § 24-3-2 was repealed and replaced by O.C.G.A. § 24-8-801 effective January 1, 2013). O.C.G.A. § 24-8-801 states that "an out-of-court statement shall not be hearsay if the declarant testifies at the trial or hearing, is subject to cross-examination concerning the statement, and the statement is admissible as a prior inconsistent statement or a prior consistent statement under Code Section 24-6-613 or is otherwise admissible under this chapter".

   a. *Forde v. State*, 289 Ga. App. 805(1) (2008)(child's videotaped interview, made well after the alleged improper motive came into existence, was inadmissible as a prior consistent statement).

b. *Mims v. State,* 314 Ga. App. 170 (2012) Defendant tried to get the victim to testify that she had been drinking prior to the incident and could not positively say defendant was the attacker, thus calling her veracity into question. The Court then stated that it was proper to allow the officer's hearsay testimony as prior consistent testimony in light of defendant's questioning.

F. Prior Inconsistent Statements.

1. O.C.G.A. § 24-6-613 replaced O.C.G.A. § 24-9-83 January 1, 2013. The new rule steps away from one aspect of the old rule which requires that a witness be given an opportunity to recall his or her prior inconsistent statement before being impeached. The new Georgia rule allows a witness to be confronted with a prior inconsistent statement without any foundation. Moreover, extrinsic evidence of the witness's prior inconsistent statement is admissible as long as the witness "is afforded an opportunity" at some point to admit, deny, or explain the prior statement. The details of this new rule are discussed below. O.C.G.A. § 24-6-613 (a) & (b) provides:

   a. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time; provided, however, upon request the same shall be shown or disclosed to opposing counsel.
   b. Except as provided in Code Section 24-8-806, extrinsic evidence of a prior inconsistent statement by a witness shall not be admissible unless the witness is first afforded an opportunity to explain or deny the prior inconsistent statement and the opposite party is afforded an opportunity to interrogate the witness on the prior inconsistent statement or the interests of justice otherwise require. This subsection shall not apply to admissions of a party-opponent as set forth in paragraph (2) of subsection (d) of Code Section 24-8-801.
   c. Prerequisites to admissibility.

      (1) *Griffin v. State,* 262 Ga. App. 87, 88 (2003) (first, the prior statement must contradict or be inconsistent with the witness' in-court testimony; second, the prior statement must be relevant to the case; and, third, the examiner must lay the proper foundation with the witness).

   d. Admissible as substantive evidence.

      (1) *Hartley v. State,* 299 Ga. App. 534 (2009)(written statement of defendant's estranged wife was admissible substantively as a prior inconsistent statement to support the verdict of guilty).

(2) *Simmons v. State*, 285 Ga. App. 129 (2007)(jury was authorized to rely upon victim's prior statement to the responding officer regarding defendant's assault as substantive evidence notwithstanding her disavowal of that statement at trial).
(3) *Griffin v. State*, 262 Ga. App. 87, 88 (2003) (even though a witness may recant on the stand, her prior inconsistent statements may be considered by the jury as substantive evidence of the defendant's guilt).
(4) *Gibbons v. State*, 248 Ga. 858, 286 S.E.2d 717 (1982) (a prior inconsistent statement of a witness who takes the stand and is subject to cross-examination is admissible as substantive evidence, and is not limited in value only to impeachment purposes).

e. Recanting victims.

(1) *Griffin v. State*, 262 Ga. App. 87, 88-89 (2003) (when at trial the defendant's girlfriend recanted her earlier statements about the defendant's abuse, the State was permitted to impeach her testimony with her taped 911 call for help).
(2) *Watkins v. State*, 183 Ga. App. 778, 779 (1987) (a recanting victim's prior inconsistent statements to police at the scene of a domestic dispute may be used not only to impeach her trial testimony, but also as substantive evidence of the defendant's guilt).

G. Res Gestae.

1. Pursuant to O.C.G.A. § 24-8-803(2), an "excited utterance is a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition".

a. *Thompson v. State*, 291 Ga. App. 355(2) (2008)(audiotape of victim's 911 call was made with such immediacy after the attack that it qualified under the res gestae exception).
b. *Orr v. State*, 281 Ga. 112 (2006) (admission of a 911 tape where an unknown third party, who was not the caller, can be heard stating the defendant's name was erroneous under res gestae because the statement was reduced to an expression of opinion or conclusion absent evidence showing the declarant spoke from personal knowledge).
c. *Wilbourne v. State*, 214 Ga. App. 371, 372 (1994) (determination whether evidence is res gestae is in the discretion of the trial court but such discretion was abused in this case).

5.2.2. The Confrontation Clause.

A. In *Crawford v. Washington,* 541 U.S. 36 (2004), the United States Supreme Court held that a criminal defendant's Sixth Amendment right to confront witnesses against him is violated when at trial a court admits the "testimonial" pre-trial statements of an unavailable prosecution witness under a hearsay exception unless the defendant had a prior opportunity for cross-examination. While the Court stopped short of spelling out a comprehensive definition of "testimonial," it noted that the term includes, at a minimum, prior testimony at a preliminary hearing, before a grand jury, or at a former trial, and statements made in police interrogations. The Court further noted that "testimonial" statements are typically made under circumstances which would lead an objective witness to reasonably believe that his statement would be available for use at a later trial.

B. Under Crawford, with some exceptions as noted below, it appears that a domestic violence victim's on-the-scene and subsequent formal statements to police will ordinarily be considered as "testimonial" in nature and therefore inadmissible in the event that the victim is unavailable for cross-examination at trial, e.g., she invokes a spousal testimonial privilege and refuses to testify or simply fails to appear at trial.

1. Testimonial Statements.

a. Statements made to police officers.

(1) *Davis v. Washington,* 547 U.S. 813; 126 S. Ct. 2266, 2273-74 (2006)(statements taken by police officers in the course of interrogation are "testimonial," and subject to the Confrontation Clause, when the circumstances objectively indicate that there is no ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution).

(2) *Davis v. Washington,* 547 U.S. 813; 126 S. Ct. 2266, 2278-79 (2006)(alleged domestic battery victim's written statements in affidavit given to police officer who responded to domestic disturbance call were "testimonial" and, therefore, subject to Confrontation Clause because there was no emergency in progress when statements were given and the primary purpose of officer's interrogation was to investigate a possible past crime).

(3) *Wright v. State,* 285 Ga. 57(3)(a)(2009)(holding that child's words in response to a question by law enforcement after emergency had already ended were reflective of past events and, as such, were testimonial in nature).

(4) *Pitts v. State,* 280 Ga. 288 (2006) (statements which are originally non-testimonial, such as statements made to for the purpose of seeking immediate assistance, may shift to testimonial statements).

(5) *Jenkins v. State*, 278 Ga. 598, 605 (2004) (police interrogations as delineated in Crawford include "structured police questioning").
(6) *Moody v. State*, 277 Ga. 676, 679 (2004) (police interrogations as delineated in Crawford include interviews with witnesses conducted in the field shortly after the commission of a crime).

b. Waiver of Error.

(1) *Wilkerson v. State*, 286 Ga. 201 (2009) (when a defendant fails to raise an objection at trial to testimony as violating his right of confrontation, he is barred from raising the objection on appeal)
(2) *Cranford v. State*, 275 Ga. App. 474, 475 (2005) (when defendant's wife invoked her marital privilege and refused to testify, her testimonial statements to police were nonetheless properly admitted under the necessity exception where defendant failed to raise a constitutional objection under Crawford).
(3) *Walton v. State*, 278 Ga. 432, 434 (2004) (defendant's failure at trial to raise an objection to the admission of a dying declaration under the Sixth Amendment precluded consideration of the Crawford issue on appeal).
(4) *Watson v. State*, 278 Ga. 763, 767 (2004) (Crawford error waived where defendant failed to timely object to admission of his deceased wife's prior statements to a police officer regarding her fear of the defendant and his propensity for violence).

c. Reversible Error.

(1) *Miller v. State*, 273 Ga. App. 761, 764 (2005) (reversal of some convictions will be required when a wife's testimonial hearsay statements to police are admitted over a defendant's objection and the State is unable to show beyond a reasonable doubt that such statements did not contribute to the verdict).
(2) *Miller v. State*, 289 Ga. 854 (2011) Defendants were a mother and a son. Defendants appealed, arguing that their Sixth Amendment rights to confront witnesses were violated when the trail court allowed a Florida judge to testify to the contents of three petitions for temporary protective injunctions that were filed in his court, two by the victim and one by the mother. In regards to the mother, the Court held that the testimony by the Florida judge constituted reversible error. The Supreme Court reversed the conviction for the mother.

d. Harmless Error.

(1) *Boyd v. State,* 286 Ga. 166, 168 (2009) ("a right of confrontation violation is considered harmless if there is not a reasonable probability that it contributed to the verdict or if the other evidence against the defendant is overwhelming")
(2) *Wright v. State,* 285 Ga. 57(3)(a)(2009)(erroneous admission of child's testimonial hearsay statements to investigating officer that "Daddy did it" held harmless where no "reasonable probability that the evidence contributed to the verdict").
(3) *Humphrey v. State,* 281 Ga. 596, 599 (2007) (a Crawford violation is harmless if the hearsay was cumulative of other evidence or if the evidence against the defendant was overwhelming).
(4) *Bell v. State,* 278 Ga. 69, 72 (2004) (estranged wife's prior hearsay statements to police about prior difficulties with defendant were testimonial, but admission of such statements was harmless in light of the strength of the evidence including other admissible evidence of prior difficulties).
(5) *Brooks v. State,* 313 Ga. App. 789 (2012) Defendant was convicted of aggravated stalking. The Defendant appealed contending that the trial court erred in excluding or limiting evidence of certain defense witnesses. The Court of Appeals confirmed the defendant's conviction and held that "any error in the exclusion of evidence was harmless".
(6) *Moody v. State,* 277 Ga. 676, 680 (2004) (victim's prior hearsay statements to police two years before her murder about her being assaulted with a shotgun by the defendant were testimonial, but admission was harmless given such testimony was cumulative of other admissible evidence and because there was no reasonable possibility that it contributed to the conviction).

2. Non-Testimonial Statements.

a. Statements made to police officers.

(1) *Davis v. Washington,* 547 U.S. 813, 126 S. Ct. 2266, 2273-74 (2006)(statements taken by police officers in the course of an interrogation are "non-testimonial," and not subject to the Confrontation Clause, when they are made under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency).
(2) *Hester v. State,* 283 Ga. 367(4) (2008)(statements made by cut and bleeding victim to responding police and paramedic in response to question "what happened" deemed non-testimonial).

b. Statements made to persons other than police officers.

(1) *Brown v. State,* 278 Ga. 810, 811 (2005) (victim's hearsay statements to her cousin that she was distressed because defendant had been stalking her, attacked her, and had threatened to kill her one week before her murder were non-testimonial and properly admitted under the necessity exception to the hearsay rule).
(2) *Demons v. State,* 277 Ga. 724, 727-728 (2004) (victim's hearsay statements were not "testimonial" in nature as they were made in a conversation with a close friend, before the commission of any crime, and without any reasonable expectation that they would be used at a later trial, and thus properly admitted under the necessity exception to the hearsay rule).

c. 911 calls.

(1) *Davis v. Washington,* 547 U.S. 813; 126 S. Ct. 2266, 2276 (2006) (statements made by domestic abuse victim in response to 911 operator's questions while the defendant was allegedly inside the victim's home were not "testimonial" and, therefore, were not subject to Confrontation Clause because the victim was speaking about events as they were actually happening, and the primary purpose of the 911 operator's interrogation was to enable police assistance to meet an ongoing emergency).
(2) *Davis v. Washington,* 547 U.S. 813; 126 S. Ct. 2266, 2277 (2006) (a conversation which begins as an interrogation to determine the need for emergency assistance may "evolve into testimonial statements" once the emergency ends, and trial courts should, through in limine procedure, redact or exclude portions of any statement that have become testimonial).
(3) *Pitts v. State,* 280 Ga. 288 (2006) (admission of 911 tape does not violate the Confrontation Clause where the caller's primary purpose is to thwart an ongoing crime or seek assistance in a situation involving immediate danger).
(4) *Thomas v. State,* 284 Ga. 666(2)(2008)(admitting victim's 911 call identification of her ex-husband as the person who shot her under rationale of Davis).
(5) *Thompson v. State,* 291 Ga. App. 355(2)(2008) (victim's 911 call deemed "non-testimonial" in that it was made to seek assistance in a situation involving immediate danger).

3. Exceptions.

a. Statements not offered to prove the truth of the matter asserted (i.e., non-hearsay).

(1) In Crawford, the Supreme Court stated that the Confrontation Clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted. Crawford, 541 U.S. at 59, fn.9.

i. *Robinson v. State*, 271 Ga. App. 584, 587 (2005) (the Confrontation Clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted).

b. Dying declarations.

(1) In Crawford, the Supreme Court suggested that dying declarations should be exempted from the cross-examination requirement of the Sixth Amendment because a hearsay exception for such statements existed at common law at the time of the founding. Crawford, 541 U.S. at 54-56, fn.6.

i. *Sanford v. State*, 287 Ga. 351, 695S.E.2d 579 (2010) (dying declarations made while the subject is conscious of his condition being near death, even when death does not come immediately, are admissible).

ii. *Sanford v. State*, 287 Ga. 351, 695 S.E.2d 579 (2010) (dying declarations made in response to police inquiries are admissible).

iii. *Walton v. State*, 278 Ga. 432, 435 (2004) (although many dying declarations will be made under circumstances that render such hearsay statements non-testimonial, there is authority for admitting even those dying declarations that clearly are testimonial).

c. Witness testifies and/or is subject to cross-examination.

(1) In Crawford, the Supreme Court explicitly stated that if a declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements. Crawford, 541 U.S. at 59, fn.9.

i. *Dickson v. State*, 281 Ga. App. 539, 539-541 (2006) (declarant's testimony at a pre-trial bond hearing did not afford defendant adequate opportunity for cross-examination regarding a prior testimonial statement to police.)

ii. *Rice v. State,* 281 Ga. 149, 150-151 (2006) (defendant waived any Crawford objection when he chose not to cross-examine the declarant at a pre-trial deposition.)

iii. *Robinson v. State,* 271 Ga. App. 584, 587 (2005) (when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements).

iv. *Chambers v. State,* 252 Ga. App. 190, 194 (2001) (no error in admission of statements made by defendant's girlfriend to a police officer where the girlfriend testified at trial and was subject to cross-examination).

d. Prior in-court testimony subjected to cross-examination.

(1) In Crawford, the Supreme Court held that a defendant's right to confront the witnesses against him at trial would be satisfied if he had had an opportunity to cross examine an unavailable witness at a previous court proceeding in the case. Crawford, 541 U.S. at 57-58.

i. *Kilgore v. State,* 291 Ga. App. 892(1)(2008)(Crawford satisfied where defendant had prior opportunity to cross-examine his live-in girlfriend at his probation revocation hearing despite her refusal to testify at his trial on the same underlying incident).

ii. *Pitts v. State,* 272 Ga. App. 182, 186-187 (2005), cert. granted Sept. 19, 2005 (stating general rule that defendant must have been afforded a prior opportunity to cross-examine his wife before her testimonial statements to police could be admitted).

e. Forfeiture due to defendant's own misconduct.

(1) In Crawford, the Supreme Court stated that the rule of forfeiture by wrongdoing survives to extinguish the right to confrontation when the hearsay declarant's unavailability is attributable to the defendant's own wrongdoing. Crawford, 541 U.S. at 62.
(2) *Davis v. Washington,* 547 U.S. 813; 126 S. Ct. 2266, 2280 (2006) (one who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation).
(3) *Giles v. Calif.,* 128 S. Ct. 2678 (2008)(in order to invoke the forfeiture exception, the state must prove deliberate witness tampering by the defendant, i.e., that the defendant's actions in rendering the hearsay declarant unavailable were specifically designed to prevent such witness from testifying).

i. Note: Addressing concerns raised by the dissent, the majority opinion in Giles points out that acts of domestic violence are often intended specifically to dissuade a victim from resorting to outside help, including cooperating with police and prosecutors. *Id.* at 2693.

f. Hearsay admissible at bond hearings, preliminary hearings, motions to suppress, etc.

(1) The right to cross-examination guaranteed by the Confrontation Clause is generally considered to be a "trial right" and therefore the opportunity to cross-examine a hearsay declarant is not constitutionally mandated for non-trial stages of a criminal prosecution. See *California v. Green,* 399 U.S. 149, 157 (1970); *Pennsylvania v. Ritchie,* 480 U.S. 39, 52-53 (1987).

i. *Fair v. State,* 284 Ga. 165(3)(e)(2008)(guilt or innocence is not at issue on a motion to suppress and does not involve the issue of right of confrontation).

ii. *Gresham v. Edwards,* 281 Ga. 881 (2007) overruled on other grounds by *Brown v. Crawford,* 289 Ga. 722 (2011) (the right to confrontation is a trial right, thus Crawford is not applicable to preliminary hearings.)

iii. *Banks v. State,* 277 Ga. 543, 544 (2004) (admission of hearsay for the purpose of establishing probable cause for search warrant does not violate the constitutional right of a defendant to confront the accusing witnesses, because guilt or innocence is not the issue for determination).

iv. *U.S. v. Ventresca,* 380 U.S. 102, 107 (1965)(a finding of probable cause may rest upon evidence which is not legally competent in a criminal trial).

v. *Jones v. U.S.,* 362 U.S. 257, 271 (1960) overruled on other grounds by *U.S. v. Salvucci,* 448 U.S. 83 (1980) (it has long been recognized that hearsay is admissible in determining the existence of probable cause).

5.3. Similar Transactions / Prior Difficulties

5.3.1. Similar Transactions or Occurrences. Prior incidents involving an accused and the same victim should ordinarily be treated as "prior difficulties" not as similar transactions. (See Prior Difficulties, Section 5.3.2., below.)

A. **Notice / Timeliness**. Uniform Superior Court Rule 31.1 provides that "[n]otices of the state's intention to present evidence of similar transactions or occurrences … shall be given and filed at least ten (10) days before trial unless the time is shortened or lengthened by the judge."

   1. *Rodriguez v. State,* 211 Ga. App. 256, 258 (1993) (the purpose of timely advance notice is to allow the defendant to investigate the validity, relevancy, and other aspects of admissibility of the prior offenses).

B. **Notice / Content**. Uniform Superior Court Rule 31.3(B) provides that "[t]he notice shall be in writing, served upon the defendant's counsel, and shall state the transaction, date, county, and name(s) of the victim(s) for each similar transaction or occurrence sought to be introduced. Copies of accusations or indictments, if any, and guilty pleas or verdicts, if any, shall be attached to the notice."

C. **Hearings**. Uniform Superior Court Rule 31.3(B) provides that "[t]he judge shall hold a hearing at such time as may be appropriate, and may receive evidence on any issue of fact necessary to determine the request, out of the presence of the jury. The burden of proving that the evidence of similar transactions or occurrences should be admitted shall be upon the prosecution. The State may present during the trial evidence of only those similar transactions or occurrences specifically approved by the judge."

   1. *McClarity v. State,* 234 Ga. App. 348, 354 (1998) (a hearing at which the State relies upon the statements of the prosecuting attorney to make the required showing for the admissibility of similar transaction evidence is sufficient to satisfy the requirements of USCR 31.3(B)).

D. Three affirmative showings required.

   1. In *Williams v. State,* 261 Ga. 640 (1991), the Georgia Supreme Court held that the State must make three affirmative showings before a proffered similar transaction should be admitted:

      a. The first of these affirmative showings is that the State seeks to introduce evidence of the independent offense or act, not to raise an improper inference as to the accused's character, but for some appropriate purpose, which has been deemed to be an exception to the general rule of inadmissibility.

         (1) *Lamb v. State,* 273 Ga. 729, 731 (2001) (appropriate purposes include: to show a defendant's bent of mind, including to demonstrate a defendant's course of conduct, motive, intent, or lack of mistake).

(2) *Smith v. State*, 232 Ga. App. 290, 291 (1998) (appropriate purposes include: establishing a defendant's motive, intent, absence of mistake or accident, plan or scheme, or identity).

b. The second affirmative showing is that there is sufficient evidence to establish that the accused committed the independent offense or act.

(1) *Freeman v. State*, 268 Ga. 185, 187-188 (1997) (the State need only establish that the defendant committed the independent act by a "preponderance of the evidence").

c. The third affirmative showing is that there is a sufficient connection or similarity between the independent offense or act and the crime charged so that proof of the former tends to prove the latter.

(1) *Bogan v. State*, 255 Ga. App. 413, 414-415 (2002) (previous incident need not be identical).
(2) *Lamb v. State*, 273 Ga. 729, 731 (2001) (proper focus is on the similarities, not the differences).
(3) *Ryan v. State*, 226 Ga. App. 180, 181 (1997) (the lapse in time between the similar transaction and the offense being tried generally goes to the weight, not the admissibility of the similar act).

E. No limiting instruction required unless requested.

1. *Igidi v. State*, 251 Ga. App. 581, 584 (2001) (the law is well settled that the trial court does not commit reversible error by failing to give a contemporaneous limiting instruction without a request that it do so).

F. Similar transactions and domestic violence cases.

1. *Henry v. State*, 278 Ga. 554, 555-556 (2004) (trial court's finding of sufficient similarity of the prior incident was not erroneous where it showed that defendant had previously while intoxicated been involved in a shooting after an argument with a girlfriend).
2. *Talley v. State*, 269 Ga. App. 712, 713-714 (2004) (prior acts can show the accused's bent of mind as to how sexual partners should be treated; prior acts can also show an accused's course of conduct in reacting to disappointment or anger in such a relationship).
3. *Woods v. State*, 250 Ga. App. 164, 166 (2001) (prior similar acts by defendant against a previous sexual partner held admissible).

4. *Thomas v. State,* 246 Ga. App. 448 (2000) (in cases of domestic violence, prior incidents of abuse against family members or sexual partners are more generally permitted because there is a logical connection between violent acts against two persons with whom the accused had similar emotional or intimate attachment).
5. *Olds v. State,* No. A15A0136, 340 Ga. App. 401 (2017) (evidence of prior acts against two former female victims of the defendant was relevant and admissible under O.C.G.A.§ 24-4-404 (b), to show defendant's intent and motive).
6. *Harris v. State,* No. A16A1047, 338 Ga. App. 778 (2016) (prior similar acts by defendant against estranged wife and sister held admissible).
7. Limitations:

    a. *Fincher v. State*, 363 Ga. App. 439 (Ga. App. 2022): Defendant was convicted of a variety of crimes (aggravated assault, aggravated stalking, false imprisonment, burglary, cruelty to children in the third degree, criminal trespass, influencing a witness, and battery. The court held that, though the admission of other-acts evidence that the defendant forced the victim to have sex with other men for drugs was erroneous, any error was harmless.
    b. *Hounkpatin v. State,* 313 Ga. 789 (Ga. 2022): Defendant was convicted of felony murder of his two-year old step son. The court held that other-acts evidence of the defendant forcefully squeezing both the victim and another child around the rib cage in other instances was admissible to show intent. Additionally, the court held that in admitting other-acts evidence of purported child abuse (hitting, slapping), trial court's error was harmless, if any.
    c. *Pritchett v. State,* 314 Ga. 767 (Ga. 2022): Defendant was convicted of malice murder of his roommate (shooting death). The court held that other-acts evidence of previous incidents of assault and domestic disturbance were inadmissible for the purpose of showing plan, preparation or knowledge. The court also held that other-acts evidence of the defendant's prior violence against a significant other was inadmissible for the purpose of showing motive (to control others). The court found, though, that the trial court's error in admitting other-acts evidence was harmless.

5.3.2. Prior Difficulties. Prior difficulties are relevant past incidents between the accused and the victim in the present case. Prior difficulties need not necessarily be similar to the incident for which the accused is being tried. (Compare Similar Transactions, Section 5.3.1., above.)

A. No notice or hearing required.

1. *Cooks v. State,* 289 Ga. App. 179 ((2008)(prior difficulties between a defendant and the victim are not subject to the notice requirements of Uniform Superior Court Rule 31.1 and 31.3.); *McCullors v. State,* 291 Ga. App. 393(2)(2008)(same).
2. *Babb v. State,* 252 Ga. App. 518, 519 (2001) (the court is not required to abide by the pre-trial hearing requirements for similar transactions set forth in Uniform Superior Court Rule 31.3 before admitting evidence of prior difficulties between the defendant and the victim).

B. Relevant purpose.

1. *Brown v. State,* 278 Ga. 810, 811-812 (2005) (evidence of the defendant's prior acts toward the victim, be it a prior assault, a quarrel, or a threat, is admissible when the defendant is accused of a criminal act against the victim).
2. *Benton v. State,* 256 Ga. App. 620, 623 (2002) (evidence of prior difficulties is always admissible to show bent of mind, intent, and course of conduct between the accused and the victim).
3. *Cunningham v. State,* 243 Ga. App. 770, 771, 533 S.E.2d 735, 736 (2000) (evidence of prior difficulties between the parties is admissible if there is a logical, probative connection between the difficulties and the crimes charged).
4. *Dixson v. State,* 269 Ga. 898, 900 (1998) (prior acts of domestic violence by defendant against his girlfriend were relevant to his abusive course of conduct in this murder case).

C. No limiting instruction required unless requested.

1. *Cooks v. State,* 289 Ga. App. 179 (2008)(trial court is not required to give a limiting instruction to the jury on their consideration of prior difficulties in the absence of a request).
2. *Benton v. State,* 256 Ga. App. 620, 623 (2002) (where the defendant did not request a limiting instruction on the prior difficulties evidence, the trial court did not err in failing to give one sua sponte).

D. Similarity not required.

1. *Cunningham v. State,* 243 Ga. App. 770, 771, 533 S.E.2d 735 (2000) (there is no requirement that a prior difficulty be so similar to the crime charged as to also constitute a similar transaction); *McCullors v. State,* 291 Ga. App. 393(2)(2008)(same).
2. *Dixson v. State,* 269 Ga. 898, 900 (1998) (prior acts of domestic violence against defendant's girlfriend were admissible in his trial for murdering her with a firearm despite the fact that the prior acts did not involve the use of a weapon; such prior acts were relevant to show the abusive nature of the relationship).

3. *Herring v. State,* 224 Ga. App. 809, 814 (1997) (mere fact that prior difficulties between defendant and his wife occurred in a variety of places and over different matters did not render such prior acts irrelevant).

E. Lapse in time.

1. *Benton v. State,* 256 Ga. App. 620, 623 (2002) (the statute of limitation as to an indicted offense certainly places no time restrictions on the introduction of prior difficulties when such evidence goes to show the intent with which the indicted act was committed).
2. *Babb v. State,* 252 Ga. App. 518, 519 (2001) (similar offenses occurring eleven and fourteen years earlier between defendant and his sister held admissible; lapse in time goes to weight and credibility, not admissibility).

F. Prior difficulties in domestic violence cases.

1. *Allen v. State,* 284 Ga. 310(2)(2008)(prior DV incidents between defendant and his ex-girlfriend admissible in his trial for her subsequent murder).
2. *Bell v. State,* 278 Ga. 69, 71-72 (2004) (prior difficulties between defendant and his estranged wife, including his prior threats to kill her, were properly admitted in this murder case).
3. *Moody v. State,* 277 Ga. 676, 678 (2004) (evidence of prior difficulties was relevant to show the defendant's motive, intent, and bent of mind in committing the act against the victim).
4. *Hayes v. State,* 275 Ga. 173, 175 (2002) (evidence of prior threats, quarrels or assaults by a defendant against a victim are admissible as prior difficulties to show motive and intent).
5. *Hawks v. State,* 223 Ga. App. 890, 892 (1996) (photographs showing victim's injuries from prior incident of domestic abuse admissible in defendant's assault trial to show his course of conduct).

5.4. Defenses and Related Issues

5.4.1. Self Defense.

A. **Justifiable use of force**. O.C.G.A. § 16-3-21(a) provides that "[a] person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself or herself or a third person against such other's imminent use of unlawful force; however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony."

B. **Unjustifiable use of force**. O.C.G.A. § 16-3-21(b) provides that "[a] person is not justified in using force under the circumstances specified in subsection (a) of this Code section if he:

1. initially provokes the use of force against himself with the intent to use such force as an excuse to inflict bodily harm upon the assailant;
2. is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or
3. was the aggressor or was engaged in a combat by agreement unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force.

    a. *Miller v. State*, 273 Ga. App. 761, 762-763 (2005) (although the defendant contended that he had beaten his wife in self-defense, the jury was authorized to disbelieve him based on the extent of his wife's injuries as depicted in photographs taken at the scene).
    b. *McCracken v. State,* 224 Ga. App. 356, 358 (1997) (defendant was not justified in beating his live-in girlfriend's face in response to her act of tossing a bowl of hot chili on him).

C. **Immunity from prosecution**. O.C.G.A. § 16-3-24.2 provides that "[a] person who uses threats or force in accordance with [Georgia's law of self defense] shall be immune from criminal prosecution…"

1. *State v. Yapo*, 296 Ga. App. 158(2)(2009)(a defendant claiming immunity under this statute must convince the trial court by a preponderance of evidence at a pre-trial hearing that he was acting in self defense).

D. Jury Charge: Justification.

1. *Buice v. State*, 281 Ga. App. 595, 598 (2006) (prima facie case of justification requires a showing that the victim was the aggressor, that the victim assaulted the defendant, and that the defendant was honestly trying to defend himself; thus, defendant not entitled to justification instruction where two theories presented at trial were either that defendant was aggressor or that defendant never touched victim).

5.4.2. Mutual Combat.

A. If there was an intention on the part of both the deceased and the defendant to enter into a fight or mutual combat and that under these circumstances the defendant killed the deceased, then ordinarily such killing would be voluntary manslaughter, regardless of which party struck the first blow or fired the first shot. (See Suggested Pattern Jury Instructions, Vol. III, Criminal Cases, 2.03.43.)

1. *Demons v. State,* 277 Ga. 724, 726 (2004) (jury instruction on mutual combat not required where there was no evidence that defendant and the victim were both armed with deadly weapons and mutually intended or agreed to fight).
2. *Brannon v. State,* 188 Ga. 15, 17-19 (1939) (the evidence did not disclose an intent to fight on the part of the deceased wife who was killed by the defendant while on Christmas furlough from jail where he had been serving time for a previous fight with her).
3. *Eich v. State,* 169 Ga. 425 (1929) (where there was evidence that the defendant and his wife had been fighting all night and evidence that she may have shot him first, a charge of voluntary manslaughter under the theory of mutual combat was required).

5.4.3. Battered Person Syndrome.

A. O.C.G.A. § 16-3-21(d) provides that "[i]n a prosecution for murder or manslaughter, if a defendant raises as a defense a justification provided by subsection (a) of this Code section, the defendant, in order to establish the defendant's reasonable belief that the use of force or deadly force was immediately necessary, may be permitted to offer:

1. Relevant evidence that the defendant had been the victim of acts of family violence or child abuse committed by the deceased, as such acts are described in Code Sections 19-13-1 and 19-15-1, respectively; and
2. Relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to the family violence or child abuse that are the bases of the expert's opinion.

    a. *Cave v. State,* S18A1539 (2019) (Trial court was correct in not allowing expert testimony on battered person syndrome offered to negate the intent elements of the crimes of which defendant was charged related to the death of the infant daughter of her former partner).
    b. *Horne v. State,* 333 Ga. App. 353 (2015) (Expert witness testimony was relevant to explain why a victim of intimate partner violence might recant in order to protect the abuser from prosecution).
    c. *Pickle v. State,* 280 Ga. App. 821 (2006) (The trial court erred in excluding defendant's expert witness testimony that the defendant was a victim of battered person syndrome, since the evidence was relevant to show that the victim lacked the requisite intent to commit the crimes. The error was harmless however, because other evidence overwhelmingly showed that the defendant's conduct was knowing.

d. *Graham v. State,* 239 Ga. App. 429, 431 (1999) (battered person syndrome is not a separate defense and evidence supporting this syndrome is admissible only to assist the jury in evaluating a defendant's claim of self-defense under O.C.G.A. § 16-3-21, and such self-defense is not an issue where the criminal acts were directed toward non-aggressor victims).
e. *Nguyen v. State,* 234 Ga. App. 185 (1998) (verbal threats alone, unaccompanied by actual or attempted violence, cannot authorize reliance upon the battered person syndrome).
f. *Smith v. State,* 268 Ga. 196, 199 (1997) (battered person syndrome is not a separate defense, but evidence of the syndrome is relevant as a component of the defense of justification by self-defense).
g. *Chester v. State,* 267 Ga. 9, 11 (1996) (defendant seeking to rely on the battered person syndrome must show that she was previously subjected to acts of actual or attempted violence committed by the victim, and not simply verbal threats).
h. *Johnson v. State,* 266 Ga. 624, 626 (1996) (the battered woman syndrome describes a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives).
i. *Chapman v. State,* 259 Ga. 706, 707-708 (1989) (evidence of battered woman syndrome is admissible to show that the defendant had a mental state necessary for the defense of justification although the actual threat of harm does not immediately precede the homicide).
j. *Smith v. State,* 247 Ga. 612, 619 (1981) (expert testimony admitted to explain why a person suffering from battered woman's syndrome would not leave her mate, would not inform police or friends, and would fear increased aggression against herself).
k. Browne's (1998) ground breaking study found that one of the significant characteristics of abusers who were killed by their victims is they more frequently raped or sexually assaulted their partners. (See Appendix B – Assessing for Lethality)

B. Jury Charge: Battered Person Syndrome.

1. In *Smith v. State,* 268 Ga. 196, 200-201 (1997), the Georgia Supreme Court recommended the following jury charge be given if evidence of the battered person syndrome has been properly placed before the jury:

(1) I charge you that the evidence that the defendant suffers from battered person syndrome was admitted for your consideration in connection with the defendant's claim of self-defense and that such evidence relates to the issue of the reasonableness of the defendant's belief that the use of force was immediately necessary, even though no use of force against the defendant may have been, in fact, imminent. The standard is whether the circumstances were such as would excite the fears of a reasonable person possessing the same or similar psychological and physical characteristics as the defendant, and faced with the same circumstances surrounding the defendant at the time the defendant used force.

5.4.4. Prior Violent Acts by Victim.

A. Notice and hearing requirements.

1. Uniform Superior Court Rule 31.1. provides that "[n]otices of … the intention of the defense to introduce evidence of specific acts of violence by the victim against third persons, shall be given and filed at least ten [10] days before trial unless the time is shortened or lengthened by the judge."
2. Uniform Superior Court Rule 31.6(A) provides that "[t]he defense may upon notice filed in accordance with Rule 31.1, claim justification and present during the trial of the pending case evidence of relevant specific acts of violence by the victim against third persons."
3. Uniform Superior Court Rule 31.6(B) provides that '[t]he notice shall be in writing, served upon the states counsel, and shall state the act of violence, date, county and the name, address and telephone number of the person for each specific act of violence sought to be introduced. The judge shall hold a hearing at such time as may be appropriate and may receive evidence on any issue of fact necessary to determine the request, out of the presence of the jury. The burden of proving that the evidence of specific acts of violence by the victim should be admitted shall be upon the defendant. The defendant may present during the trial evidence of only those specific acts of violence by the victim specifically approved by the judge."
4. Uniform Superior Court Rule 31.6(B) provides that "[n]otice of the State's intention to introduce evidence in rebuttal of the defendant's evidence of the victim's acts of violence and of the nature of such evidence, together with the name, address and telephone number of any witness to be called for such rebuttal, shall be given defendant's counsel and filed within five days before trial unless the time is shortened or lengthened by the judge."

a. *Williams v. State*, 255 Ga. App. 177, 179 (2002) (Uniform Superior Court Rules 31.1 and 31.6 require a defendant to provide the State with written notice at least ten days before trial which states the specific violent act, the date of the act, and the name, address, and telephone number of the person involved).

B. Threshold showing for admissibility.

1. *Williams v. State*, 255 Ga. App. 177, 178-179 (2002) (in order to present evidence of prior violent acts by the victim, a defendant is required to (1) follow the procedural requirements for introducing the evidence, (2) establish the existence of prior violent acts by competent evidence, and (3) make a prima facie showing of justification).
2. *Peterson v. State*, 274 Ga. 165, 167 (2001) (to make a prima facie showing of justification, a defendant must show that the victim was the aggressor, that the victim assaulted the defendant, and that the defendant was honestly seeking to defend himself).

5.4.5. Accident.

A. O.C.G.A. § 16-2-2 provides that "[a] person shall not be found guilty of any crime committed by misfortune or accident where it satisfactorily appears there was no criminal scheme or undertaking, intention, or criminal negligence."

1. *Griffin v. State*, 262 Ga. App. 87, 89 (2003) (jury charge not required where defendant denied the act itself).

5.4.6. Abusive Language.

A. § 16-5-25 provides that "[a] person charged with the offense of simple assault or simple battery may introduce in evidence any opprobrious or abusive language used by the person against whom force was threatened or used; and the trier of facts may, in its discretion, find that the words used were justification for simple assault or simple battery."

1. *Danzis v. State*, 198 Ga. App. 136, 137 (1990) (the defense of verbal provocation in O.C.G.A. § 16-5-25 is limited to the offenses of simple assault and simple battery; it does not apply to the offense of battery).

5.4.7. Corporal Punishment.

A. O.C.G.A. § 16-3-20(3) provides that a person's conduct may be justified "[w]hen the person's conduct is the reasonable discipline of a minor by his parent or a person in loco parentis." (See Section 4.1.2. - Family Violence Act, above.)

1. *Marshall v. State,* 276 Ga. 854, 857 (2003) (what is reasonable parental discipline may depend upon the age and physical condition of the child).
2. *Buchheit v. Stinson,* 260 Ga. App. 450, 455-456 (2003) (mother's action of slapping child in response to child's disrespectful behavior constituted reasonable discipline administered in form of corporal punishment, not simple battery).
3. *Bearden v. State,* 163 Ga. App. 434 (1982) (not error to refuse to give charge on reasonable parental discipline where defendant's 5-year old stepdaughter had bruises on 75% of her face and 25% of her body).

5.4.8. Joint Property, Damage to:

A. *Mack v. State,* 255 Ga. App. 210 (2002) (defendant's conviction for criminal damage to property upheld despite the fact that he damaged a car that was jointly titled in his name and that of his estranged wife).
B. *Ginn v. State,* 251 Ga. App. 159, 161 (2001) (a jury could reasonably conclude that the damaged property, a computer keyboard, was not the defendant's property alone, and that his damaging of it would make him guilty of criminal trespass).

5.5. Privileges

5.5.1. Characteristics of a Valid Privilege: The communication originated in confidence, confidentiality is essential to the relationship, the relationship is one that is publicly recognized, and disclosure would cause more long term harm than the short term benefit.

5.5.2. Spousal Testimonial Privilege.

A. O.C.G.A. § 24-5-503(a) provides that "[h]usband and wife shall be competent but shall not be compellable to give evidence in any criminal proceeding for or against each other."
B. § 24-5-503(b) provides additional exceptions to the general rule of privilege. The privilege is not available in cases: where one spouse is charged with a crime against the person of a child under 18; where one spouse is charged with a crime against the other; where one spouse is charged with causing physical damage to either marital property or the separate property of the other; or, where the alleged crime against a spouse occurred prior to the marriage of the parties.

1. *Harrison v. State,* 238 Ga. App. 485, 486 (1999) (a spouse who refuses to testify against a defendant by invoking the marital privilege is "unavailable" for the purpose of finding necessity under O.C.G.A. § 24-3-1(b) replaced by . O.C.G.A. § 24-8-807 (effective January 1, 2013).

2. *State v. Peters*, 213 Ga. App. 352 (1994) (the spousal testimonial privilege may be asserted even when the marriage was entered into for the explicit purpose of preventing the spouse's testimony).
3. *White v. State,* 211 Ga. App. 694, 695 (1994) (if a spouse chooses to testify, it is presumed that she has waived her spousal testimonial privilege and she may be cross-examined as any other witness).
4. Caution: See *Crawford v. Washington* Section 5.2.2, A. above (invocation of a marital testimonial privilege will likely bar the admissibility of all testimonial statements made by the invoking spouse notwithstanding so-called necessity exceptions to the hearsay rule)..

C. **Privilege inapplicable in child cruelty cases**. O.C.G.A. § 24-5-503(b)(1) directs that the privilege "shall not apply in proceedings in which the husband or wife is charged with a crime against the person of a child under the age of 18, but such husband or wife shall be compellable to give evidence only on the specific act for which the accused is charged."

1. *Beck v. State,* 263 Ga. App. 256, 258-259 (2003) (spousal testimonial privilege would not have been applicable to relieve wife of duty to testify against her husband regarding his alleged molestation of his stepdaughter).

D. **Privilege inapplicable in criminal domestic violence cases**. In criminal cases, a judge may order disclosure if the evidence is material and relevant to: guilt, degree of guilt, or sentencing for the offense charged or a lesser included offense.

1. This evidence cannot be used to challenge the victim's character for truthfulness or untruthfulness. However, prior inconsistent statements are fair game.
2. The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.

E. **Privilege inapplicable in civil cases**. Evidence is material and relevant to factual issues to be determined.

1. This evidence cannot be used to challenge the victim's character for truthfulness or untruthfulness. However, prior inconsistent statements are fair game.
2. The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.

F. Privilege belongs to the witness spouse, not the defendant.

1. *Smith v. State*, 254 Ga. App. 107, 108 (2002) (the privilege of refusing to testify, i.e., the spousal testimonial privilege, belongs to the witness spouse and not to the defendant).

G. No duty to advise victim spouse of her right not to testify.

1. *Smith v. State,* 254 Ga. App. 107, 108 (2002) (court has no obligation to inform victim spouse of the spousal testimonial privilege and where a spouse takes the stand and testifies voluntarily, it is presumed that she has waived that privilege).

H. **Applicability of privilege to** "**common law**" **marriages**. O.C.G.A. § 19-3-1.1 provides that "[n]o common-law marriage shall be entered into in this state on or after January 1, 1997. Otherwise valid common-law marriages entered into prior to January 1, 1997, shall not be affected by this Code section and shall continue to be recognized in this state."

5.5.3. Marital Communications Privilege.

A. O.C.G.A. § 24-5-501(a)(1) provides that "[c]ommunications between husband and wife" are excluded on grounds of public policy."
B. The statute has been interpreted to apply only to "confidential communications" and not to impersonal communications not made in reliance on the marital relationship.

1. *Helton v. State,* 217 Ga. App. 691, 692 (1995) (marital communications privilege does not prohibit testimony by someone who overheard communications between spouses).
2. Caution: The court should be careful not to confuse the Marital Communications Privilege with the Spousal Testimonial Privilege, Section 5.5.1. above. See, e.g., *Webb v. State,* 284 Ga. 122 (5)(2008).

C. O.C.G.A. § 24-5-503(b)(1) directs that the inter-spousal communication privilege "shall not apply in proceedings in which the husband or wife is charged with a crime against the person of a child under the age of 18, but such husband or wife shall be compellable to give evidence only on the specific act for which the accused is charged."

1. *Pirkle v. State,* 234 Ga. App. 23 (1998) (defendant's statement to his then-wife not barred by marital communications privilege where subject matter of such statement related to defendant's alleged molestation of a child).

D. **Privilege inapplicable in criminal domestic violence cases**. In criminal cases, a judge may order disclosure if the evidence is material and relevant to: guilt, degree of guilt, or sentencing for the offense charged or a lesser included offense.

1. This evidence cannot be used to challenge the victim's character for truthfulness or untruthfulness. However, prior inconsistent statements are fair game.

2. The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.

E. **Privilege inapplicable in civil cases**. Evidence is material and relevant to factual issues to be determined.

1. This evidence cannot be used to challenge the victim's character for truthfulness or untruthfulness. However, prior inconsistent statements are fair game.
2. The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.

F. Privilege belongs to BOTH spouses.

1. *White v. State,* 211 Ga. App. 694, 695 (1994) (the marital communications privilege, unlike the spousal testimonial privilege, belongs to both the communicating spouse and the spouse receiving the communication, and may extend to confidential acts as well as verbal communications).

G. Applicability of privilege to "common law" marriages. O.C.G.A. § 19-3-1.1 provides that "[n]o common-law marriage shall be entered into in this state on or after January 1, 1997. Otherwise valid common-law marriages entered into prior to January 1, 1997, shall not be affected by this Code section and shall continue to be recognized in this state."

1. *Abrams v. State,* 272 Ga. 63, 64 (2003) (evidence supported trial judge's conclusion that defendant and prosecution witness did not have a common-law marriage, thus defendant's statements to the witness were not privileged)(Overruled on other grounds by *Baugh v. State,* 276 Ga. 736, 738(2003)).

5.5.4. Privileges of Parties and Witnesses.

A. O.C.G.A. § 24-5-505(a) provides that a person shall not be required to incriminate himself or herself or to testify as to any matter which shall "tend to bring infamy, disgrace or public contempt upon such party." However, the Supreme Court has ruled that this privilege has no application where "the proposed answer has no effect on the case except to impair the witness' credibility." If the testimony is material and relevant to the issues in the case, the privilege is not available to the witness.

1. *Glisson v. State,* 188 Ga. App. 152, 154 (1988) (a witness cannot refuse to testify relative to material matters concerning a crime committed by a member of her family on the basis that her answer would bring disgrace, infamy or public contempt upon her or her family).

5.5.5. Exceptions to Privileges

A. In order for their to be a waiver, the person holding the privilege must consent to disclosure. Consent must be espressed or result from "decisive, unequivocal conduc." Silence is not enough. *Kennestone Hosp. v. Hopson,* 273 Ga. 145, 148 (2000). The person holding the priviledge makes the information public. *In re Paul*, 270 Ga. 680, 686 (1999).
B. A privilege "cannot be invoked for the benefit of other persons who are strangers to such relationship". White v. Regions Bank, 275 Ga. 38,41 (2002).

5.5.6. Family Violence Rape Crisis Privilege O.C.G.A. § 24-5-509

A. An agent of a program cannot be compelled to disclose any evidence in a judicial proceeding that the agent either acquired while providing services to the victim or provided that such evidence was necessary to enable the agent to render services.

    1. An agent of a program is an employee or volunteer that has successfully completed a minimum of 20 hours of training in family violence and sexual assault intervention and prevention conducted by a Criminal Justic Coordinating Council approved program.

B. O.C.G.A. § 24-5-509 (effective January 1, 2013) creates a new privilege for communications between a family violence or sexual assault victim and counselors, including volunteers, providing services to such victims at family violence shelters and rape crisis centers. However, in both civil and criminal cases, a party may by motion, compel the testimony of an agent of a family violence or rape crisis unit to whom disclosures were made by an alleged victim upon showing: that the evidence is material and relevant; that it is not otherwise available; and, that the probative value of the evidence sought substantially outweighs "the negative effect of the disclosure on the victim." Other than evidence of prior inconsistent statements, disclosures will not be ordered if the only purpose of the evidence relates to the alleged victim's character for truthfulness. If the moving party requests disclosure on proper grounds, the court is to take the evidence under seal for in camera review and may order disclosure of those portions of the evidence which are proper under the code section.

5.5.7. Prosecution-Based Victim Advocate Work Product Privilege

A. O.C.G.A. § 17-17-9.1: Communications between a victim and victim assistance personnel appointed by a prosecuting attorney and any notes, memoranda, or other records made by such victim assistance personnel of such communication are privileged.

1. These communications are work product of the prosecuting attorney and are not subject to disclosure except where such disclosure is required by law. Such work product shall be subject to other exceptions that apply to attorney work product generally.
2. This statute only applies to "victim assistance personnel appointed by a prosecuting attorney". Victim assistance personnel included employees or vlunteers acting under direction and authority of the District Attorney or Solicitor-General. O.C.G.A. §15-18-14.2, 15-18-20, 15-18-71.
3. This statute does not apply to employees or volunteers of non-governmental organizations such as Non-profit organizations and for profit organizations. However, these organizations may be covered by other privileges. O.C.G.A. §§ 24-9-21(5), (6), (7) & (8); 24-5-503.

5.5.8. Duration of Privilege

A. Privilege usually survivies death of holder or other party. *Spence v. Hamm,* 226 Ga. App. 357, 358 (1997) (attorney - client). *Sims v. State,* 251 Ga, 877, 881 (1984) (psychiatrist-patient). *Co. v. Boney,* 139 Ga. App. 575, 577 (1976) (Spousal).

5.6. Experts

5.6.1. Expert Witnesses, In General.

A. O.C.G.A. § 24-9-67 provides that "[i]n criminal cases, the opinions of experts on any question of science, skill, trade, or like questions shall always be admissible; and such opinions may be given on the facts as proved by other witnesses."
B. O.C.G.A. § 24-7-707 states that "in criminal proceedings, the opinions of experts on any question of science, skill, trade, or like questions shall always be admissible; and such opinions may be given on the facts as proved by other witnesses.

5.6.2. Expert's Qualifications.

A. *Moorer v. State,* 290 Ga. App. 216 (3) (2008)(licensed clinical social worker with extensive training and experience in domestic violence cases was properly qualified).
B. *Miller v. State,* 273 Ga. App. 761, 764 (2005) (witness' 20 years experience in the field of domestic violence and her educational background in psychology held sufficient).
C. *Bell v. State,* 278 Ga. 69, 72 (2004) (trial court did not abuse its discretion in qualifying one witness as an expert while refusing to qualify another).

D. *Caldwell v. State,* 245 Ga. App. 630, 633 (2000) (officer permitted to testify based on her training and experience that victim's wounds were "defensive" ones).
E. *Siharath v. State,* 246 Ga. App. 736, 738 (2000) (to qualify as an expert, generally all that is required is that a person be knowledgeable in a particular matter; his special knowledge may be derived from experience as well as study, and formal education in the subject is not a requisite for expert status).

5.6.3. Expert Testimony, Subject Matter.

A. Admissibility of Scientific Principles or Techniques, in General.

1. In *State v. Tousley,* 271 Ga. App. 874, 876 (2005), the Georgia Court of Appeals held that a scientific principle or technique is admissible upon a showing that (1) the general scientific principles and techniques involved are valid and capable of producing reliable results and (2) the person performing the test substantially performed the scientific procedures in an acceptable manner.

a. Valid scientific principles or techniques.

(1) *Harper v. State,* 249 Ga. 519, 525-526 (1982) (the trial judge must decide whether the procedure or technique in question has reached a scientific stage of verifiable certainty, i.e., whether it "rests upon the laws of nature"; once a procedure has been recognized in a substantial number of courts, a trial judge may judicially notice, without receiving evidence, that the procedure has been established with verifiable certainty).
(2) *Vaughn v. State,* 282 Ga. 99(3) (2007)(Harper test still applicable in criminal cases despite the adoption of the Daubert test in Georgia Tort Reform Act, O.C.G.A. 24-9-67.1).

b. Acceptable scientific procedures.

(1) *State v. Tousley,* 271 Ga. App. 874, 877 (2005) (if the basic science and techniques used by the expert are reliable, the fact that the expert's conclusions are weak or subject to a certain margin of error usually goes to the weight, not admissibility, but if the expert substantially departed from principles and procedures that are the basis for the evidence's usual reliability, the evidence should be declined).

B. Dynamics of domestic abuse.

1. "Battered person syndrome" (See Section 5.4.3, Self-defense, above.)

a. *Moorer v. State*, 290 Ga. App. 216 (1)(2008)(admission of testimony from an expert in the area of battered woman syndrome permissible because it is an area beyond the ken of the ordinary layperson).
b. *Alvarado v. State*, 257 Ga. App. 746, 748 (2002) (domestic violence expert's testimony regarding battered person syndrome – cycle of violence, delayed reporting, remaining with abuser - was beyond the ken of the average layman and thus admissible to explain the victim's behavior).
c. *Chester v. State*, 267 Ga. 9, 13-14 (1996) (approving the use of expert testimony regarding the battered person syndrome to explain conduct of victims of domestic violence).

2. "Cycle of violence".

a. *Jones v. State*, 276 Ga. 253, 255 (2003) (at the beginning of an abusive relationship, the abuser is usually repentant; that the longer such a relationship goes on, the more the victim blames herself for the problems; that the episodes of violence do not repeat with the same frequency and there may be years between incidents; that it is common for abusive relationships to end in death or serious injury).
b. *Hawks v. State*, 223 Ga. App. 890 (1996) (trial court did not err in permitting expert to testify regarding the "cycle of abuse" which characterizes certain relationships in which repeated domestic violence occurs).

3. Delayed reporting of abuse.

a. *Moorer v. State*, 290 Ga. 216 (1) (2008)(expert testimony is admissible to explain the behavior of a domestic violence victim who does not report abuse or leave the abuser).
b. *Raymond v. State*, 232 Ga. App. 228, 229-230 (1998) (a psychologist testified that exposure to family violence might explain why a child would delay reporting abuse).

4. Denial of the abuse.

a. *Hawks v. State*, 223 Ga. App. 890, 893 (1996) (expert permitted to testify that in the "honeymoon" or "remorse" stage of the cycle of domestic violence, a victim often will go into denial).

5. Minimization of the abuse.

a. *Hawks v. State*, 223 Ga. App. 890, 893 (1996) (expert permitted to testify that in the "honeymoon" or "remorse" stage of the cycle of domestic violence, a victim often will minimize the violence which has occurred).

6. Reluctance to leave the abuser.

    a. *Jones v. State*, 276 Ga. 253, 255 (2003) (a common misconception about domestic violence is that if a person is hit once, the person will leave the relationship; the inability to leave an abusive relationship applies across the socioeconomic spectrum).

7. Reluctance to prosecute the abuser.

    a. *Jones v. State*, 276 Ga. 253, 255 (2003) (the victim feels tied to the abuser; that it is common for victims not to press charges; that the victim feels the responsibility to keep the family together).
    b. *Hawks v. State*, 223 Ga. App. 890, 893 (1996) (expert permitted to testify that in the "honeymoon" or "remorse" stage of the cycle of domestic violence, a victim often will become reluctant to prosecute her partner).

8. Batterer or abuser profile.

    a. *Jones v. State*, 276 Ga. 253, 255 (2003) (profile or syndrome evidence that suggests that a defendant shares the typical characteristics of a batterer or an abuser is inadmissible unless the defendant has placed his character in issue or has raised some defense which the syndrome is relevant to rebut; relevant here to rebut defendant's claim of accident).

9. Non-aggressor victim.

    a. *Pickle v. State*, 280 Ga. App. 821, 822-30 (2006) (expert testimony that defendant suffered from battered person syndrome was admissible to rebut mental state necessary to establish intent in trial for child abuse, battery, and aggravated assault.)

5.7. Miscellaneous Issues

5.7.1. Indictments and Accusations.

A. Surplusage / References to "Family Violence".

1. *State v. Barnett*, 268 Ga. App. 900, 901-902 (2004) (an indictment for aggravated assault is not subject to special demurrer because it lists the parenthetical phrase "family violence" in its title).

B. Surplusage / References to "Felony".

1. *State v. Barnett*, 268 Ga. App. 900, 902-903 (2004) (an indictment for aggravated assault is not subject to special demurrer because it lists the parenthetical phrase term "felony" in its title).

C. Insufficient evidence to prove family relationship.

1. *Gillespie v. State,* 280 Ga. App. 243, 245 (2006) (O.C.G.A. §16-5-23(f) does not appear to cover a relationship when defendant and victim apparently had sexual relations but the defendant did not know the victim was pregnant; further, a showing that the victim was at most a few weeks into pregnancy and later "lost" the child leads to reasonable conclusion that such a recently conceived fetus should not be considered a "child" under O.C.G.A. § 16-5-23(f)).

D. Materiality of date.

1. *State v. Swint,* 284 Ga. App. 343, 344 (2007) (accusation charging defendant with family violence battery and cruelty to children in the second degree did not allege that the date was material and the State could offer any evidence relevant to the crimes during the statutory period of limitations).

5.7.2. Jury Selection.

A. Scope of voir dire.

1. *Childers v. State,* 228 Ga. App. 214, 215 (1997) (State may explore jurors' personal beliefs concerning domestic violence issues including: whether (1) some women want to be hit; (2) some women ask to be hit; (3) the only way to get the attention of some women is to hit them; (4) hitting, punching, or kicking someone is an acceptable way to vent anger or frustration; and (5) the State should not get involved in domestic and/or family violence situations).

B. Excuses for cause.

1. *Park v. State,* 260 Ga. App. 879 (2003) (court should have excused ex-officer who expressed strong opinions about domestic violence in the Asian community).
2. *Bridges v. State,* 314 Ga. 395 (Ga. 2022): In a homicide case involving a woman shooting her partner in which the defendant claimed self-defense against her abusive partner (the decedent), the court held that prospective jurors who had personal experiences with domestic violence (one who had to physically defend herself against an abusive partner and one who had both experienced domestic violence herself and had witnessed a domestic dispute between her neighbors) were properly excused for cause.

C. Peremptory challenge.

1. *Floyd v. State,* 281 Ga. App. 72 (2006) (prospective juror's divorced or childless state is racially-neutral reason for exercise of peremptory strike).

2. *McKenzie v. State*, 294 Ga. App. 376(4) (2008)(prospective juror's past experiences with domestic violence deemed gender neutral).

5.7.3. Closing Arguments.

A. Victim's lack of cooperation.

1. *Simpson v. State*, 214 Ga. App. 587, 588 (1994) (State may argue that domestic violence crimes are crimes against the state and that a victim's cooperation in the prosecution of such cases is not required).

5.7.4. Verdict.

A. Inconsistent jury verdict.

1. *Amis v. State*, 277 Ga. App. 223 (2006) (Georgia does not recognize an inconsistent verdict rule, so acquittal on underlying offense of family violence battery was not ground to reverse conviction for cruelty to children in the third degree).

5.7.5. Recusal of Trial Judge.

A. OCGA §15-1-8(a)(3) provides that "[n]o judge ... shall ... [s]it in any case or proceeding in which he has presided in any inferior judicature, when his ruling or decision is the subject of review, without the consent of all parties in interest."

1. *Hargrove v. State*, 299 Ga. App. 27 (2009)(the fact that the trial judge had granted the victim's request for a temporary restraining order against the defendant was not alone sufficient to require his recusal at the defendant's subsequent trial for FV aggravated battery).

5.7.6. Miscellaneous Lay and Expert Witness Testimony Issues.

A. *Harvard v. State*, 365 Ga. App. 209 (Ga. App. 2022): In a case involving a conviction for child molestation, rape, and incest of the defendant's stepdaughters, the court held that neither defense counsel's failure to present expert witnesses to testify about the victims' forensic interviews nor his failure to object to testimony of witnesses about victim's disclosures prejudiced the defendant and thus did not constitute ineffective assistance of counsel.

Appendix A. DYNAMICS OF DOMESTIC VIOLENCE

The Blind Men and The Elephant…

The story of the blind men and the elephant originated in India. Several blind men are asked to describe an elephant by feeling different areas of its body. The man touching a leg describes a pillar while the one near the ear says it's a fan, and so on. The story illustrates that truth can be relative, and this is particularly applicable to a discussion of domestic violence. Efforts to develop "coordinated community responses" can be hampered by their relative perspective of the truth. Each system is designed to address or respond to a specific aspect of the domestic violence episode and thus people working in different systems see completely different aspects of domestic violence. Advocates working in shelters or answering hotlines see and hear about the most harrowing examples of abuse and torture. In contrast, police officers are often called to break up "domestic disputes" that seem mutually combative, and sometimes trivial. When people from different systems come together to discuss domestic violence, it can seem like they are speaking different languages altogether.

What Is Domestic Violence?

There is no single, universally accepted definition of domestic violence. Social service providers and community advocates usually take a broad view emphasizing a pattern of abusive behaviors including various forms of controlling tactics such as threats, manipulation and verbal abuse. In fact, researchers such as Johnson and Stark focus on intimidation and control as primary elements of domestic violence (Johnson 2006, Stark 2007). Many other researchers, in contrast,

focus on a specific form of violence such as physical abuse. However such a limited focus on physical violence summarily dismisses other forms of control that can be detrimental. Similarly, with the exception of stalking, most statutory definitions of domestic violence emphasize acts of physical or sexual violence rather than emotional abuse (Mills), suggesting a somewhat gendered view of domestic violence where strength is correlated with the ability to control and harm physically and sexually.

Generally speaking, domestic violence can be broadly defined as maltreatment that takes place in any interpersonal relationship, whether heterosexual or homosexual. The violence may be emotional, psychological, physical, sexual, or economic abuse and is most often about one person in the relationship using any means to control the other. Stalking and cyber-stalking are also being recognized as forms of intimate partner abuse.

How domestic violence is defined influences our understanding of everything from causation to dynamics to prevalence to interventions. The variance in definitions, theories of etiology and resulting research have led to ongoing confusion and debate about the nature of domestic violence.

Who Perpetrates Domestic Violence?

This depends on how domestic violence is defined. Since the start of the shelter movement in the 1970s, the issue of domestic violence has been conceptualized as male initiated violence directed towards female intimate partners in an attempt to coerce or control them. This conceptualization of violence has been incredibly important in terms of shaping public awareness and public policy regarding domestic violence, but many researchers believe it has led to a false framing of the issue. These researchers assert that domestic violence is a human problem, and the particular role of gender in the cause, perpetration and consequences of partner violence cannot be assumed.

When domestic violence is characterized as criminal behavior or a threat to physical safety, research suggests the perpetrators are overwhelmingly male. “Crime victimization” studies utilizing the National Violence Against Women Survey, National Crime Survey, and National Crime Victimization Survey focus on assaults that individuals either perceive or report as a crime. These studies reveal that domestic violence is “rare, serious, escalates over time, and is primarily perpetrated by men” (Kimmel, 2002). Most often thought of when the term domestic violence is utilized, this patterned use of physical abuse plus controlling and coercive behaviors represents the phenomenon seen in shelter populations and many criminal courts, where the violence represents a man’s attempt to dominate and control his partner. In this model, the violence is purposeful and is meant to intimidate and control the female partner. As such, it is not generally confined to physical violence and routinely involves severe emotional abuse, intimidation, and likely will result in severe injury for the woman (Johnson, 2000).

However, when domestic violence is narrowly defined as a discrete act of physical abuse between intimates, many studies reveal that women engage in these acts as frequently as men. “Family conflict” studies, which rely on self-reporting using the conflict tactics scale (CTS) developed in the 1970s by Straus, Gelles and Steinmetz, show the use of violence that is not coercive or controlling and is gender balanced. In this model, couples may engage in physical violence with one another in the context of a specific argument, but the violence is not meant to

control the other person and is likely to be bi-directional or mutual (Johnson, 2000). Similarly, studies using the CTS show this form of domestic violence occurs more frequently, does not escalate in severity, and is gender symmetrical (Kimmel, 2002). In fact, some research shows rates of female initiated violence in intimate relationships are equivalent to or even exceed male rates (Stets and Straus 1992).

Are There Different Kinds of Perpetrators?

The literature on male batterers has consistently supported the idea that they are not a homogenous group and can be classified into three distinct subtypes: (1) family-only (approximately 50% of batterers)- the least violent subgroup, these men engage in the least amount of marital violence, report the lowest levels of psychological and sexual abuse, are the least violent outside the home, and evidence little or no psychopathology; (2) dysphoric/borderline (approximately 25% of batterers)- these men engage in moderate to severe marital violence, their violence is primarily confined to their wife (although some outside violence may also be present), they are the most psychologically distressed and the most likely to evidence borderline personality characteristics; and, (3) generally violent/antisocial (approximately 25% of batterers)- these men are the most violent subtype, engaging in high levels of marital and extrafamilial violence, and they are the most likely to evidence characteristics of antisocial personality disorder (Holtzworth-Munroe & Stuart, 1994 p. 481-482). The emerging literature on female batterers suggests that women may also be distinguished from one another on constructs similar to those of male batterers [e.g., women who were violent towards their partner only (PO) versus women who were generally violent (GV) (Babcock, Miller & Saird, 2003)].

Men's use of violence against women is long-established, serious and often life threatening, but ignoring the role of women as perpetrators in domestic violence or referring them to intervention programs designed for male offenders is short-sighted. It remains important to view the issue of domestic violence through the widest lens possible when considering who perpetrates domestic violence. Issues of frequency, severity, chronicity, and level of injury are critical to parse out, as are patterns of abusive behaviors. Gender aside, considering a criminal act of domestic violence without understanding its context in the relationship between victim and perpetrator can have dangersous consequences.

What's needed is an improved understanding of the etiology of both men's and women's aggression. Ultimately, despite decades of intervention efforts with battered women and more than a decade of intervention efforts with batterers, domestic violence remains the most common cause of non-fatal injury to women in the U.S. (Kyriacou et al., 1999). No matter how domestic violence is defined, women suffer more frequent and severe injury as a result of domestic violence than men (Straus).

What Causes Domestic Violence?

Multiple theories have emerged in the last several decades to explain the causes of domestic violence. For example, "social learning" theories focus on behavior witnessed in childhood. "Conflict theory" assumes that among groups of people, including families, conflict is inevitable

and can sometimes rise to violent conflict. “Feminist theory” emphasizes patriarchy which supports men’s efforts to get and keep control over their female partners. “Attachment theory” suggests the strength and type of attachment bond to be significantly associated with the use of violence in the home (Bond & Bond, 2004; Carney & Buttell, 2005; Carney & Buttell, 2006; Dutton, 1995). Each theory has its proponents, as well as detractors, and each can point to empirical evidence or research to support their view (Cunningham, et al 1998).

As Cunningham notes, the many theoretical paradigms of domestic violence should be considered “additive rather than competing” with each contributing something to our understanding of its prevention and intervention. For example, early theories which characterized domestic violence as a mental illness have been mostly discredited. However, newer research by both Kernberg and Dutton has found a high incidence of personality disorders among batterers, particularly repeat offenders. Typical intervention programs are unlikely to produce consistent behavioral changes among people with these disorders (Brown), which suggests a gap in program offering for domestic violence perpetrators who exhibit multiple issues (substance abuse, mental illness, etc.).

Are There Different Kinds of Domestic Violence?

Some researchers assert that there are different types of domestic violence. The most helpful distinction in terms of understanding dynamics may be between sporadic or episodic violence, sometimes known as “common couple violence” or “situational couple violence” (Johnson, 1995), and an ongoing pattern of abusive behavior also known as “battering” “systemic abuse,” or “intimate terrorism.”

Johnson developed his typology of domestic violence based on the context and motive of the perpetrator. Specifically, Johnson (1995) developed an argument suggesting that domestic violence as the result of our patriarchal culture involving men using violence to subordinate women, and domestic violence as a form of conflict resolution used equally by men and women in intimate relationships are both conceptualizations of violence but are different phenomena. Situational Couple Violence (SCV), as its name implies, occurs when someone engages in abusive behavior to gain control of a particular situation. Intimate Terrorism (IT) is when physical violence is used with other tactics to gain and keep control over the other person. Violent Resistance occurs when a victim of IT engages in abusive behavior against the perpetrator of IT. Mutual Violent Control (MVC) describes a relationship in which both parties engage in abusive behavior in an effort to control the other.

What’s The Difference Between Episodic Or Situational Couple Violence and Intimate Terrorism?

Some acts of physical abuse occur without an overall context of control in the relationship. Known as episodic violence or situational couple violence, this type of violence refers to the phenomenon captured in the national family violence surveys, where the violence is not coercive or controlling and is gender balanced. In this model, couples may engage in physical violence with one another in the context of a specific argument, but the violence is not meant to control the other person and is likely to be bi-directional or mutual (Johnson, 2000). In broad terms, this

behavior tends to be more frequently witnessed, tends not to escalate in severity or frequency over time, and tends not to result in severe injury or death—although there can be exceptions. (Johnson). This may be the type of domestic violence illustrated in family conflict studies using the CTS.

By contrast, domestic violence which is more chronic and severe frequently occurs within a context of power and control. Intimate terrorism, (also known as battering or systemic abuse) defined as physical abuse plus a broad range of tactics designed to exert general control over the victim, does tend to escalate in severity and frequency over the course of the relationship and represents a man's attempt to dominate and control his partner.

While situational couple violence does not feature the coercive control, emotional abuse, or sexual abuse that is seen in relationships characterized by intimate terrorism, there is still potential for harm or injury (even serious injury). Perpetrators should be held accountable, and survivors may need protection through the courts or advocacy/shelter organizations.

In an Intimate Terrorism or Battering Relationship, What Are the Different Forms or Tactics of Abuse?

When the people think about domestic violence, it is usually in terms of physical assault that results in visible injuries to the victim. This is only one type of abuse. There are several categories of abusive behavior, each of which has its own devastating consequences. Lethality involved with physical abuse may place the victim at higher risk, but the long-term destruction of personhood that accompanies other forms of abuse is significant and cannot be minimized.

Control. Controlling behavior is a way for the batterer to maintain his dominance over the victim. Controlling behavior, the belief that he is justified in the controlling behavior and the resultant abuse is the core issue in abuse of women. It is often subtle, almost always insidious, and pervasive. This may include, but is not limited to:

Checking the mileage on the odometer following her use of the car.

Monitoring phone calls, using caller ID or other number monitoring devises, not allowing her to make or receive phone calls.

Not allowing her freedom of choice in terms of clothing styles, makeup or hairstyle. This may include forcing her to dress more seductively or more conservatively than she is comfortable.

Calling or coming home unexpectedly to check up on her. This may initially start as what appears to be a loving gesture, but becomes a sign of jealousy or possessiveness.

Invading her privacy by not allowing her time and space of her own.

Forcing or encouraging her dependency by making her believe that she is incapable of surviving or performing simple tasks without the batterer or on her own.

Using the children as spies in order to control the mother; threatening to kill, hurt or kidnap the children; abusing the children physically or sexually; and threatening to call Child Protective Services if the mother leaves the relationship.

Physical Abuse. According to the AMEND Workbook for Ending Violent Behavior, physical abuse is any physically aggressive behavior, withholding of physical needs, indirect physically harmful behavior, or threat of physical abuse. This may include, but is not limited to:

Hitting, kicking, biting, slapping, shaking, pushing, pulling, punching, choking, beating, scratching, pinching, pulling hair, stabbing, shooting, drowning, burning, hitting with an object, threatening with a weapon, or threatening to physically assault.
Withholding of physical needs, including interruption of sleep or meals, denying money, food, transportation, or help if sick or injured, locking victim in or out of the house, refusing to give, or rationing necessities.
Abusing, injuring, or threatening to injure others like children, pets, or special property.
Forcible physical restraint against her will, being trapped in a room, having her exit blocked, or being held down.
Hitting or kicking walls, doors, or other inanimate objects during an argument, throwing things in anger, destruction of property.
Holding the victim hostage.

Sexual Abuse. New research has shed light on what those working with battered women have known for years: the high occurrence of rape in physically abusive relationships. Taylor et.al. (2007) reports that two-thirds of the women in their study who were physically assaulted, also were raped by their abuser(s). A study of dating violence also showed considerable overlap between physical and sexual abuse (White & Smith 2004). DeKeseredy (2006) indicates that leaving a marital or cohabitating relationship increases a woman's chance of being sexually assaulted. Sexual assault perpetrated by a current partner is more traumatic for the victim than sexual assault perpetrated by a former partner or non-intimate. (Temple et.al., 2007). Sexual abuse is using sex in an exploitative fashion or forcing sex on another person. Having consented to sexual activity in the past does not indicate current consent. Sexual abuse may involve both verbal and physical behavior. This may include, but is not limited to:

Using force, coercion, guilt, or manipulation or not considering the victim's desire to have sex. This may include making her have sex with others, have unwanted sexual experiences, or be involuntarily involved in prostitution.
Exploiting a victim who is unable to make an informed decision about involvement in sexual activity because of being asleep, intoxicated, drugged, disabled, too young, too old, or dependent upon or afraid of the perpetrator.
Laughing or making fun of another's sexuality or body, making offensive statements, insulting, or name-calling in relation to this victim's sexual preferences/behavior.
Making contact with the victim in any nonconsensual way, including unwanted penetration (oral, anal or vaginal) or touching (stroking, kissing, licking, sucking or using objects) on any part of the victim's body.
Exhibiting excessive jealousy resulting in false accusations of infidelity and controlling behaviors to limit the victim's contact with the outside world.
Withholding sex from the victim as a control mechanism. Also, refusing to say, "I love you."

Emotional Abuse and Intimidation. According to the AMEND Workbook for Ending Violent Behavior, emotional abuse is any behavior that exploits another's vulnerability, insecurity, or character. Such behaviors include continuous degradation, intimidation, manipulation,

brainwashing, or control of another to the detriment of the individual. This may include, but is not limited to:

Insulting or criticizing to undermine the victim's self-confidence. This includes public humiliation as well as actual or threatened rejection.
Threatening or accusing, either directly or indirectly, with intention to cause emotional or physical harm or loss. For instance, threatening to kill the victim or himself, or both.
Using reality distorting statements or behaviors that create confusion and insecurity in the victim, such as saying one thing and doing another; stating untrue facts as truth; and neglecting to follow through on stated intentions. This can include denying the abuse occurred and/or telling the victim she is making up the abuse. It might also include what is "crazy making" behaviors such hiding the victim's keys and berating her for losing them.
Consistently disregarding, ignoring, or neglecting the victim's requests and needs.
Using actions, statements or gestures that attack the victim's self-esteem and self-worth with the intention to humiliate.
Telling the victim that she is mentally unstable or incompetent.
Forcing the victim to take drugs or alcohol.
Not allowing the victim to practice her religious beliefs, isolating her from the religious community, or using religion as an excuse for abuse.
Using any form of coercion or manipulation that is disempowering to the victim.

Isolation. Isolation is a form of abuse often closely connected to controlling behaviors. It is not an isolated behavior, but the outcome of many kinds of abusive behaviors. By keeping her from those she wants to see, doing what she wants to do, setting and meeting goals, and controlling how she thinks and feels, he is isolating her from the resources (personal and public) that may help her leave the relationship. By keeping the victim socially isolated he is cutting her off from those who might not reinforce his perceptions and beliefs. Isolation often begins as an expression of his love for her with statements such as: "If you really loved me you would want to spend time with me, not your family." As it progresses, the isolation expands, limiting or excluding her contact with anyone but the batterer. Eventually, she is left totally alone and without the internal and external resources to change her life.

Some victims isolate themselves from existing resources and support systems because of the shame of bruises or other injuries, his behavior in public, or his treatment of friends or family. Self-isolation may also develop from fear of public humiliation or from fear of harm to herself or others. The victim may also feel guilty for the abuser's behavior, the condition of the relationship, or a myriad of other reasons, depending on the messages received from the abuser.

Verbal Abuse: Coercion, Threats, and Blaming. Verbal abuse is any abusive language used to denigrate, embarrass, or threaten the victim. This may include, but is not limited to:

Threatening to hurt or kill the victim or her children, family, pets, property or reputation.
Name-calling ("ugly," "bitch," "whore," or "stupid").
Telling victim she is unattractive or undesirable.

Yelling, screaming, rampaging, terrorizing, or refusing to talk.

Economic Abuse. Financial abuse is a way to control the victim through manipulation of economic recourses. This may include, but is not limited to:

Controlling the family income, and either not allowing the victim access to money or rigidly limiting her access to family funds. This may also include keeping financial secrets or hidden accounts, putting the victim on an allowance or allowing her no say in how money is spent, or making her turn her paycheck over to him.
Causing the victim to lose a job or preventing her from taking a job. He can make her lose her job by making her late for work, refusing to provide transportation to work, or by calling/harassing her at work.
Spending money for necessities (food, rent, utilities) on non-essential items (drugs, alcohol, stereo equipment, hobbies).

Most Other Forms of Abuse Aren't Criminal Acts. As a Judge, Why Should I be Concerned?

Emotional abuse, verbal abuse, isolation and economic abuse can be used in concert with occasional physical abuse or threats to force victim compliance with the abuser's wishes. Termed "coercive control" by Evan Stark, this has been found by researchers to be "a more accurate measure of conflict, distress and danger to victims than the presence of physical abuse" (Beck & Raghavan, 2010). Thus it is impossible to appreciate a victim's vulnerability or risk without sufficient information regarding the context of domestic violence. Decisions, ranging from bond conditions to temporary protective orders to custody and visitation, should be made with as much information regarding the type and extent of domestic violence at issue in the relationship.

So How Can I Discern Whether Violence is Occurring Within a Context of Control?

It may not always be possible to determine whether a particular case involves intimate terrorism and a context of control, but assessing for lethality factors is critical. Judges can ask law enforcement officers about the presence of lethality factors, and encourage them to include these factors in police reports. Judges also can make an effort to gain access to the perpetrator's criminal history for use in fully evaluating the situation and potential danger. In certain settings, such as the ex parte TPO hearing, the judge can ask the victim questions about the violence or the context of the relationship; this type of questioning should not be done, and would not be productive, in a setting in which the perpetrator is present. Judges can also take a leadership role and ask for coordination between advocates and prosecutors' offices; domestic violence advocates are trained to work with and recognize lethality factors and contexts and types of domestic violence.
There are assessments for danger and lethality; they are not foolproof but can be helpful tools for assessing a victim's risk of being killed. (See Appendix B for a more detailed discussion of lethality factors). One such tool is Jacquelyn Campbell's danger assessment, which asks victims whether or not a number of factors, such as increase in frequency of violence, weapons,

strangulation, drugs, alcohol, threats, controlling behaviors, jealousy, suicidal thoughts or attempts, were involved during violence incidents over the past year (Campbell et al, 2003). The best way to assess a domestic violence situation is by keeping in mind that context is key, that greater injuries do not necessarily indicate greater danger. Also, follow intuition; sometimes a particular combination of factors or details of factors leads you to feel that there is greater risk.

What About When Victims Take the Perpetrator's Side, Ask the Court to Dismiss a TPO or Remove Conditions of Bond?

There are a number of different reasons why victims and survivors may not "cooperate" with the court system. The best way to learn about a victim's motivation is to listen.

When situations can be classified as intimate terrorism, survivors may recant or voluntarily contact a perpetrator after receiving a TPO against him because of economic dependence on the perpetrator, or because they believe that being conciliatory will avert another assault. Denial and minimization can also be evidence of trauma. Some victims suffer from post-traumatic stress disorder (PTSD), which may make them less able to cooperate with law enforcement or to follow through with court orders or pressing criminal charges.

In other situations, such as situational couple violence, victims may not cooperate with law enforcement officers and prosecutors because they do not want the options given to them by those officials. When the domestic violence is not accompanied by a context of power and control or by a history of abuse, victims may not want to have the perpetrator arrested or press charges because they believe, and studies have shown, that such violence can be curbed by other means such as counseling, or because the incident was a one-time act. In other instances, even if there has been a history of violence, the victim may love his or her perpetrator and may want other options and a chance to make the relationship work.

It should be noted that there is an ideology of victimization that encourages the criminal justice system to treat people who have been hit or threatened by a partner—regardless of context—as someone incapable of assessing the situation for themselves. It also believes those victimized need guidance and urging to make the "right" decision to end the relationship and criminally punish the perpetrator. Even though this answer uses the word "victim" to denote the person who was injured in the incident and "perpetrator" to denote the person who injured in the incident, it is important to remember that many actors are not "victims" or "perpetrators" in the traditional sense. The best way to assess a situation, to determine whether an injured party is uncooperative out of fear or out of frustration at being talked down to as a "victim," is to listen. Be sure that a victim is questioned separately from the perpetrator, in case he or she and the perpetrator have an intimate terrorism relationship. Doing so would be stressful or dangerous for the victim. Pay attention to context (Mills, 2008).

What Steps Can I Take To Increase The Safety of The Victim and His Or Her Family?

The most important step that a judge can take to increase the victim's safety is to assess the context of the domestic violence incident by looking for lethality factors or other evidence of coercive control. Using that analysis, be aware that a lack of injury does not necessarily mean that a victim is safe since physical abuse can taper off when the abuser has achieved control over

the victim. During custody or visitation hearings, the judge can also ensure that agreements are careful and precise. If a victim and a perpetrator need to meet in order to drop off or pick up children in common, the agreement should specify a safe location, such as a police or fire department. It should be specific, so as not to allow the perpetrator to place the victim or children in any danger, and so as not to allow the children to be used to place the victim in a dangerous situation. During bond hearings, the judge can order specific bond conditions, such as no contact, or the use of a monitoring device, in order to increase the victim's safety and protection from the perpetrator.
To increase the victim's safety at the courthouse, judges should consider the following:

Connect a victim with a local domestic violence advocate who will help the victim engage in safety planning and attend the victim's court hearings;

Order a safety check if the victim does not show up for a hearing;

Consider detaining the perpetrator in the courtroom until after the victim leaves a hearing;

Provide victims with updated information on their cases to minimize appearances in court, thus reducing the chances of placing her in further danger.

Encourage the court and the sheriff's department to create safe places within the courthouse where there is private space to speak with advocates.

Encourage training for sheriff departments on how to keep domestic violence victims and perpetrators apart during court hearings to keep victims safe (being available to walk or escort victims into and out of the courthouse for hearings, keeping perpetrators away from victims, etc.). (WomensLaw.org, Safety in Court.)

To increase victims' safety and perpetrators' accountability, broader steps can be taken through a coordinated community response . Such steps include:

Participate in a local domestic violence task force by assessing criminal justice resources and practices, promoting consistency and collaboration among response systems, and creating formal and informal networks for communication and collaboration across systems (GCFV, 2008). Follow the link for information on task forces: https://gcfv.georgia.gov/family-violence-task-forces.

Encourage prosecution, local domestic violence advocates, and law enforcement to form a collaborative group to assist with information sharing, cross-training, and transitioning of cases through the justice system (GA Fatality Review, 2007).

As part of task forces, ensure that agencies have a brochure or informational packet that includes a list of victims' rights and legal remedies informing victims about domestic violence (GA Fatality Review, 2007).

As part of task forces, provide assistance to local and state governing agencies to revise policies and procedures related to the agencies under their jurisdictions to ensure that response, outreach and education efforts include culturally sensitive, culturally relevant, and language accessible content (GA Fatality Review, 2007).

Be aware of the Safe Connections Act (HR 7132) which became law December 7, 2022 The Safe Connections Act pertains to safe communications access (specifically mobile services) for survivors of domestic violence, human trafficking, and related harms.

At a survivor's request, a mobile service provider must separate the survivor's phone line (and that of any dependents of the survivor) from the abuser's line. An exception applies if the separation is technologically infeasible. A survivor requesting this separation must verify through "appropriate documentation" that the alleged abuser committed or allegedly committed an act of domestic violence, trafficking, or a related criminal act against the survivor. The Act does not provide a definition or examples of what constitutes "appropriate documentation." The survivors must take on financial responsibility for services after a line separation.

The service provider has several requirements under the Act. The provider cannot impose fees or other requirements on survivors when they are leaving existing plans. The service provider also must meet requirements pertaining to timing, confidentiality, remote requests, and information accessibility regarding the process.

The law also imposes several requirements on the FCC, including expanding access to its federally subsidized communication services plan, offering a discount to survivors with financial difficulties, and creating rules requiring that calls and texts to domestic violence (or similar) hotlines are excluded from call or text logs that consumers can access.

Appendix B. ASSESSING FOR LETHALITY

Introduction

"Men of all ages and in all parts of the world are more violent than women…When it comes to violence, women can proudly relinquish recognition in the language, because here at least, politically correct would be statistically incorrect." --Author Gavin DeBecker on his use of male, gender-specific language in The Gift of Fear.

Margaret Zahn (2003) advises that although research has come a long way in determining the risk factors associated with intimate partner homicide, there is a disconnect between our social policies and our knowledge of these factors. She urges us to do a better job of linking the two if we are to resolve this social problem. Zahn believes intimate partner homicides and other homicides will decrease when the criminal justice system and victim service organizations focus on these risk factors.

Lethality factors can be useful courtroom tools. The best source of information for judges is the police report. If the police report doesn't specifically address lethality factors, judges can ask law enforcement about their presence or absence, which in turn would encourage police to put the factors into the police reports directly. Lethality factors can be helpful in determining bond conditions and issuing temporary protection orders. When using lethality factor analysis, it is important to consider context over the presence of physical violence; threats coupled with other non-physical lethality factors may indicate a more dangerous situation than one alone involving physical violence. A lethality factor analysis can assist judges in more thoroughly assessing the context in which domestic violence occurs, and in better anticipating danger and violence.

There are many efforts to determine which factors indicate an increased risk for homicide in domestic violence cases. The bottom line is that there is no single factor or set of factors that can be used as fail-proof indicators in assessing lethality. Yet several factors have emerged from research that can be considered significant in contributing to an increased risk for serious injury or homicide. The National Institute of Justice, in its November 2003 issue on the Assessment of Risk factors for intimate partner homicide, has found that among women who reported being subject to domestic violence, those who had been threatened or assaulted with a gun were 20 times more likely to be killed than other women, and those who were threatened with murder were 15 times more likely to be killed than other women. Rounding out the top five factors were non fatal

strangulation, extreme jealousy and forced sex. (NIJ Journal 250 p. 17). Research indicates that a combination of factors, instead of a single factor, increase the risk of intimate partner homicide. The research cited in this section refers specifically to intimate partner homicide, which does not include elder or child abuse. An "intimate partner" is defined as spouse, ex-spouse, boyfriend, girlfriend, ex-boyfriend or ex-girlfriend.

Lethality Factor List

Quantitative Lethality Factors (severity and amount of prior violence)

Attempted strangulation
Sexual assault
Increase in violent attacks
Threats to kill
Access to firearms
Animal or pet abuse

Qualitative Lethality Factors (behaviors related to abuser's desire for power and to control victim)

Controlling/jealous behavior
Victim's efforts to leave/sever relationship
Depression/thoughts of suicide
Victim's terror
Harassment/stalking-type behavior

Environmental Lethality Factors

Unemployment
Substance abuse
Access to victim
Pregnancy

Lethality Factors

Quantitative Lethality Factors (timing, frequency and severity of violence)

Non fatal strangulation

(1) In 2014, Georgia became 38th state to criminalize strangulation as a felony (OCGA 16-5-21). Prior to that, strangulation fell under the simple assault statute, OCGA §16-5-20.
(2) A 2003 National Institute of Justice report found that women who were subject to domestic violence, and who had been the victims of attempted

strangulation, were 10 times more likely to be killed than other women (NIJ Journal, No. 250)

(3) A 2008 Journal of Emergency Medicine study found that 43 percent of women who were murdered in domestic assaults and 45 percent who were victims of attempted murder had previously been choked by their male partners.

(4) 34% of abused pregnant women report being "choked" (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 7)

(5) Strangulation accounts for 11% of violent deaths every year (Paluch 11)

Sexual assault

Increase in violent attacks

(6) When an abusive partner increases the frequency of his violent acts, this poses a high risk of violence to the victim and to the abuser.

(7) No matter how severe the most recent act of violence, the occurrence of an incident within 30 days of that violence places the woman at high risk of being killed or of killing the abuser.

(8) It is important to remember that there need not be a long history of violence; even the first incident of domestic violence can be fatal.

Threats to kill

(9) A 2003 National Institute of Justice report found that women who were subject to domestic violence, and were threatened with murder, were 15 times more likely to be killed than other women (NIJ Journal, No. 250).

(10) In more than half of the cases reviewed by the Georgia Domestic Violence Fatality Review Project, threats to kill the primary victim were documented before the homicide. These threats cannot be dismissed as mere words; they must be taken seriously by victims and service providers alike.

Access to firearms

(11) A 2003 National Institute of Justice report found that women who were subject to domestic violence, and were threatened or assaulted with a gun, were 20 times more likely to be killed than other women (NIJ Journal, No. 250).

(12) When a gun was in the home, women were six times more likely to be killed by their abuser than other women in abusive relationships. Research also suggests that abusers who possess guns "tend to inflict the most severe abuse."

(13) The Georgia Domestic Violence Fatality Review Project found that of all of the deaths studied from 2003 to 2009, the majority were committed with firearms (2009).

Animal or Pet Abuse

(14) A 1997 study found that 71% of pet owners entering domestic violence shelters reported that the batterer had threatened, injured, or killed family pets (Ascione, F.R., Weber, C.V. & Wood, D.S. (1997). The abuse of animals and domestic violence: A national survey of shelters for women who are battered. Society & Animals 5.3: 205-218)

(15) A 2007 study found that batterers who abuse pets use more forms of aggressive violence, such as sexual violence, marital rape, emotional violence, and stalking, and demonstrate a greater use of controlling behaviors (Simmons, C & Lehmann, P. Exploring the Link Between Pet Abuse and Controlling Behaviors in Violent Relationships. Journal of Interpersonal Violence 22.9 (2007):1211-1222

(16) Pet abusers are more likely to be domestic violence abusers, to have been arrested for other violent crimes and drug related offenses, and engage in other delinquent behavior. Many abusers have a history of animal abuse that preceeds domestic violence towards their partner. (Ascione, F.R., Weber, C.V., Thompson, T.M., Heath, J., Maruyama, M., Hayashi, K. Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and Nonabused Women, Violence Against Women 13.4 (2007): 354-373 and Weber, C.V. A Descriptive Study of the Relationship Between Domestic Violence and Pet Abuse. Dissertation Abstracts International. Section B: The Sciences and Engineering. 59.80-B (1999).

Qualitative Lethality Factors (behaviors related to abuser's desire for power and to control victim)

Controlling/jealous behavior
Victim's efforts to leave/sever relationship

(17) The Georgia Domestic Violence Fatality Review found that in almost all domestic violence cases reviewed from 2003 to 2007, victims had indicated a desire to separate from their abusers just before the homicide – whether filing for a protective order, moving out and getting an apartment, or talking with family about leaving (2007).

Depression/thoughts of suicide (on the part of the abuser)

(18) The Georgia Domestic Violence Fatality Review found that in cases from 2004 and 2006, 38 percent of the perpetrators attempted or completed suicide

at the homicide scene or soon after. In 29 percent of the cases, the perpetrator had a history of depression or was depressed.

(19) In a majority of the cases from 2004 to 2009, friends and family were aware of the perpetrator's suicidal threats and attempts, but did not understand how the perpetrator's threats to hurt himself could impact the safety of the victim and others.

Victim's terror
Harassment/stalking-type behavior

(20) of the cases reviewed by the Georgia Domestic Violence Fatality Review Project from 2003 to 2009, 43 percent of homicide victims were stalked by their abusers before their murders. In many of these cases, stalking escalated after separation.

Environmental Lethality Factors

Unemployment

(21) Jacquelyn C. Campbell (2003) found the abuser's lack of employment to be the strongest environmental risk factor for intimate partner homicide, increasing the risk fourfold.

Substance abuse

(22) Sharps et al (2003) studied the connection between alcohol and drug use during, and in the year leading up to, an intimate partner homicide (or attempted murder), and found the following:

(23) Very high levels of alcohol and drug use were seen in males who murdered or attempted to murder their partners;

(24) In the year before the homicide or life-threatening abuse of their female partner, 80 percent of the male abusers were problem drinkers.

(25) Homicide and attempted homicide abusers were described as drunk every day or as a problem drinker or drug user.

(26) Two-thirds of the homicide and attempted homicide offenders used alcohol, drugs, or both during the incident.

(27) The research shows that when a male abuser is a problem drinker or drug user, his female partner is in a particularly dangerous situation. It also indicates that serious alcohol use by abusers increases the risk for a deadly incident to occur.

Access to victim
Pregnancy

Practical Application of Lethality Factors

The majority of victims who are abused by their intimate partners use the criminal justice system as their first line of defense. Most often that is a call to the police, but for many it is through the civil courts when they file a petition for a civil protective order. This points to the court's power to intervene through their policies and practices and attitudes to prevent intimate partner homicides. The following is a list of suggestions:

Police Reports

The best source of information regarding lethality factors present in a violent situation is the police report. Judges can ask law enforcement about the presence or absence of lethality factors. Work with law enforcement to encourage the development of a procedure for documenting lethality factors in police reports.

Temporary Protective Orders

Lethality factor analysis can be helpful in assessing the context in which domestic violence occurs, and in better anticipating danger and violence. Remember to consider the presence of lethality factors in addition to the severity of the act of violence when making decisions. Assaults or threats, coupled with other non-physical lethality factors, may indicate a more dangerous situation than one that includes more physical violence.

Be aware that by seeking a temporary protective order (TPO), a victim is signaling that his or her situation could be serious in spite of the lack of previous documentation.

When interviewing a TPO petitioner during the ex parte hearing know the indicators that signal an increased risk for homicide and ask the petitioner the appropriate questions to determine that risk.

In cases of very high risk (where a victim is planning to leave a very jealous and controlling partner with whom he or she lives) it is important to warn her not to confront her partner with that information and make an immediate referral to an advocate who can help her develop a safety plan.

In high risk situations, restrict the abuser's access to guns. A recent study (Bridges, Tatum and Kunselman, 2008) revealed that limiting firearm availability once a protective order has been served may help to reduce family homicide rates. The study found that in 47 states, there was an inverse correlation between family homicide rates and states mandating firearm restrictions during a protective order.

Either through the prosecutor's office or the local shelter, have an advocate who is immediately accessible to victims of intimate partner violence. It may be the only opportunity to provide them with resources for their safety.

Provide a list of local resources for anyone seeking seeks to file a temporary protective order.

Appendix C. SCREENING FOR DOMESTIC VIOLENCE

Why is it Important to Screen for Domestic Violence?

Often, survivors of domestic violence are hesitant to share their history of abuse. Even survivors that reach out to a loved one or an agency may find it difficult to discuss the details of their story (Cross 2016). Though these experiences may be difficult to disclose, they are crucial to document in order to provide the best protections, both legally and ethically. In cases where the survivor is a mother, you are also screening to protect the child(ren). An estimated ten million children witness domestic violence in a given year and up 60% of men that abuse women will also abuse children (American Bar Association 2005).

The screening process and the ability to conduct a screening successfully are both equally impactful to one's efficacy as an attorney. In order to protect the civil liberties of the client, proper care and attention must be given to the environment and circumstances in which a client lives and navigates. The presence of domestic violence will affect rulings on custody, relocation, parenting time, distribution of assets, and the determination of dispute resolution (Client Screening to Identify Domestic Violence Victimization 2013).

What Does Screening Try to Identify?

In short, behaviors and patterns. Through a screening process, you will build the context in which the survivor operates, as you ask questions to understand:

1. The intent of the offender
2. The meaning of the act to the victim
3. The effect of the violence on the victim

These factors, along with a detailed description of the act and the level of violence, coercion, or intimidation, will all impact the help that you can offer your client (Client Screening to Identify Domestic Violence Victimization 2013). There are additional signs that your client could be experiencing abuse from a partner or loved one. The Minnesota Bar Association list of signs that domestic violence has occurred or is occurring includes:

- Attempts to control and manipulate their actions
- Bruising, broken bones, and physical attacks
- Threats with weapons
- Pushing/shoving or otherwise intimidating behaviors
- Belittling or humiliating behavior

- Use of the legal system to punish
- Attempting to control victim-lawyer appointments
- Repeated, unwanted phone calls / text messages / communications
- Isolating victim from relatives, friends, peers

What Else Might Screening Help You Detect?

In addition to the information you are trying to collect and the signals that might help you detect domestic violence, there are also "red flags" to look out for. As the survivor shares the details of their experience with you, be sure to actively listen for risk factors such as:

- Violence; especially the pattern seems to be increasing in frequency or intensity
- Client expressing feelings of isolation, concerns over abusive behavior
- The abuser possessing a firearm and / or
- Abuser carries, has access to, uses, or threatens with a weapon
- Threats to kill (the client, children, or pets)
- Strangulation
- Stalking
- A history of police intervention in domestic violence calls
- Abuser makes threats of suicide (*CLIENT SCREENING TO IDENTIFY DOMESTIC VIOLENCE VICTIMIZATION 2013).*

Things to Consider Before You Begin the Screening

Before you begin an interview to screen for domestic violence, it is important that you prepare the "where and when" and the "what" of the interview with intentionality. The where and when of the interview is straightforward - where are you conducting the screening and at what time. Remember that some of the questions that you will be asking may be new to your client. You cannot plan for an emotional reaction, but you can take steps to ensure the client is in a safe space when they are answering these questions. The what of the interview includes the screening questions that you will be asking. Remember that the survivor of abuse may not be ready to disclose the details at this screening. When you ask the appropriate questions, you assure the client that there is a safe space to tell their story, when they are ready.

It is also important to remember that domestic violence is typically ongoing, rather than a single act. Situations may change and escalate, and new risk or lethality factors may emerge. Attorneys should revisit conversations regarding domestic violence during the course of representation.

Tools for Screening

The following table of questions has been adopted from the Domestic Abuse Committee of the Family Law Section of the Minnesota State Bar Association's "Client Screening to Identify Domestic Violence

Victimization" literature. These questions are intended to guide a thoughtful conversation and are by no means a checklist for the screening. Some clients may not be ready to answer specific questions regarding their experience; do not press for disclosure (Temple, 2020).

Guiding Questions	**Things to Listen For**
What do you believe are the issues currently in dispute between you and your partner?	Control issues; safety of client, children, pets; focus on other party's behavior; fear of harm, risk of violence or lethality
Would you feel comfortable in a meeting with [Partner's name]?	Fear; apprehension of being in the same room.
Are you currently employed? Where, doing what, for how long, etc.	Access to money; isolation; dependency
Have you ever lost a job, either by being laid off or by being fired? If yes, please tell me about how that happened.	Job interruption because of partner
Is your [partner's name] employed?	Unemployment of the batterer is a lethality factor
When you look back over time, how were decisions made in your marriage/relationship?	Overbearing partner; exaggerated jealousy; possessiveness; controlling and domination; threats; who controls the money, decides where to live, with whom time is spent either together or separately.
What happens when you speak your mind and express your point of view to [insert name]?	Demeaning; minimizing; name-calling; extreme argumentativeness; intimidation; threats
What is your support system like?	An imbalance between parties; life balance; client not allowed to do things alone; client isolated
Does [insert name] engage in activities outside the home or job? If yes, tell me about them.	Hobbies with potential for violence directed at your client (collecting comic books vs. collecting knives)
Does [insert name] ever try to control you in a way that makes you uncomfortable? (such as whom you see or talk to, how you spend money, what you wear, whether or not you work or go to school.)	Exaggerated control; inappropriate boundaries; jealousy; rigid gender roles
How are the children doing?	Unreasonable control by the partner; fear; safety issues; other parenting concerns
If the parties are living separately: With whom are the children living now? How did that come	Flight risk (passports?); party removed from home; parenting time problems; not seeing

about? How did that decision get made? How is that arrangement working?	children; fear by the client; decision making by intimidation
When you and [insert name] fight and/or are angry with each other, what happens?	Exaggerated anger; threatening words or actions; veiled threats to client, family, her friends, pets; damage to property, prevented from leaving house or room; restrained client
Have you ever left the home, even if it was for a couple of hours following an argument? Tell me more about what happened.	Need for safety; escape abuse; ability to leave
Has [insert name] ever followed you, examined your phone records, interrogated you about where you were and with whom, or otherwise monitored you? Accused you of having an affair?	Stalking; jealousy
Have either of you ever had or does either of you currently have a court order such as an order for protection (OFP), harassment restraining order (HRO) or a domestic abuse criminal no contact order (DANCO) either protecting you or against you?	Dynamics of relationship; client's efforts to stop harm
Do you or [insert name] own or have access to any firearms or weapons? If yes, what kinds of firearms or weapons and how many? Has [insert name] threatened you, the children or [him]self with a weapon or other object? If so, tell me what happened.	Use of or threats with gun or weapon; fear; use of household objects to create fear; do lethality risk assessment; the mere presence is a risk factor

Appendix D. CHECKLIST FOR EX PARTE APPLICANTS

The following questions are intended to assist the court in addressing issues that may exist in any ex parte application. More reliable information is obtained if the court personally asks these or other questions. Obviously, questions not relevant to the issues in a petition should be excluded.

Are there past or pending court actions in any court involving any of the parties, children or other issues presented in this case? Examples:

Criminal charges
Divorce
Child custody (between these or other parties)
Juvenile Court
Paternity
Legitimation
Adoption
Child support
Landlord – Tenant
Other

Are there present or past investigations involving any of the parties or children involved in this case? Examples:

Police or other law enforcement investigation
Probation
Pretrial Diversion
Safety Plans
Department of Family and Children Services

Are there present or past Family Violence Protective Orders, Stalking Orders, or Bond Orders limiting contact or applications for any such orders that involve parties or children involved in this petition?
Does the respondent have access to weapons?
Does an attorney represent either party at this time, in this, or any related matter?
Who currently has physical possession of the children at issue?
Has there been a change in the party who has physical possession of the children in the last 12 months?
Have criminal warrants been taken by either party or by law enforcement that include either party to this petition?
Have police reports been made of incidents recited in this petition?
Who owns real property, which is at issue in the petition?
Who has had possession of that real property during the last 12 months?
Who owns automobiles, which are at issue in this petition?

Who has had possession of such automobiles during the last 12 months?
Are there unnamed third parties who have or claim an interest in any child or property address in the petition? Examples:

Grandparents
Biological Parents
Guardians or Guardians ad litem
Foster Parents

Has either party to the petition been diagnosed with a psychological or psychiatric disorder?
What medication does that party take?
Who recommended that you file this petition? Examples:

Attorney
Law enforcement officer
District Attorney
Social service caseworker
Family member

Was either party consuming alcohol or drugs before or during the incidents recited in the petition?
Has either party been accused of drug abuse, violation of drug laws, or DUI during the past 24 months?

If yes: what drug or drugs are involved?

What is the employment status of all parties to the petition?
Does the petitioner have the support and assistance of an advocate?

If not, consider making that referral.

In 2004, over 20,000 orders of protection were filed in Georgia. Given how many orders are filed and how chronically-abused parties are exceptionally keen at reading unconscious and nonverbal communication (Herman, 1992), it may prove helpful to the court to review a unique study on the power of judicial demeanor and how it encourages or discourages parties from claiming their rights under the law (Ptacek, 1999).

For comprehensive information on previous orders filed by either party, see Section 3.5.4, B., 3. and Appendix M – Georgia Protective Order Registry

Appendix E. FIREARMS

Firearms and Temporary Protective Orders

A person who is subject to a qualifying protection order under federal law is generally prohibited from possessing any firearm or ammunition (18 U.S.C. § 922(g)(8)). Violation of this prohibition while the order is in effect is a federal offense punishable by up to ten years in prison (18 U.S.C. § 924(a)(2)). **Generally, a respondent, subject to a protective order that includes one element (indicated by a diamond) from each section listed below, is covered by the federal firearms prohibition**.

Gun restrictions can be ordered in ex parte orders. (While the Georgia Court of Appeals has questioned this practice in footnote 20 of *State v. Burgess,* 826 SE2d 352 (2019), that issue was not dealt with in the case itself. In Burgess, the court found that the Family Violence TPO did not obviate the need for a search warrant in the criminal case against Burgess.)

Constitutional Challenges To These Restrictions Have Failed Until Very Recently.

Until February, 2023, the federal firearm prohibitions against abusers have been universally upheld, despite numerous challenges. However, the U. S. Court of Appeals for the 5th Circuit in *U.S. v. Rahimi*, No. 21-11001 (5th Cir. 2023), applying *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), ruled that the federal prohibition on possession of firearms by persons subject to civil restraining orders is unconstitutional.

The Justice Department issued the following statement from Attorney General Merrick B. Garland on the day of the Rahimi decision.

"Nearly 30 years ago, Congress determined that a person who is subject to a court order that restrains him or her from threatening an intimate partner or child cannot lawfully possess a firearm. Whether analyzed through the lens of Supreme Court precedent, or of the text, history, and tradition of the Second Amendment, that statute is constitutional. Accordingly, the Department will seek further review of the Fifth Circuit's contrary decision."

I. HEARING

- Defendant/Respondent received **actual notice** and had an **opportunity to participate**.

II. INTIMATE PARTNER

Plaintiff/Petitioner is an **intimate partner** of the Respondent, (18 U.S.C. § 921(a)(32)); that is:

- a s**pouse** of Respondent;
- a **former spouse** of Respondent;
- an individual who is a **parent** of a child of Respondent; **or**
- an individual who **cohabitates or has cohabited** with Respondent.

III. RESTRAINS FUTURE CONDUCT

- The order restrains Defendant/Respondent from **harassing, stalking**, or **threatening** the intimate partner, child of the Respondent, or child of the Respondent's intimate partner; or
- The order restrains Respondent from engaging in other conduct that would place the intimate partner in **reasonable fear of bodily injury** to the partner or child.

IV. CREDIBLE THREAT OR PHYSICAL FORCE

- The order includes a finding that Respondent is a **credible threat** to the physical safety of the intimate partner or child; or
- The order, by its terms, explicitly prohibits the use, attempted use, or threatened of **physical force** against the intimate partner or child that would reasonably be expected to cause bodily injury.

The Georgia Family Violence Act, O.C.G.A. § 19-13-1 through 19-13-6, gives a judge the discretion to order firearms restrictions in ex parte protective orders to ensure that the domestic violence will not re-occur. O.C. G.A. § 19-13-3(b) states: "Upon filing of a verified petition in which 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 minor of the household from violence*." [Emphasis added.] Federal firearms restrictions do not apply to ex parte orders because the respondent has not had notice or an opportunity to be heard.

A study (Bridges, Tatum and Kunselman, 2008) revealed that limiting firearm availability once a protective order has been served may help to reduce family homicide rates. Across 47 States, they found that family homicide rates went down in States mandating firearm restrictions during a temporary protective order.

In 2018, there were 143 domestic violence-related deaths in Georgia, and 72% were caused by firearms (Georgia Commission on Family Violence Fact Sheet, 2019)

Recommended Practice: Order a respondent to turn over all firearms and weapons to the deputy or police officer at the time of service.

Example #1: "It is further ordered that law enforcement (sheriff or police department) shall take and maintain possession of firearm(s) that are in the possession of the Respondent until the expiration of this Order. Detailed description of firearm(s) and location:_____"

Example #2

"Further: The Respondent is to immediately surrender to law enforcement any weapons owned by Respondent or in the actual or constructive possession of the Respondent regardless of ownership of the same. Failure of the Respondent to surrender such weapons will authorize law enforcement to arrest and incarcerate without bond the Respondent until further order of the court. Based upon the evidence presented to the court, this term and condition of this Order authorizes law enforcement to search the Respondent or any area under the control of the Respondent for the sole purpose of locating and taking custody of weapons.

Upon seizing and taking custody of weapons, law enforcement is ordered to surrender said weapons to the property and evidence officer of the _____ County Sheriff Department whereupon it is ordered that said weapons be held and stored under the above-captioned and numbered case until further order of this court."

An alternative to ordering firearm restrictions in all cases is to inquire about past use or threat of use prior to ordering restrictions.

Recommended Practice: Revise the form Petition for Family Violence Protective Order to request information from the Petitioner about the threat, or use, of firearms in current or past acts of domestic violence (questions 4 and 5), as well as whether the Petitioner believes the Respondent has access to firearms (with space to describe types and typical locations). When the judge at the ex parte hearing reviews the Petition and speaks to the Petitioner, if the threat, use or possession of firearms are indicated, the judge should request additional information from the Petitioner. The judge's inquiry could include questions to acquire knowledge regarding:

- the extent of past violence
- whether other lethality indicators are present
- other information helpful to understand the safety needs of the Petitioner and/or children
- whether the Respondent is on probation or parole (possible avenue for surrender of firearms)

Example:

4. On or about_____, Respondent committed the following acts of family violence against Petitioner and/or the minor child/ren:

_____

_____
_____
_____
_____

☐ Use or threat of the use of a firearm was involved in this/these incident(s).
☐ No use or threat of the use of a firearm was involved in this/these incident(s).
☐ Petitioner does not wish to confirm or deny the use or threat of use of firearms.

Petitioner is in reasonable fear for Petitioner's own safety and/or the safety of the minor child/ren.

5. At other times Respondent has committed other such acts, including but not limited to (approximate dates and what happened):

_____
_____
_____

☐ Use or threat of the use of a firearm was involved in this/these incident(s).
☐ No use or threat of the use of a firearm was involved in this/these incident(s).
☐ Petitioner does not wish to confirm or deny the use or threat of use of firearms.

Recommended Practice: Include language in Ex-Parte Orders stating that the respondent shall not possess or own firearms or ammunition while the Order is in effect.

Example: "It is further ordered that because the Respondent presents a credible threat to the physical safety of the Petitioner and/or her children, the Respondent shall not possess any firearm or ammunition during the effective period of this order."

Some stalking orders trigger the federal firearms restrictions.

Only stalking cases where the parties are spouses, ex-spouses, have a common child, or live or have lived together in an intimate relationship, meet the federal requirements for a protective order that imposes federal firearms restrictions. These cases are an exception to the Rawcliffe v. Rawcliffe decision, 283 Ga. App. 264 (2007), which involved unrelated parties.

Recommended Practice: When issuing a Stalking Order where the parties are spouses, ex-spouses, have a common child, or live or have lived together in an intimate relationship, and there is concern about the petitioner's safety, be sure that the relationship is spelled out in the order and include language finding a threat to physical safety. This will insure that the federal firearms restrictions apply to the stalker. To empower local law enforcement to enforce the

firearms restrictions, order the stalker not to have possession of a firearm or ammunition. This is basically a restatement of the federal restrictions, but the fact that it is in a state order will enable local law enforcement to enforce the federal restriction without needing to get federal enforcement agents involved.

The firearms restriction is in effect for the term of the TPO.
There are statutory exemptions for military and law enforcement.

18 U.S.C. § 925(a) provides that the restrictions on firearms possession by respondents shall not apply to government-issued firearms that are used by military or police officers in the line of duty. Only official duty firearms are covered.

Recommended Practice: Order an abuser in the military or law enforcement to notify his/her superior officer of the TPO. This will insure that supervision and restrictions on firearms use are implemented by the government entity.

Federal law preempts any state order regarding firearms.

> If the four qualifications are met, the restriction automatically applies and overrides any state order to the contrary. In those cases, a state order carving out exceptions will not protect the respondent from prosecution for violating federal law.

The Federal Protections Can Be Entered Through Other Types of Orders.

> Any order that meets the four pronged test for a qualified protective order will subject a respondent to firearms restrictions. The name of the order is not important.
>
> **Recommended Practice:** Include language in bail/bond orders, first offender probation requirements, divorces, custody cases or other orders in which the respondent/defendant has notice and the safety of a party or minor children is an issue. Consider the following language:
>
> > "Respondent/Defendant shall not harass, stalk, threaten, or injure the protected party or put the protected party in fear of bodily injury. It is further ordered that because the Respondent/Defendant presents a credible threat to the physical safety of the protected party, the Respondent/Defendant shall not possess any firearm or ammunition. The Respondent/Defendant's relationship to the protected party is _____."
>
> If this provision is included in the order, be sure to notify the FBI so that the order will be catalogued in the national registry to prohibit firearm sales. (*See Section 9 below*).

Judges Should Put Respondents On Notice About the Federal Firearms Restrictions.

> Federal regulations require any state receiving grant money for certain domestic violence work ("STOP Grants") to have judicial policies and practices in place to notify abusers of

the federal firearms restrictions. Georgia receives this grant money. Therefore, a standardized system of notifying respondents/defendants of this restriction is necessary.

Recommended Practice: Asking about firearms possession from the bench ensures that the answer is given under oath. It will also alleviate any misconception that the petitioner has caused the restriction from possessing firearms to be imposed.

When entering a twelve month TPO or any order meeting federal requirement for firearms restrictions, inform the respondent of this restriction from the bench. Also be sure that the notice is in the written order. (Notice is already included in standard TPO forms (2008).)

Reporting TPO Orders.

One of the main purposes of the firearms restrictions is to stop abusers from obtaining firearms to use against family members. To be sure that gun sellers know about the TPO, it needs to be filed in the Georgia Registry, which passes the information to NICS (National Instant Criminal Background Check System). The court can facilitate this process by:

Using the standard TPO forms, which include the mandatory language and include PCO numbers that facilitate entry into the TPO Registry;
Signing paragraph 26 to confirm that the relationship between the parties meets the federal guidelines;
Insuring that the Superior Court Clerk is entering the TPO into the Georgia Registry expediently (within 24 hours);
Contacting NICS directly if the court has a non-TPO order or if there is difficulty registering the TPO with the Georgia Registry.

Phone: 1-877-444-NICS (6427)
By fax: 1-888-550-6427
Electronically:
NICS website: http://www.fbi.gov/hq/cjisd/nics.htm.
NICS e-check: http://www.nicsezcheckfbi.gov/
NICS email: a_nics@leo.gov

Tenth Amendment (no interference with state rights)

Important Safety Considerations:

"When a gun [is] in the house, an abused woman [is] 6 times more likely than other abused women to be killed." (Campbell 2003)
In each year from 1980 to 2000, 60% to 70% of batterers who killed their intimate partners used firearms (Rothman 2005).
When domestic violence abuse involves a firearm, the victim is 12 times more likely to die than in incidents not involving a firearm (Frattaroli 2006).

These national firearm statistics hold true for Georgia. "of all the deaths studied over the past four years, the majority have been committed with firearms." (Georgia Domestic Violence Fatality Review Project, 2007).

Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV).

> Generally are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 178.11, 178.32.

A qualifying MCDV is an offense that meets the following tests:

- Is a misdemeanor under federal or state law;
- Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon;
- At the time the MCDV was committed, the defendant was:
  - A current or former spouse, parent, or guardian of the victim; or
  - A person with whom the victim shared a child in common; or
  - A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or
  - A person who was or had been similarly situated to a spouse, parent, or guardian of the victim; and
- Meets the following Due Process requirements:
  - Either defendant was represented by counsel or knowingly and intelligently waived the right to counsel; and
  - IF the person was entitled to a jury trial under Georgia law, the case was either tried by jury or the defendant knowingly and intelligently waived the right to jury trial.

EXCEPTIONS:

These restrictions DO NOT apply if the conviction was set aside or expunged; the person was pardoned; or, the person's civil rights – the right to vote, sit on a jury, and hold elected office – were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense)

UNLESS:

- The expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or
- The person is otherwise prohibited by Georgia or local law from receiving or possessing any firearms.

For further information about Section 922(g)(9) or Federal Firearms Prohibitions generally, contact your local Field Division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855.

The misdemeanor does not have to be identified as a "domestic violence misdemeanor" to trigger the restriction.

Any misdemeanor that has as an element the use or attempted use of force or the attempted use of a deadly weapon will qualify if the defendant and the victim are related as required by the statute (18 U.S.C. § 921(a)(33)(A)). The misdemeanor does not need to have "domestic violence" in the title or in the description of the crime, and an intimate partner relationship does not have to be an element of the crime (*United States v. Hayes*).

The physical force requirement does not require violent contact.

In *U.S. v. Castleman*, 695 F. 3d 582 (2014), the Supreme Court held that the respondent's conviction qualifies as a "misdemeanor crime of domestic violence" and that "Section 922(g)(9)'s 'physical force' requirement is satisfied by the degree of force that supports a common-law battery conviction—namely, offensive touching."

Georgia's battery statute meets the requirements for a misdemeanor crime of domestic violence.

In *U.S. v. Griffith*, 455 F. 3d 1339 (2006), cert. den. 127 S. Ct. 2028 (2007), the Eleventh Circuit determined that the Georgia battery statute satisfied the "physical force" requirement of 18 U.S.C. § 921(a)(33)(A)(ii) [defining the requirements for a misdemeanor crime of domestic violence for the purpose of the firearms restrictions in 18 U.S.C. § 922(g)(9).]

A nolo contendere plea does not trigger the federal firearms restrictions.

See 1998 Op. Att'y Gen. 98-2. Because a nolo contendere plea is not a guilty plea for the purpose of affecting civil disqualifications (such as voting, holding public office, or acting as a juror), it also does not disqualify a defendant from possessing a firearm.

Recommended Practice: When considering whether to accept a *nolo contendere* plea, consider whether the protections of the federal firearms statutes would make the victim safer. If so, consider refusing to accept such a plea, or adding language to the terms of probation which restrict the defendant's access to firearms.

First offender status does not trigger the federal firearms restrictions.

Under O.C.G.A. §42-8-60, a court may defer a judgment of guilt and place a defendant on first offender status. If the defendant successfully completes the terms of the probation, the defendant is discharged without an adjudication of guilt. O.C.G.A. §42-8-62. With no adjudication of guilt, the first requirement to qualify as a misdemeanor crime of domestic violence is not met.

Recommended Practice: Order that the defendant not possess firearms or ammunition during the term of the first offender probation. If the victim's safety is in jeopardy, consider not accepting a first offender plea.

The length of the restriction.

The restriction on possessing, purchasing, shipping, transporting, or receiving firearms or ammunition lasts until such time as the defendant's civil rights are restored, or s/he is pardoned or the record is expunged.

There is no exception for use of a gun by military or law enforcement personnel.

The exception for these professions is only for those who are subject to TPOs, not for criminal convictions involving domestic violence.

Gun restrictions can be included in conditions of bond.

However, because the defendant does not yet have a criminal conviction, the bail/bond order needs to follow the requirements for a protective order:

"Defendant shall not harass, stalk, threaten, or injure the protected party or put the protected party in fear of bodily injury. It is further ordered that because the Defendant presents a credible threat to the physical safety of the protected party, the Defendant shall not possess any firearm or ammunition. The Respondent/Defendant's relationship to the protected party is _____."

Recommended Practice: Include this language in standardized bond forms. In every bond hearing involving parties who know each other, consider the advisability of ordering that the defendant not have access to firearms or ammunition while on bond. Research shows that the most dangerous time for a victim of domestic violence is when she attempts to leave the relationship (U.S. Dept of Justice, 1995). Adding this language to standardized forms will ensure that the issue is addressed at all bail/bond hearings. See Form B at the end of this section

It is recommended that the court address the issue of firearms in a misdemeanor case involving domestic violence.

Federal regulations require that states receiving STOP grant money must certify that its "judicial policies and procedures include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9)." To meet these qualifications, the Georgia Criminal Justice Coordinating Counsel urges the court to:

Notify the defendant by a verbal statement on the record; and/or
Notify the defendant in writing on the sentencing sheet; and/or
Include the restrictions as a standardized check box on all documents.
Raise the issue at every stage of hearing:

- Pre-trial hearings
- Entry of pleas
- Sentencing
- Probation and/or parole hearings

Recommended special language for written notices:

The Department of Justice suggests the following:

"If you are convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 U.S.C. 922(g)(9)."

To ensure that the federal safety provisions re firearms apply in a specific criminal case:

Be sure the sentencing sheet:

Clearly identifies the relationship between the defendant and the victim.
Specifies that use or attempted use of physical force or threatened use of a deadly weapon has been proven.
Addresses representation by counsel and trial by jury.

To ensure the victim's safety:

Verbally advise the defendant of firearms restrictions
Discuss how the defendant will meet that requirement.
Have defendant sign an acknowledgement of firearms restrictions. This is useful in the event of a violation.
Include identifying information on sentencing sheet.
Consider ordering surrender of firearms, licenses and permits.
Have third party sign Acknowledgement of Responsibility if firearms are being transferred to family or friends.
Order firearms to be relinquished as condition of probation or parole.
Employ a compliance mechanism to ensure firearms are surrendered.
Notify firearms licensing authorities of disqualifying convictions. *(See Section A.9 above)*..

Firearm Statistics:

"From 2010 through 2015, Georgia had 527 domestic violence-related firearm deaths, which comprises 69% of the total 760 domestic violence-related deaths during this period. These 527 deaths occurred in 350 separate incidents. 131 of those 350 incidents were murder/suicides (37%). 35 of those 350 incidents were multiple homicides where not only the victim was killed, but also at least one other person other than the perpetrator (10%)." (GCADV 2016)

Women are twice as likely to be shot and killed by intimate partners as they are to be murdered by strangers using any type of weapon. (Rothman 2005).
When domestic violence abuse involves a firearm, the victim is 12 times more likely to die than in incidents not involving a firearm (Frattaroli 2006).

These national firearm statistics hold true for Georgia. “Firearms continue to be the leading cause of death for victims in reviewed cases, greater than all other methods combined.” (Georgia Domestic Violence Fatality Review Project, 2010)

Georgia Firearm Legislation

Campus Carry

O.C.G.A. 16-11-127.1 allows students 21 and over with permits to carry guns on post-secondary campuses (except in certain limited areas including student housing, fraternity and sorority houses, childcare space, administrative offices,and at sporting events). The bill, H.B. 280, was signed by the Governor May, 2017.

Safe Carry Protection Act of 2014

In 2014, the Georgia Legislature passed H.B. 60, sweeping legislation that increases the places in which Georgia residents can carry weapons. The bill revised O.C.G.A. 16-11-126, 16-11-127, 16-11-127.1, 16-11-129, and other code sections, and includes provisions that allows residents with concealed carry permits to take guns into places such as: bars, churches, school zones, and government buildings.

Specifically, the law allows school staffers to carry guns in school zones, leaders of religious congregations to choose to permit the carrying of weapons by licensed individuals in houses of worship, and allows permitted gun holders to carry weapons into government buildings without security at the entrance. The law went into effect July 1, 2014.

Note: The Georgia Supreme Court has interpreted 16-11-129 to mean that, for a person’s license to carry to be denied on the basis of a criminal conviction of misdemeanor domestic violence, the conviction must be confirmed. (*Bell v. Hargrove*, 313 Ga. 30 (Ga. 2021): In a case involving an applicant seeking a license to carry a weapon, the Supreme Court held that the probate court improperly denied the defendant’s application for a license to carry a weapon based on a determination that the applicant’s criminal history report raised a question about whether he had a disqualifying conviction but did not confirm said conviction (misdemeanor domestic violence)).

“Stand Your Ground” Laws

Prior to the passage of the Safe Carry Protection Act, Georgia enacted what is known as a “Stand Your Ground” law in 2006. O.C.G.A. 16-3-23.1 states that a person who uses force in self-defense, in defense of others, in defense of their home, or in defense of property has no duty to retreat and has the right to “stand his or her ground” and use force, including deadly force.

This provision provides important self-defense protections in instances of domestic violence. Though traditional self-defense requires that one retreat, if there is the ability to do so, prior to using force, in a domestic violence situation, that might require that a victim leave his or her home. The Georgia "Stand Your Ground" law gives victims the right to remain in their homes and defend themselves against abuse, regardless of whether they have the ability to retreat.

Domestic Violence and Firearms

Georgia's laws are some of the least restrictive in the nation, and provide for expanded access to firearms and additional protections for those who might use firearms against another. Access to firearms, and legislation that allows a perpetrator of domestic violence to carry firearms and weapons in an increased number of locations, may pose a threat to victims of domestic violence.

An initiative of the Centers for Disease Control and Prevention, the National Violent Death Reporting System is a surveillance system that combines data from law enforcement, crime labs, medical examiners and vital statistics from the participating states. According to the NVDRS, in 2016 (the most recent year available) Georgia had 754 homicides—598 of which were caused by firearms. Among the 122 homicides involving current or former intimate partners, spouses, or other family members, 70 were caused by firearms. (Centers for Disease Control & Prevention, "National Violent Death Reporting System" available at https://wisqars.cdc.gov:8443/nvdrs/nvdrsDisplay.jsp accessed November, 2019).

State Restrictions on Firearms in Domestic Violence

Introduction

Though federal restrictions on the possession of firearms in temporary protective orders, and in cases of domestic violence, exist, they often fail to be enforced. As an additional protective measure against the continued possession of firearms by perpetrators of domestic violence, several states have enacted state-level legislation that restricts access to firearms for perpetrators of domestic violence.

Texas

Tex. Fam. Code §85.022. (6) provides that the court may prohibit the person subject to the order from possessing a firearm (with exceptions for peace officers, sworn full time employees of stage agencies and political subdivisions).

Kentucky
KRS 237.110 (13) (k) requires license holders subject to a domestic violence protective order to surrender their license to the court for the duration of the order. While the law addresses surrender of licenses, it is less clear regarding surrender of actual firearms.

Washington

HB 1501 requires gun dealers to alert police and police to alert domestic violence victims when their convicted abuser attempt to illegally purchase a firearm. The law went into effect July, 2017. Previously, House Bill 1840 prohibits those who have a protective order against them from possessing a firearm for the duration of the order. A person ordered to surrender firearms must provide the clerk of court with a receipt and proof of surrender. It also requires law enforcement agencies to develop policies and protocols for firearm removal, storage, and return. It was signed by the governor March, 2014. Wash.Rev.Code Ann. § 9.41.800

New Jersey

S2483 provides that domestic abuse offenders subject to final restraining orders turn in firearms to law enforcement immediately. It was signed by the governor January, 2017. NJSA 2C:25-28

Tennessee

House Bill 1964 requires the Tennesee Bureau of Investigation to notify the agency making an entry of a protective order into the NCIC within one day if the subject of the order attempts to purchase a firearm. House Bill 2576 includes provisions for a temporary protective order to be issued if a court finds probable cause at a defendant's initial appearance for a domestic violence arrest that defendant displayed a deadly weapon to the alleged abuse victim. Both bills were signed into law April, 2016.

Virginia

House Bill 1391/Senate Bill 49 requires any person subject to a permanent protective order for domestic violence to relinquish firearms within 24 hours or face a felony. The bills were signed by the governor February, 2016.

Connecticut

House Bill 5054 shortens the deadline by which a person must transfer, deliver, or surrender firearms, ammunition and permits, if such person becomes ineligible to possess them as a result of becoming subject to a civil restraining order, civil protection order, criminal protective order, or foreign order of protection involving force, to 24 hours. It also extends these requirements to ex parte orders. This bill was signed by the governor May, 2016.

Florida

Florida Statute § 790.065 (2) (a) 2. requires review of available records to determine if a potential firearm purchaser has been convicted of misdemeanor domestic violence and thus is subject to federal restrictions. Florida law also prohibits someone subject to a protective order for domestic violence, stalking or cyberstalking from possessing firearms or ammunition. Fla. Stat. § 790.233.

Louisiana

Louisiana Statute § 14.95.10 prohibits those who have a protective order against them from possessing a firearm for the duration of the order. Those who have been convicted of domestic abuse battery are prohibited from possessing a firearm or carrying a conceled weapon. It was signed by the governor May, 2014. La.Rev.Stat § 14.95.10.

Washington

House Bill 1840 prohibits those who have a protective order against them from possessing a firearm for the duration of the order. A person ordered to surrender firearms must provide the clerk of court with a receipt and proof of surrender. It also requires law enforcement agencies to develop policies and protocols for firearm removal, storage, and return. It was signed by the governor March, 2014. Wash.Rev.Code Ann. § 9.41.800

Minnesota

A Minnesota statute expands existing handgun restrictions for those convicted of domestic violence to include restrictions on rifles and shotguns, and prohibits those convicted of child or domestic abuse in certain circumstances from possessing firearms permanently. The bill prohibits those who have a protective order against them from possessing a firearm for the duration of the order. It also creates a process for the surrender and storage of those firearms. The bill was passed into law May, 2014. Minn.Stat.Ann §260c.201.

Wisconsin

Act 321 was passed in April, 2014 and prohibits those who have a protective order from possessing firearms and outlines procedures to facilitate surrender of the weapons. They are required to fill out a form documenting their weapons. There must be a hearing during which they are ordered to surrender their weapons. When the order expires, the party must request their weapons back in writing. Wis. Stat. Ann. § 813.1285.

Forms Attached:

Form A: Defendant's Written Acknowledgement of Firearms Prohibition
Form B: Bond Conditions Form, Including Firearms Restriction Language (2(c) and (d))
Form C: Plea Agreement, including acknowledgement of Firearm Restriction (para. 9)
Form D: Sentencing Sheet, including specific firearms restriction (paragraph 11)

Form E: Acknowledgement of Receipt of Firearm By Third Party

Acknowledgement of Prohibition
Against Receiving, Shipping, Possessing, Transporting, or
Attempting to Purchase a Firearm or Ammunition

I_____, Date of Birth _____,
Full name (please print)

_____
(Social Security number)

Acknowledge that I have read, or had read to me, the following and understand that:

____ I have been **convicted of a felony offense**, or
____ I have received First offender Treatment for a felony offense, or
____ I have been **convicted of a misdemeanor crime of domestic violence.**

As a result of this action, I am prohibited by Georgia Law (O.C.G.A. §16-11-131 and §42-8-60 through 65) and Federal Law (18 U.S.C. 921 through 925) from receiving, shipping, possessing, transporting or attempting to purchase a firearm. This includes any handgun, rifle, shotgun or other weapon, which will or can be converted to expel a projectile by the action of an explosion or electrical charge. I also acknowledge that if I am a convicted felon or have been convicted of a misdemeanor crime of domestic violence, federal law prohibits me from receiving, shipping, possessing, transporting, or attempting to purchase ammunition. (18 U.S.C. §922(g)(9))

Possession of a firearm or ammunition means that I may not have a firearm or ammunition in my actual, physical control (i.e. in my pants pocket) or within my area of access and control (i.e. in the glove box of my car). I may not possess a firearm or ammunition either by myself or jointly with another person.

If I receive, ship, possess, transport, or attempt to purchase a firearm or ammunition, I will be guilty of a state and/or federal felony crime.

I understand that this document can be used as evidence in a court of law during probation revocation or criminal proceedings.

_____ _____
Signature Witness

_____ _____
Date Title of witness

Form A

IN THE MAGISTRATE COURT OF _____ COUNTY
STATE OF GEORGIA

State of Georgia
v.
_____
Defendant

Warrant or Warrantless
Arrest or Citation
No. _____

SPECIAL CONDITIONS OF BOND

The above case having come before me and evidence having been heard and considered with regard to granting of bond, IT IS HEREBY ORDERED that said Defendant be admitted to bond under the following conditions:

1. That bond in the amount of $_____ be allowed.
2. That as a condition of granting and continuance of said bond, the Defendant:

a) Shall stay away, absolutely, directly and indirectly, by person and telephone, from the person, home, school and job of
_____subject to the following exceptions:
_____
_____ [If none write "None."]

The relationship between the Defendant and the protected person(s) is:
___ spouse ___ ex-spouse ___ parents of same child
___ living together ___ lived together in past ___ child/ren

b) Shall not harass, stalk, threaten, injure, put in fear of bodily harm, or otherwise contact in public or private places any of those person(s) named in (a) above.
c) Because the Defendant represents a credible threat to the physical safety of the person(s) named in (a) above, the Defendant shall not possess any firearm or ammunition while free on bail and shall surrender any and all firearms now in Defendant's domicile or possession to the arresting agency within 24 hours from the time of release on bond.
d) Shall not exercise the privileges afforded by a Georgia Firearms License (concealed weapons carry permit) at any time while free on bail.
e) Shall obey the laws of this state. Defendant shall in no case behave violently toward nor offer to do harm to any person whatsoever.

That upon probative evidence of violation of the above terms and conditions of bond on the part of the Defendant, said bond shall stand REVOKED.
SO ORDERED this ____ day of _____, 20__.

_____
Judge, Magistrate Court of _____ County

I acknowledge notice of the above condition of bond and realize that, upon breach of any of the conditions, my bond may be revoked, and that I do not have a legal right to a second bond after such revocation. I may also be subject to sanctions under the contempt power of the Court.

Date:_____ Defendant:_____
Form B

IN THE STATE COURT OF _____ COUNTY
STATE OF GEORGIA

State of Georgia
v.

Case No:_____

_____
Defendant

RECORD OF DEFENDANT PRIOR TO ENTERING A PLEA

Under the penalty of perjury, the Defendant swears or affirms:

A. I am not under the influence of alcohol or drugs and I am not suffering from any mental or physical disabilities.
B. I acknowledge (waive) the receipt of a copy of the accusation and I understand the charge(s) stated in the accusation.
C. I understand:
    1. Each misdemeanor offense carries a maximum penalty of 12 months in jail which may be spent on probation, reporting or non-reporting, with additional conditions including the performance of community service and payment of a fine up to $1,000 ($5,000 for misdemeanors of a high and aggravated nature) and the court may order the sentence of each such offense to run consecutively, that is one following the other;
    2. If I violate any criminal laws of any governmental unit or any terms and conditions of probation, the Court may revoke all or part of the balance of the probation period and sentence me to serve that time in jail.
    3. I have the right to be represented by an attorney and if I cannot afford an attorney, the court may appoint an attorney to represent me at no cost if I meet certain income guidelines;
    4. A lawyer may be able to provide defense(s) to the charge(s) and/or assist in mitigating the sentence;
    5. A not-guilty plea will be entered for me if I remain silent and I will be scheduled for a jury trial;
    6. My guilty plea may result in deportation if I am not a citizen of the United States:
    7. The judge is not required to follow the recommendations of the solicitor in imposing the sentence;
    8. If the court intends to reject the plea agreement, the disposition of the case may be less favorable to me than contemplated by the plea agreement;
    9. I am prohibited from possessing, receiving, shipping and transporting a firearm under federal law if I enter a guilty plea to a charge involving domestic violence;
    10. All habeas corpus proceedings challenging a conviction must be filed one year from the date on which the conviction becomes final except in traffic cases where the time limitation is six months. See O.C.G.A. §9-14-42; §40-13-33.

D. I understand by entering a plea of guilty or nolo contendere, I waive:
1. The right to a speedy and public trial by jury;
2. The right to have State prove my guilt beyond a reasonable doubt;
3. The presumption of innocence.
4. The right to confront witnesses against me;
5. The right to subpoena witnesses;
6. The right to testify and to offer other evidence;
7. The right to assistance of counsel at all stages of trial; and
8. The right not to incriminate or testify or produce evidence against myself.

I freely and voluntarily enter my plea of _____ to the charge(s) against me. No promises, threats or inducements have been made to me by anyone.

_____ I am not represented by a lawyer. I understand the nature of the charges against me and the consequences of my plea. I freely and voluntarily waive the benefit of counsel and choose to represent myself in this plea proceeding.

_____ _____
Defendant Date

_____ _____ _____
Solicitor Attorney Date

_____ _____
Print Name: Print Name and phone:

The Court finds the Defendant understands the nature and consequence of Defendant's action and the Defendant is freely and voluntarily entering into this plea. The Court is satisfied there has been a sufficient factual basis for the acceptance of this plea. As to pro se defendants, the Court has determined the Defendant understands Defendant's right to counsel and has knowingly, voluntarily and intelligently waived that right. IT IS HEREBY ORDERED the Defendant's plea be accepted.

This _____ day of _____, 20___.

_____
Judge, State Court of _____ County

Form C

IN THE STATE COURT OF _____ COUNTY
STATE OF GEORGIA

State of Georgia
v. Criminal Action No. _____

_____
Defendant

☐ PLEA	☐ VERDICT	☐ OTHER DISPOSITION
☐ NEGOTIATED ☐ GUILTY ON COUNT(S) _____ ☐ NOLO CONTENDERE ON COUNT(S) _____	☐ JURY ☐ NON-JURY ☐ GUILTY ON COUNT(S) _____ ☐ NOT GUILTY ON COUNT(S)_____	☐ NOLLE PROSEQUI ORDER ON COUNT(S) _____ ☐ DEAD DOCKET ORDER ON COUNT(S) _____

Fine Amount	_____	Photo Cost:	_____	Drug Assessment:	_____
POPIDF:	_____	Joshua's Law:	_____	Crime Lab Fee:	_____
Plus 10%	_____	Victim's Fund:	_____	Restitution:	_____
Jail Staffing:	_____	Brain & Spinal		Public Defender Fee:	_____
Victims Assistance:	_____	Injury Trust Fund:	_____	Probation User Fee:	_____
Mandatory assessment on all fines.		**Total Amount Due:**	_____		

IT IS CONSIDERED, ORDERED AND ADJUDGED BY THE COURT:
Defendant is to serve a sentence of ____hours/days/months, consisting of ___ hours/days/months of confinement, credit for ____ hours/days/months already served and the remainder on probation.

PROVIDED THAT:

( ) 1. The Defendant, having been granted the privilege of serving all or part of the above stated sentence on probation, hereby is sentenced to the following general conditions of probation: (A) not violate the criminal laws of any governmental unit; (B) avoid injurious and vicious habits-especially alcohol intoxication and narcotics and other dangerous drugs unless prescribed lawfully; (C) avoid persons or places of disreputable or harmful character; (D) report to the Probation officer as directed and permit each officer to visit him/her at home or elsewhere; (E) work faithfully at suitable employment insofar as may be possible; (F) not change his/her present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor; (G) support his/her legal dependants to the best of his/her ability.

( ) 2. Payment by defendant of the fine and costs in the amount of $_____, and restitution in the stipulated amount of $_____, shall be a condition of probation.

( ) 3. The Defendant shall perform ____ hours of community service at times and places specified by the Probation office.

( ) 4. The Defendant shall report to the _____ County Jail on _____ at _____a.m./p.m.

( ) 5. Defendant is to attend a Risk Reduction Program and/or undergo alcohol and/or drug evaluation and treatment as directed by the Probation office, and/or attend AA/NA ____ times a week for _____ months, and show proof of same to the Probation office.

( ) 6. Defendant is to pay $_____ per month supervision fee.

( ) 7. Defendant may work off fine and fees by performing community service at the rate of $_____ per hour.

( ) 8. Defendant is to submit to random screening of blood, breath, urine or other bodily substances, at Defendant's cost.

( ) 9. Defendant to complete approved Domestic Violence Intervention Program and to return to court on _____ at _____a.m./p.m. to show compliance.

( ) 10. Non-Reporting Probation once all conditions are met. However, Defendant shall report for no less than ____ months.

( ) 11. Because the Defendant committed a misdemeanor of domestic violence, defendant shall not possess, receive, transport firearm(s) or ammunition as prohibited by federal law. The relationship between the Defendant and the victim is either spouse, ex-spouse, parents of a child in common, child and parent or guardian, cohabiting now or in the past as a spouse, parent, or guardian, or similarly situated to a spouse, parent, or guardian.

( ) 12. Other: _____

SO ORDERED this ____ day of _____, 20____.

_____

Judge, State Court of _____ County

NOTICE

I have read or have had read to me the above conditions of probation and the Court's General Conditions of Probation. I understand that my probation is an alternative to a jail sentence. I also understand that my probation may be revoke, I may be immediately arrested, and the balance of my probation served in jail if I fail to abide by these conditions.

_____

Defendant

Form D

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

_____

v.

_____ No._____

AFFIDAVIT OF RECEIPT OF THIRD PARTY TRANSFER

Before me, the undersigned personally appeared and after being duly sworn, deposes and says:

1. I, _____, residing at _____ _____, whose date of birth is _____, hereby agree to receive by sale and/or transfer from the Defendant the following described firearms and/or ammunition (set forth make, model and serial number): _____.
2. I do not reside with the Defendant. My relationship to the Defendant is _____.
3. I agree not to return, loan, or sell the firearms and or ammunition listed in paragraph one or any other firearms or ammunition to the Defendant under any circumstances, without a court order allowing same. I understand that violation of this oath may result in contempt of court charges against me.
4. I further understand that it is a violation of federal law to transfer firearms or ammunition to the defendant. 18 U.S.C. 922 (d)(9) states:

   "It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person…(9) has been convicted in any court of a misdemeanor crime of domestic violence."

I understand that violation of this federal law could subject me fines or imprisonment for to up to 10 years.

I also affirm that I am not prohibited from owning firearms under either State or Federal law. Further Affiant Sayeth Naught.

_____
Signature

_____
Print Name

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20____.

_____
Notary Public
My commission expires:_____

Form E

DEKALB COUNTY STATE COURT PROBATION

INFORMATION FOR PROBATIONERS REGARDING THE SURRENDER OF FIREARMS AND AMMUNITION

FAMILY VIOLENCE CONVICTION

You have been convicted of a misdemeanor crime of domestic violence. As a result of this action you are prohibited by Georgia Law (O.C.G.A. §16-11-126) and Federal Law (18 U.S.C. §922(g) (9)) from receiving, shipping, possessing, transporting or attempting to purchase a firearm. This includes any handgun, rifle, shotgun or other weapon, which will or can be converted to expel a projectile by the action of an explosion or electrical charge.

Possession of a firearm or ammunition means that you may not have a firearm or ammunition in your actual, physical control (i.e. in your pants pocket) or within your area of access and control (i.e. glove box of your car). You may not possess a firearm or ammunition either by yourself or jointly with another person and you may not use a firearm or ammunition for hunting.

THE PENALTY FOR VIOLATING THIS SECTION MAY INCLUDE UP TO TEN (10) YEARS IMPRISONMENT AND/OR $250,000 FINE.

INSTRUCTIONS TO SURRENDER FIREARMS AND AMMUNITION

1. Immediately call the DeKalb County State Court Probation Department at 404.371.2657 and ask to speak with the Supervisor on Duty to schedule a time to surrender all firearms, ammunition and/or concealed weapons permits in your care, custody or control. The Probation Department is located in the DeKalb County Courthouse on the 3rd Floor of the Administrative Tower.

DO NOT ATTEMPT TO BRING A FIREARM INTO THE COURTHOUSE

   a. Unload and separate all firearms and ammunition **before** leaving your residence.
   b. Lock all firearms in the lock boxes or gun cases and place in the trunk of the vehicle.
   c. When you arrive, park in the parking deck behind 556 N. McDonough St. Decatur, GA 30030
   d. Enter the courthouse **(without firearms and ammunition)** and proceed to the Probation Department and ask for the Supervisor on Duty.
   e. Advise the Supervisor of the quantity and location of firearms and ammunition being surrendered.
   f. Follow the procedures set forth by law enforcement personnel to complete the surrender.

2. Obtain a written receipt from the law enforcement agency that you surrendered the firearms, ammunition and/or concealed weapons permits.

3. If you have been in possession of firearms, ammunition and concealed weapons permit within the past six months but are not currently in possession of these items, you must file documentation of this surrender in the form of a signed, sworn and notarized bill of sale and/or law enforcement property receipt.

4. Failure to completely comply with this order may result in civil and criminal penalties.

DEKALB COUNTY STATE COURT PROBATION DEPARTMENT
FIREARMS/AMMUNITION NOTICE

The State of Georgia CASE NO._____

vs.

_____

PROBATIONER'S SWORN STATEMENT OF POSSESSION OF FIREARMS AND/OR AMMUNITION
Under penalties of perjury, I declare that the facts below are true:

1) I am the Probationer in this case. My name is_____

and my current address is_____

_____

Please answer the following questions:

2) Do you now or have you in the past six months before today, owned or possessed, any firearms or ammunition? (*Initial* the correct statement)

_____NO, I do not currently own or possess any firearms or ammunition and have not owned any firearms or ammunition in the past six months.

_____NO, I do not currently own or possess any firearms or ammunition but I have owned or possessed firearms and ammunition in the past six months.

_____YES, I do currently own or possess a firearm and ammunition. If you answered yes, continue to #3.

3) List the firearm and/or ammunition that you currently, or within the past six months, have owned or possessed.

Firearm and/or Ammunition	Quantity	Make/Model	Surrendered/Sold Yes or No	Receipt Yes or No

The Probationer is advised that if he or she fails to completely and accurately complete this sworn statement he or she may face serious civil and criminal penalties. If the Probationer remains in possession of a firearm or ammunition after a conviction of a misdemeanor crime of domestic violence, he or she would be in violation of (18 U.S.C. §922(g) (9)) which is punishable by a maximum of ten (10) years imprisonment or a $250,000 fine.

Probationer's Signature_____ **Date**_____

Probation officer_____ **Date**_____

Appendix F. PROTECTION ORDER INFORMATION SHEET

Information For Petitioners

About Your Temporary Protective Order

- Keep a copy of your order with you at all times.
- Call 911 if the person you took the order out against disobeys the order.
- For your protection, do not contact the person you took the order out against. It is very important to remember that this order cannot guarantee your safety.
- This is a court order and only a judge has the authority to dismiss it. This order, cannot be dismissed by you or the person you took it out against without going back before a judge.
- A violation of this order is a criminal offense. If the person you took this order out against violates it, he/she can be arrested and prosecuted.

About Your Safety

Leaving someone who is controlling, threatening and abusive is a very dangerous time for you and your children. It is important to talk to someone who has experience in helping individuals separate from abusive partners. They can help develop a safety plan for leaving that takes your unique situation into account. The judge can refer you to someone with that experience

Appendix G. FAMILY VIOLENCE INTERVENTION PROGRAMS

Differences Between Anger Management and Family Violence Intervention Programs (FVIPs)

The distinction between anger management programs and certified family violence intervention programs lies in differing philosophical tenets and is linked to our beliefs about what causes domestic violence. Proponents of anger management suggest the root of the problem lies in the perpetrator's inability to control their anger. This program model contends that domestic violence occurs because the abuser is out of control, often responding to "triggers" in their environment. This places the therapeutic solution on controlling the anger to eliminate the abusiveness, and over-simplifies the complex nature of interpersonal violence and abusive outbursts. This approach is risky as a response to domestic violence because the victim becomes complicit in the abuse as a potential "trigger" source and the perpetrator lacks responsibility for their actions because they could not control their behavior. Alternatively, family violence intervention programs are designed to address issues of power and control because the proponents of this approach see the use of domestic violence by the perpetrator as a means of intimidation and coercion designed to control and gain power over the victim. This program model agrees that anger is present in domestic abuse situations, but simply controlling anger will not eliminate domestic violence, and violence may in fact be present in the absence of anger.

	Anger Management	**Certified FVIPs**
Who is served by the programs?	Perpetrators of stranger or non-intimate violence.	Family violence defendants and protective order respondents.
Relevant statutes		O.C.G.A. § 19-13-16(a) O.C.G.A. § 19-13-10 et. al. O.C.G.A. § 19-13-1 O.C.G.A. § 19-13-14(d)

Are programs certified and monitored by a state agency?	No	Yes. Certification is administered by the Georgia Commission on Family Violence (GCFV) and the Georgia Department of Community Supervision.
What is the emphasis of the intervention	Anger management programs focus on anger as the impetus for violence (Gottlieb, 1999.) Violence is primarily seen as a reactionary behavior and as a result of a triggering factor.	FVIPs are specifically designed to intervene with perpetrators of intimate partner violence. Violence is viewed as learned behavior that is primarily motivated by a desire, whether conscious or unconscious, by the abuser to control the victim (Adams, 2003). Violence is seen as one of many forms of abusive behaviors chosen by abusers to control their intimate partners and family members, including physical, sexual, emotional and economic abuse.
How long are programs?	Usually 8 to 20 classes, with the average being 12 classes.	24 classes. The national average duration is 24 to 26 classes (Adams, 2003).
How much do programs cost?	Unknown	$35 is the average cost per class and the most common cost per class is $30 in Georgia. FVIPs are required to have a sliding fee scale for defendants declared indigent by the court.
Do programs contact victims?	No	Yes. FVIPs contract with state-certified or GCFV-approved domestic violence organizations to contact victims to provide referrals and safety planning.
Are group facilitators trained about domestic violence?	Subject to agency discretion	Certification requires facilitators to have 100 hours of domestic violence training and 72 hours experience facilitating or co-facilitating family violence intervention classes.
How would I address grievances with this type of program?	Talk to the director of the program.	1) Talk to the director of the program. 2) Call GCFV. 404-657-3412. More information available at www.gcfv.ga.gov
What type of data collection occurs?	No statewide system.	GCFV and GDC have developed a statewide collection system.

Are Family Violence Intervention Programs appropriate for women perpetrators?

Preliminary research suggests women who might best be categorized as primarily victims of partner abuse can be distinguished from women who are more appropriately categorized as primarily perpetrators. Furthermore, female domestic violence offenders share many of the same characteristics as male offenders, including similar motives and psycho-social characteristics (prior aggression, substance use, personality disturbance, etc.). Perhaps most importantly, early research suggests that the issues addressed in FVIPs may have relevance for both male and female domestic violence offenders.

General Information on Monitoring and Enforcing TPO Conditions

> "Courts can promote safety for battered women by issuing protection orders; contrary to popular opinion that they are 'just a piece of paper,' protective orders have been found to be effective, particularly when the court and the law enforcement systems enforce them."
>
> Julie Kunce Field, Screening for Domestic Violence: Meeting the Challenge of Identifying Domestic Violence and Developing Strategies for those Cases, Court Review, Summer 2002, at 10.
>
> "Comprehensive provisions of restraining orders are only as good as their enforcement. To improve their enforcement, courts should develop, publicize, and monitor a clear, formal policy regarding violations. This might include follow-up hearings, promoting the arrest of violators, incremental sanctions for violators, treating violations as criminal contempt, and establishment of procedures for modification of orders."
>
> National Council of Juvenile and Family Court Judges (NCJFCJ), Family Violence: Improving Court Practice, 1990, pg. 21-22.

Overview.

O.C.G.A. § 19-13-16(a) has stimulated a lot of good discussion in Georgia about how TPO conditions may be monitored and enforced. Local Circuits and courts are developing innovative strategies to deal with monitoring and enforcing TPO conditions. These local solutions work because they mobilize the individual strengths of each system and community. Not all of the ideas below will work everywhere, but they are examples of the kinds of ideas and solutions that are emerging.

Monitoring – General.

Both superior courts and law enforcement are charged with enforcing protective orders. See O.C.G.A. § 19-13-4(d). "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."
Make protection orders as clear, specific and detailed as possible to minimize doubt about respondent's proscribed behavior (See Appendix N – Paragraph A. - Issues for Consideration in Cases Involving Domestic Violence). Include built-in consequences for noncompliance.
Ensure that copies of protection orders are sent to the local sheriff by the Clerk of Superior Court as required by O.C.G.A. § 19-13-4(b).
Ensure that protection orders are being sent to GCIC's Georgia Protective Order Registry as required by O.C.G.A. § 19-13-52.
Request that State probation and local law enforcement agencies develop training and policies to regularly use the Georgia Protective Order Registry.
Ensure that law enforcement officers know that prompt service of TPOs on respondents is a top priority.
Enforce valid orders from other states. VAWA's Full Faith and Credit Provision. 18 USC 2265(a). A protection order from another State or tribe must be enforced "as if it were the order of the enforcing State or tribe" 18 USC 2265(a) if it meets the jurisdictional and notice requirements.

Monitoring by Law Enforcement.

Law enforcement must arrest a TPO respondent for a contact violation. The respondent may be charged with the misdemeanor charge of violating a TPO (O.C.G.A. § 16-5-95) or with the felony charge of aggravated stalking (O.C.G.A. § 16-5-91.)
To be charged as a misdemeanor, the TPO contact violation must be nonviolent.
O.C.G.A. § 16-5-90(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 or more than ten years.

Monitoring by the Court - See Appendix S-Judicial Compliance Hearings
GCFV Contact Information

Contact: April Ross, Executive Director, Georgia Commission on Family Violence at 404-657-3412 or www.gcfv.ga.gov for program staff information.
The Institute of Continuing Judicial Education's library has copies of Judicial Review Hearings in Domestic Violence Cases for loan.

State Certified Family Violence Intervention Programs

For current certified programs listed by county and circuit please go to:
https://gcfv.georgia.gov/enroll-family-violence-intervention-program

Appendix H. IMMIGRANTS AND REFUGEES

Introduction to Immigrants and Refugees

Foreign nationals are not immune from domestic violence, and their non-citizen status often makes domestic violence victims even more vulnerable. Yet, there are several important factors that courts can consider to ensure their rights and safety. The courts can be aware that immigration status, or lack thereof, is often used as a tool of family violence. Abusive U.S. citizens or lawfully present non-citizens frequently threaten domestic violence victims that if they call the police, they will be report them to the immigration authorities to have them deported or divorce them to render them out of status (where their status is marriage-based). Moreover, foreign nationals involved in domestic violence cases may not have access to their documents or may have been falsely accused. Language and communication difficulties can compound this problem. Further, the violence may occur between intimate partners, parents, in-laws or other family members.

Please find below some basic immigration information. Immigration law is complex, and the information below does not cover all possible scenarios. However, this information should provide some basic guidance to help avoid the abuser's using a court's lack of knowledge about immigration as a method to perpetuate abuse. It is also extremely important that foreign nationals are advised to consult an attorney experienced in immigration law, as this area of law is complex and changes frequently.

Basic Immigration Terminology and Documentation

Immigrants and Non-Immigrants. There are two types of non-citizens in the U.S: immigrants and non-immigrants. Immigrants are here on a permanent basis and non-immigrants are here on a temporary basis.

Immigrants Many immigrants are lawful permanent residents (also called LPR's or greencard holders). A person can become an LPR through: a family relationship; their employer's sponsorship; the diversity lottery; certain substantial business investments in the U.S.; extradordinary/ exceptional ability in certain fields; or a grant of asylum status, refugee status, or relief in immigration Court. LPR's may reside in the United States permanently, may work for any employer or themselves, and may travel in and out of the United States, as long as they do not abandon their U.S. domicile. LPR's may be subject to removal (or deportation) if they become subject to grounds of inadmissibility or deportability.
Non-immigrants are in the U.S. on a temporary basis. They include visitors, students, employees, certain crime victims. A derivative spouse of an employment-based nonimmigrant or a foreign student would fall out of status if their spouse divorced them.

Obtaining LPR status through marriage

A common misconception is that if someone marries a U.S. citizen, they automatically become a U.S. citizen. This is far from the truth. Only some spouses of U.S. citizens are eligible to become LPR's. Moreover, those who do qualify must be sponsored by their spouse through numerous applications to US CIS. Generally, a U.S. citizen can file for LPR status for their spouse if they entered the U.S. lawfully. Others must apply with the U.S. consulate abroad, but may be subject to lengthy bars to approval (e.g. 10 years) if they have been in the U.S. unlawfully. For example, if the foreign spouse entered the U.S. by walking across the border or otherwise entered without inspection, they cannot generally obtain LPR status in the U.S. despite marrying a U.S. citizen or having U.S. citizen children. They would be required to leave the U.S. and would potentially be barred from returning for three to ten years.
Conditional permanent residence: Foreign nationals married to their U.S. citizen spouses for less than two years at the time their greencard application is approved receive two-year conditional permanent resident status. Conditional LPR's are required to affirmatively petition US CIS to remove this condition during the 90 day window before their conditional residence expires. This petition must be signed by both parties and requires proof that the couple remains together in a bona fide marriage. If the couple is no longer living in a bona fide marital relationship, the petition may be denied. There are waiver provisions permitting a foreign national to file this application without a signature from the U.S. citizen (e.g. where there is proof of domestic violence, extreme hardship, or divorce but a bona fide marriage was intended at the time of marriage).
Some foreign nationals enter the U.S. on a fiancé visa and get married to their U.S. citizen spouses in the U.S. Others marry abroad and enter the U.S. as LPR's after obtaining immigrant visas at the U.S. consulate abroad.

Asylee/Refugee – One who is granted status in the U.S. based upon their fear of returning to their home country because of past persecution and/or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Most are eventually eligible to file for permanent residence. Refugees are granted this status outside the United States by the State Department and Asylees are granted this status inside the United States by the Asylum office.

Temporary Protected Status (TPS) - A status allowing temporary residence and employment authorization to nationals of foreign countries that have been appropriately designated by the government based upon extraordinary and temporary political or physical conditions. TPS applicants must meet the specific criteria established for TPS for their particular country.
Visa Waiver Program - A program under which nationals of certain countries may enter the United States for up to 90 days (as visitors for business or pleasure) without first obtaining a visa from a U.S. embassy or consulate. Generally, persons who enter under this program cannot extend or change to another status once entered the United States.
Employment Authorization Document ("EAD")– A US CIS issued Form I-688B document, provided to some (but not all) foreign nationals authorized to work in the United States. EAD's can be issued to individuals with a specific visa status and to other designated groups (e.g. students authorized to work, individuals with specific immigration applications pending, Temporary Protected Status grantees, Deferred Action or DACA grantees, asylees/refugees). It is important to note that this is only one form of documentation to establish work authorization.
Visa - A visa is an official endorsement, issued by a U.S. consulate, certifying that the bearer has been examined and is permitted to seek admission to the United States at a designated port of entry during the visa's validity. A visa does not grant the bearer the right to enter the United States; it merely gives one the eligibility to seek admission at a port of entry. Visas can be issued for extensive periods of time to be used for multiple entries. There are immigrant visas and non-immigrant visas. An expiration of a visa does not reflect the expiration of status in the U.S. For example, many visitor visas are valid for 10 years, but that does not mean that the visa holder may enter and remain in the U.S. for ten years.
I-94 Card – This white card issued by US Customs and Border Patrol upon entry into the U.S. indicates when one's status expires. It is typically stapled to the passport. If a foreign national changed their status in the U.S., their I-94's may be a light green color and may be attached to an approval notice. The period authorized for stay is stamped on the I-94 and may be less than the period of validity of the visa, or may be longer than the period during which the visa itself is valid. It is important to understand that it is the I-94, and not the visa in the passport, that determines status and its validity as to time and purpose. An alien is not out of status if he or she was properly admitted pursuant to a valid visa and the visa has expired, provided the person is still within the authorized period of stay indicated on Form I-94. Moreover, where "D/S" is indicated instead of a date on the I-94, it means that the foreign national is in status for the duration of their program (and is a common annotation provided for foreign students). Finally, some lawfully present foreign nationals are not issued I-94's (e.g. some Canadians, lawful permanent residents).
FOIA – The Freedom of Information Act allows one to file a "FOIA" request for copies of documents filed with USCIS or other immigration offices. Unfortunately, obtaining a response to a FOIA request can take a very long time (several months to over a year). Some information may be redacted from the FOIA response (including information pertaining to family members of the requestor).
Undocumented Immigrants – an immigrant who does not have legal status to be in the United States. Some undocumented immigrants, however, may have claim to an immigration status through pending or potential applications. Undocumented immigrants do not generally include

those who lack a specific visa status if they remain in a period of stay authorized by the U.S. Attorney General. Also, being visa–exempt does not make one undocumented. Canadians for example, are simply admitted to the U.S. by showing their Canadian passports without a visa, and they often don't have an I-94.

Deferred Action

Deferred Action refers to an administrative decision by the Department of Homeland Security (DHS) to defer any removal (deportation) proceedings for an individual. It does not mean that the individual has acquired a specific visa status. Rather, it is a determination by DHS the individual is low priority for removal. This is typically done for humanitarian purposes and renders the recipient eligible for work authorization upon demonstration of a need to work.

Deferred Action for Child Arrivals (DACA) In June 2012, President Obama and the Secretary of DHS implemented a program referred to as DACA. The program's purpose was to formalize the process to request deferred action for a special class of young people who came to the U.S. as minors. A DACA approval does not grant any specific status. The DACA decision simply formalizes a decision not to remove the individual and provides them with authorization to work, attend school, obtain a social security number, and to obtain a driver's license. DACA applicants must meet the following requirements:

(1) Under the age of 31 as of June 15, 2012 (those born June 16, 1981 or later);
(2) Came to the United States before reaching 16th birthday;
(3) Continuously resided in the United States since June 15, 2007, up to the present time;
(4) Physically present in the United States on June 15, 2012, and at the time of making your request;
(5) Entered without inspection before June 15, 2012, or lawful immigration status expired as of June 15, 2012;
(6) Currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
(7) Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Work Authorization Eligibility

There is no single document constituting a "work permit." Some forms of lawful status allow for work authorization and others don't. Some who are authorized to work are provided an employment authorization card ("EAD") and others are not. There are various documents that foreign nationals may present to evidence work authorization.

Virtually all EAD's are limited as to time.

Some individuals with EAD's may have pending removal (deportation) proceedings or even a removal order.

The majority employment authorization for non-immigrants is limited as to employer or nature of employment. For example, if they lose their job, they may be out of status that day. Changing their job or job location may even constitute a violation of status. Most non-immigrants authorized to work have an approval notice or visa and I-94 as evidence of employment authorization, but others do have EAD's.
Some non-immigrant derivative spouses are not eligible for work authorization, which creates additional hardships for domestic violence victims. For example, if they leave their abuser, they may not be able to earn a living to support themselves or their children. However, the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) Tit. VII, Pub. L. No. 109-162 includes a provision that provides eligibility for certain abused non-immigrants to file special requests for employment-authorization. Proposed regulations on this rule were issued in December 2012, but US CIS has still not set up a formal procedure for these applications to be accepted.

Grounds of Deportability

Certain arrests, charges, violations of protective orders or convictions can render a foreign national deportable or ineligible for various immigration status. Arrests and convictions, in the context of domestic violence, may even lead to victims being deported (even when they have a green card or other legal immigrant status). This may result in deportation to countries where the victim will have little or no access to counseling, support, or court/police protection. Moreover, some countries do not honor U.S. orders. Deportation of a batterer may also have a detrimental affect on the victim, especially if the victim does not have strong language capabilities, needs child support or does not have work authorization.

Please find below a sampling of grounds that may be used to remove or deport someone from the U.S. and/or deny their immigration application or visa. This is not an exhaustive list:

Commission of "Crime Involving Moral Turpitude" (CIMT)

Crimes where conduct is "inherently base, vile and contrary to the accepted rules of morality", moral turpitude often involves evil intent. Interpretation of CIMT's are largely derived from case law and crimes constituting CIMT's are quite broad. The entire record of conviction may be examined in a CIMT determination.
Examples:

(8) Assault with intent
(9) Aggravated Assault
(10) Child Abuse
(11) DUI when license already suspended
(12) Robbery & Theft Crimes
(13) Prostitution
(14) Crimes Involving Fraud
(15) Shoplifting

(16) Domestic Violence

Commission of Multiple Criminal Convictions (2 or more CIMTs)

Any two crimes involving moral turpitude not arising out of single scheme of criminal misconduct

Commission of Aggravated Felony

Actual felony conviction not necessary and jail time not necessarily involved
Misdemeanors can be aggravated felonies
Examples:

(17) Controlled Substance offenses
(18) Crime of Violence for which term of imprisonment is at least 1 year in the original sentence (not what was actually served)
(19) Theft offense for which term of imprisonment at least 1 year in the original sentence (not what was actually served)
(20) Fraud offense where loss to victim exceeds $10,000.

Controlled Substance Convictions
Firearms Convictions
Crimes related to Domestic Violence

Crime of Domestic Violence
Crime of Stalking
Crimes of Child Abuse, Child Neglect or Child Abandonment
Violation of Protective Orders

Sentencing Considerations

A sentence to confinement is considered confinement for immigration purposes, even if probated or suspended.
For some crimes, a twelve-month confinement sentence (even if probated) can make a misdemeanor crime an aggravated felony (even if no time is actually served in jail).
Crimes can become “crimes of domestic violence” if committed against a person who is a former or current spouse, an individual with whom the person shares a child in common, or by an individual similarly situated to the person’s spouse under the domestic or family violence laws of the jurisdiction. For example, a simple battery is not a CIMT, but if committed against a spouse, will be considered a crime of domestic violence. Also. while simply battery may not be a CIMT it could be an aggravated felony in some circumstances.

Immigration Relief for some Domestic Violence Survivors

Violence Against Women Act (VAWA)

Applies to males and females
Allows certain qualified abused spouses, children and parents of United States citizens and legal permanent residents to self-petition for legal permanent residence and later US citizenship.
Requires proof of abuse, such as protective orders, indictments, accusations after indictments, police reports, arrest records, shelter records, counselor's statements, and other forms of supporting evidence.
VAWA relief can also be granted to those who are in a same sex marriage under the Defense of Marriage Act (DOMA) but find themselves in an abusive marriage. The same rules for filing under VAWA apply to same-sex marriages that are legal under DOMA.
The victim can file while married to the abusive spouse or file within 2 years of the divorce.
Allows abused conditional residents to extend their two-year conditional status without participation from abusive spouse.
Allows the victim to apply proactively for themselves so they do not need to depend on their abusive spouse to file for them.

T (Trafficking) Visas

A special visa that allows persons who can show that they:

(21) have been victims of trafficking, debt bondage or slavery
(22) Are physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking;
(23) agree to assist in the investigation or prosecution of the traffickers; and
(24) would suffer unusual and severe harm if removed from the United States.

After three years, victim may apply for permanent residence if s/he has had T visa for three years, has complied with reasonable requests for assistance by law enforcement, and possesses good moral character. Upon five years of being a lawful permanent resident, the victim may thereafter apply for US Citizenship.
Certain spouses, children, and some siblings, parents, and grandparents may be eligible for derivative status.

U status

This visa status provides temporary status for victims of certain crimes enumerated in the statute, where the crime resulted in physical injury or emotional trauma to the victim, and where the victim is, was or could be helpful to the investigation or prosecution of an enumerated crime.
The accused does not need to be prosecuted or convicted for the victim to qualify.
The U visa was intended to help law enforcement investigate and prosecute certain crimes, such as domestic violence, sexual assault, and trafficking.
After three years in U status, the applicant may be eligible to file for legal permanent residence status (a green card). Upon five years of being a lawful permanent resident, the victim may thereafter apply for US Citizenship.

Certain spouses, children and some siblings and parents may be eligible for derivative status. Requirements:

(25) Applicant is the victim of either: a crime enumerated in the U visa statute/regulations; an attempt/conspiracy/solicitation to commit such a crime; or an activity similar to an enumerated crime. Qualifying crimes include: rape, torture, prostitution, sexual exploitation, incest, trafficking, domestic violence, sexual assault, abusive sexual contact, sexual exploitation, female genital mutilation, being held hostage, peonage, slave trade, involuntary servitude, kidnapping, abduction, manslaughter, murder, blackmail, witness tampering, obstruction of justice, unlawful criminal restraint, false imprisonment, felonious assault).

(26) Applicant has information about the relevant criminal activity.

(27) Applicant has suffered substantial physical or mental abuse as a result of the crime(s).

(28) Applicant is, was or could be helpful to the investigation or prosecution of the crime(s).

(29) The relevant crime occurred in the US or violated US law.

(30) Applicant must obtain "certification" with the assistance of "a certifying agency", which includes judges, federal/state/local law enforcement officers, probation officers, district attorneys, or other officials who might have an investigative role in the criminal justice system. The certification must verify that the applicant is, was or could be helpful to the investigation or prosecution of the crime. There is a U visa certification form created for this purpose: Supplement B to Form I-918, available at http://www.uscis.gov., which must be signed by the person designated to this task by the head of a "certifying agency." It is important to keep in mind that the certification alone will not guarantee U visa approval, but it is a required step in the process.

(31) The U visa status covers some indirect victims (e.g. certain family members of murder/manslaughter victims or incapacitated/incompetent victims).

(32) Excludes one who is culpable for the criminal activity specifically at issue in the U visa application. Those who may have engaged in separate unlawful activity, however, may nevertheless qualify. For example, a woman who agrees to be smuggled into the US but is later held in involuntary servitude will not be excluded from U visa protection as a victim of involuntary servitude, even where she may have some culpability by participating willingly in the smuggling crime or by entering illegally into the US.

Special Immigrant Juvenile Status (SIJS)

An avenue for providing legal status to children who are undocumented and have been abused, abandoned and neglected by their parents.

Based upon changes made under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) an eligible SIJ alien now includes an alien: (1) who has been declared dependent on a juvenile court; (2) whom a juvenile or State court has legally committed to, or placed under the custody of, an agency or department of a State; or (3) who has been placed under the custody of an individual or entity appointed by a State or juvenile court.
Thus, petitions filed by the juvenile that include juvenile court orders legally committing a juvenile to or placing a juvenile under the custody of an individual or entity appointed by a juvenile court are now eligible. For example, a petition filed by an alien on whose behalf a juvenile court appointed a guardian may be eligible. Note that if a state or an individual appointed by the state is acting in loco parentis, such a state or individual is not considered a legal guardian for purposes of SIJ eligibility.
Previously, the juvenile court needed to deem a juvenile eligible for long term foster care due to abuse, neglect or abandonment. Under the TVPRA 2008 modifications, the juvenile court must find that the juvenile's reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care and replaced it with a requirement that the juvenile court find reunification with one or both parents not viable. If a juvenile court order includes a finding that reunification with one or both parents is not viable due to a similar basis found under State law, the petitioner must establish that such a basis is similar to a finding of abuse, neglect, or abandonment.
Applicant must remain a "child" on the date the SIJS application is filed with US CIS.
A petitioner is still required to demonstrate that he or she has been the subject of a determination in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.

Refugees and Political Asylees

Refugees and asylees are people who have a well-founded fear of persecution due to their race, religion, nationality, membership in a particular social group, or political opinion.
Poverty, alone, is not considered persecution, therefore people coming to the United States solely to escape poverty are not refugees or asylees.
The fear of persecution must be both objective and subjective. The social and political conditions must exist in the person's home country so that fear of persecution is possible and reasonable, and the applicant, him or herself, must have a personal, reasonable fear of persecution.
The fear may be based on past persecution, or because of a fear of future persecution.
Refugees' fear of persecution is evaluated before they enter the United States. If they succeed in proving such "fear", they are invited to come to the US by our government. They are given housing vouchers and some social welfare assistance during their first three months in the US.
Asylees find their own way to the United States, and ask the US government for protection once they are here. They can either apply affirmatively for asylum with U.S. Citizenship and Immigration Services, or file their application before an immigration judge in removal proceedings.

Once status is granted, both asylees and refugees are given immediate permission to work in the United States. They may apply for legal permanent residence after they have had their refugee or asylee status for a year.
This form of relief can be applied for those who are victims of domestic violence and those who are LGBT, however relief may be difficult to obtain depending on the circumstances and home country.

The Illegal Immigration Reform and Enforcement Act of 2011 (HB87)

There are two sections of this law that concern victims of domestic violence. They have both been challenged in the 11th Circuit, where one was upheld and the other struck down. *Georgia Latino Alliance for Human Rights, et al. v. Nathan Deal* et al. 691 F3d 1250 (2012).

Section 8, which was upheld, authorizes Georgia law enforcement officers, when they have probable cause that someone has committed a crime, to check that person's immigration status if they are unable to produce adequate identification to prove citizenship, O.C.G.A. § 17-5-100(b). The law includes an exception that could apply to victims of domestic violence who are seeking help from law enforcement:

> "No person who in good faith contacts or has contact with a state or local peace officer or prosecuting attorney or member of the staff of a prosecuting attorney for the purpose of acting as a witness to a crime, to report criminal activity, or to seek assistance as a victim to a crime shall have his or her immigration status investigated based on such contact or based on information arising from such contact. O.C.G.A. § 17-5-100(f)."

Section 7, which codifies three separate crimes for interactions with an "illegal alien," was struck down by the 11th Circuit on preemption grounds. The law would have made it a criminal offense to "transport or move an illegal alien ...while committing another criminal offense", conceal, harbor or shield an illegal alien from detection, or induce an illegal alien to enter Georgia, O.C.G.A. §§16-11-200(b), 16-11-201(b), and16-11-202(b).

There is nothing in HB 87 that authorizes law enforcement to check the immigration status of a person filing a civil legal action or attending a civil hearing. Law enforcement may verify a person's immigration status only if they are being investigated for a criminal offense. As long as a victim is only involved with a civil legal action, there should be no basis for law enforcement to check their immigration status.
Likewise, undocumented immigrants remain eligible to seek protective orders related to family violence and stalking order

Hague Convention: International Kidnapping

This provides an important means of relief for a victim of domestic violence who fears that the abusing parent will kidnap the child on the pretext of taking the child out of the country

on visits. Although more than 70 countries have signed on to the Hague Convention at this time, there are still a number of countries that have not.

Outline of custody issues incident to domestic violence under Hague Convention:

Custody battles incident to domestic violence:

Relevant law:

(33) Hague Convention-U.S. party
(34) U.S. version: International Child Abduction Remedies Act ("ICARA")

Policy of Hague Convention:

Prompt return of children wrongfully removed to a foreign state; and
securing that the rights of custody and access afforded to one parent are respected by the other.

Central legal issue affecting breadth of Hague Convention in a custody dispute: a party's removal of a child is considered "wrongful" under the Hague Convention only if both countries at issue are contracting states as of the date of the child's removal.

The child must also be under sixteen years of age.

Caveat: a court presiding over a Hague Convention issue has no subject matter jurisdiction to decide merits of a custody dispute.

Sole issue before court is whether removal of a child from one country to another is wrongful.

(35) Advantages to parent victim of domestic violence who suffers removal of child to another country: removing parent cannot litigate custody issue in foreign state's court, and take advantage of any favorable law in the foreign state on questions of custody;
(36) Disadvantage: victim parent cannot avail him/herself of a forum with potentially beneficial custody law by simply fleeing from abuser in the original state to another state and taking the child with him or her.

Once the prerequisites of "wrongfulness" are established, i.e., the presence of two contracting States and a child who is under sixteen years of age, then the removal is evaluated under the definition of "wrongfulness." A removal is "wrongful" if:

it is done in breach of custody rights of a parent, under the law of the State in which child was "habitually resident" immediately before the removal or retention; and
At time of removal or retention, those rights were actually exercised, or would have been so exercised but for the removal or retention.

"Habitual residence": place where a child has been physically present for an amount of time sufficient for acclimatization and which has a degree of settled purpose from the child's perspective. *Feder v. Evans-Feder,* 63 F.3d 217 (1995).

Focus on the child and analysis consists of child's circumstances in particular place, plus parents' present, shared intentions regarding the child's presence there.

But, federal appeals decision adopted by 11th Circuit: *Mozes v. Mozes,* 329 F.3d 1067 (9th Cir. 2001). focuses more on the intention of the parents. Relevant areas of analysis under Mozes:

Family jointly taking all steps associated with abandoning habitual residence in one country to take it up in another.
Child's relocation to another country is initially "clearly intended to be of a specific, delimited period," then one parent changes his or her mind and decides to make the move permanent.
Parents have agreed to allow a child to stay in a new country for an indefinite period.
If parental intent is unclear, level of child's acclimatization in new country may be evaluated by court to determine whether shift in habitual residence should be undisturbed or changed.

If American court finds that petitioner in Hague Convention case fails to show by a preponderance of the evidence that a child has been removed from his or her habitual residence, Hague Convention is inapplicable and no return order of child is set. (Could be detrimental to victim of domestic violence losing child.)
Custody rights under Hague:

Petitioner has burden to show that removal of child from one country to another is in breach of his or her custody rights:

> (37) Under the law of State in which the child was habitually resident immediately before the removal or retention.

Rights of custody not limited to court ordered custody; but pre-order scenarios as well. Example: deteriorating marriage may lead one party to consider leaving country and take child with him or her.

Administrative vehicles by which to bring Hague Convention petition:

Each contracting state must establish a Central Authority with power to accept Hague Convention applications requesting return of a child:

> (38) Must apply to Central Authority of child's habitual residence or Central Authority of any other Contracting State for assistance.

U.S. has designated the National Center for Missing and Exploited Children as Central Authority.

If child has been wrongfully removed from the U.S. to a foreign country, the U.S. State Department acts as Central Authority.

Petitioner may file Hague Convention petition in either state or federal court in the place where the child is located at the time the petition is filed.

Language Access to Interpreters in Domestic Violence Cases

There are both federal and state guidelines that require access to interpreters for foreign language speakers.

Title VI of the Civil Rights Act requires any agency receiving federal funds to provide meaningful access to foreign language speakers.
The precise requirement - i.e., what reasonable steps are needed to provide that meaningful access - is determined by a four-factor balancing test:

Number of Limited English Proficiency (LEP) persons eligible to be served or encountered;
Frequency of contact with LEP persons;
Nature and importance of the program to the LEP individuals; and
Resources available, including costs of providing LEP services.

The relevant statute provides:

Interpreters should be provided at no cost to the victim in protective order hearings. O.C.G.A. 15-6-77(4)
No fee or cost shall be assessed for any service rendered by the clerk of superior court through entry of judgment in family violence cases under Chapter 13 of Title 19 or in connection with the filing, issuance, registration, or service of a protection order or a petition for a protection order to protect a victim of domestic violence, stalking, or sexual assault. A petitioner seeking a temporary protective order (TPO) or a respondent involved in a temporary protective order hearing under the provisions of Code Section 19-13-3 or 19-13-4 shall be provided with a foreign language or sign language interpreter when necessary for the hearing on the petition. The reasonable cost of the interpreter shall be paid by the local victim assistance funds as provided by Article 8 of Chapter 21 of this title. The provisions of this paragraph shall have control over any other conflicting provisions of law and shall specifically have control over the provisions of Code Sections 15-6-77.1, 15-6-77.2, and 15-6-77.3.

The Georgia Supreme Court established the Georgia Commission on Interpreters in 2003. The Commission is charged with "regulating a statewide comprehensive court interpreter program, developing the criteria for the training and certification of interpreters, designating languages for which certification shall be required, and establishing standards of conduct for interpreters."
Supreme Court rules regarding use of interpreters are available here.
http://coi.georgiacourts.gov/sites/default/files/coi/GA-%20Supreme%20Court%20Rule%20on%20Use%20of%20Interpreters.pdf

Additional Safeguards for Protective Orders and Bond Orders

Here are some examples of items that can be added to the temporary protective order (TPO) to help protect foreign national domestic violence victims but also to obtain what is necessary to prove their status. Many of these provisions are already available as an additional Appendix B of Bond Orders throughout the State of Georgia.

You can ask that the abuser:

Give victims access to, or copies of, any documents supporting their application. Have victims consult an immigration attorney to find out which documents should be requested and how to find out his or her immigration status.
Not withdraw the application for temporary or permanent residency, which had been filed on the victim's behalf.
Take any and all actions necessary to ensure that the victim's application for temporary or permanent residency or conditional permanent residency is approved.
Not contact Department of Homeland Security (DHS), the Consulate, or the Embassy about the victim's status. This is useful when abusers try to prevent victims from obtaining legal residency or legal status.
Immediately turn over victim's personal property. If the court orders this, it is advised that a law enforcement escort be dispatched immediately with the victim to get the documents and items. If the court waits, the batterer may destroy documents needed for the victim to obtain immigration status.
Sign a form to obtain the abuser's birth certificate or provide a copy of his or her green card or U.S. passport. oftentimes proof of the abuser's citizenship or permanent resident status is needed.
Not remove the children from the court's jurisdiction and/or United States. Obtain a court order that the abuser turn over the children's passports to the victim or the court. Send a copy of the court order to the U.S. Dept of State office of Passport Services. This should keep the abuser from kidnapping the children.
Sign a statement that will also be signed by the victim and the judge to inform the relevant embassy or consulate that they should not issue a visitor's visa or any other visas to the child of the parties.
Pay any fees associated with the petitioner's and/or children's immigration cases.
Send copies to respective consulates, embassies, passport office, and airlines to prevent issuance of a visa.
Sign a prepared Freedom of Information Act (FOIA) form with the result of this form being sent to the victim's attorney. This helps when the abuser has been keeping information from the victim about the status that may have been filed on the victim's behalf.
State information about previous marriages and divorces and whether the abuser has the copies of the decrees. If the abuser has the copies, ask that they be turned over to the battered spouse. Proof of termination of previous marriages is often required.
There is always the possibility of abuser's taking victims and their children out of the country to avoid their cooperation with law enforcement or the courts, please consider language in protective orders and bond orders to prevent such action. This is something you might want to

screen for when writing up orders. The abuser may also leave the country so they don't have to face the charges or consequences.

Georgia Security and Immigration Compliance Act (SB529) and How it Impacts Immigrant Victims of Domestic Violence.

O.C.G.A. 13-10-90 *et. seq*. was passed in June 2006 in order to regulate and restrict immigrants in the state of Georgia. Many aspects of this law have unintended consequences for battered immigrants because such persons will be afraid to go to police for assistance out of fear that their immigration status will be verified and they will be removed/deported.

Police must verify immigration status for every person who is confined on a felony or DUI charge.
Prohibits unauthorized people (ex. Notarios) from providing immigration services. Many "notarios" take advantage of vulnerable immigrants by charging them for services that they are not authorized to provide. As a result, a battered immigrant might think that the appropriate paperwork had been filed only to find out that the paperwork was not filed properly or not filed at all.
A person convicted of human trafficking shall be guilty of a felony crime.
All public employers and contractors must verify status of newly hired employees.
State agencies must verify immigration status of any applicant for benefits over the age of 18. This has been adversely affecting children who have been filing for SIJS status because of the way different jurisdictions have been interpreting the word "benefits". A broad application of this term may prevent many battered immigrants or children from coming forward to apply for support for which they are eligible. We believe that the word "benefits" applies to State funded benefits that most immigrants have not been granted or for which they are not eligible. It is important to note that certain federally funded services such as shelter, victim compensation, Violence Against Women funded services, interpretation and others are exempt from this requirement.

VAWA Confidentiality

VAWA confidentiality protects immigrant victims from being picked up by immigration, or law enforcement who have immigration duties, if they are relying on information provided by the abuser. 8 U.S.C. § 1367 (commonly referred to as the §384 confidentiality provision) prohibits disclosure of ANY information relating to an foreign national who is a VAWA self petitioner, VAWA cancellation, T or U visa applicant. The prohibition remains in effect until "the application for relief is denied and all opportunities for appeal of the denial have been exhausted."

VAWA Confidentiality provides three types of protection to immigrant victims of violence, including battered immigrants and immigrant victims of sexual assault, trafficking and other U-visa-listed crimes. Specifically, VAWA:

Protects the confidentiality of information provided to the Department of Homeland Security, the Department of Justice or the Department of State by an immigrant victim in order to prevent abusers, traffickers and other perpetrators from using the information to harm the victim.
Prohibits immigration enforcement agencies from using information provided solely by an abuser, trafficker U visa crime perpetrator, a relative, or a member of their family, to take an adverse action regarding admissibility or deportability against an immigrant victim, without regard to whether a victim has ever filed for VAWA related immigration relief or even qualifies to file for it.
Prohibits enforcement actions at any of the following locations: domestic violence shelter; victim services program; family justice center; supervised visitation center; or courthouse where the victim makes an appearance in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking where the alien has been battered or subject to extreme cruelty. If any part of an enforcement action takes place at any of these locations, DHS must disclose this fact in the Notice to Appear and in immigration court proceedings, and must certify that such action did not violate section 384 of IIRAIRA.

In addition to Department of Homeland Security (DHS), VAWA confidentiality provisions apply to family court officers, criminal court judges, and law enforcement officers.
VAWA's confidentiality provisions require certification that the confidentiality provisions have been complied with when enforcement actions are taken at specified locations, such as domestic violence shelters, rape crisis centers, or courthouses.
VAWA's confidentiality provisions prohibit DHS from using information from particular individuals as the sole basis for arresting and charging an alien with removability.
VAWA's confidentiality provisions generally prohibit third-party disclosure of any information relating to an alien who is an applicant for relief under VAWA.
VAWA's confidentiality protections prohibit an abuser from inquiring into the existence or substance of any VAWA, T-Visa and U-Visa application for relief. VAWA confidentiality is a protection to be asserted by an immigrant victim, not just a prohibition on governmental action. Absent voluntary disclosure by a victim or limited exceptions set forth in the statute, information protected by VAWA should remain confidential, regardless of whether it resides with the government or the victim. To hold otherwise would defeat one of the paramount purposes of VAWA confidentiality, "to prohibit disclosure of confidential application materials to the accused batterer". Hawke v. United States Dep't of Homeland Sec., No. C-07-03456 RMW, 2008 U.S. Dist. LEXIS 87603 (N.D. Cal. Sept. 29, 2008). The limited exceptions to VAWA mandated confidentiality of VAWA protected information do not extend to discovery or use in civil litigation between the victim and her abuser, or to criminal litigation in which the victim testifies against her abuser.
Absent limited exceptions, VAWA's broad confidentiality provisions expressly prohibit the release of protected information by the government to third parties. Although VAWA does not explicit address attempts by an abuser to discover the same VAWA protected information from his victim in civil or criminal proceedings, Congress's intent to prevent the use by or disclosure of any information related to confidential VAWA applications to third parties is unambiguous.

Permitting abusers to discover or use protected information from their victims could render VAWA's confidentiality provisions meaningless and subject victims to the further abuse that VAWA intended to prevent.
Violation of VAWA confidentiality can result in:

Disciplinary action and/or
$5,000 fine for the individual and
Dismissal of the immigration proceeding against the non-citizen.
Violations also include making false certifications in a Notice to Appear.
Useful links for this:

(39) http://library.niwap.org/wp-content/uploads/2015/pdf/CONF-VAWA-Bro-3ProngsofConfidentiality-6.19.2014.pdf
(40) http://library.niwap.org/wp-content/uploads/2015/IMM-DHSPolicyGuidance-11.13.15.pdf
(41) http://library.niwap.org/wp-content/uploads/2015/pdf/CONF-VAWA-tool-HawkeDemajfactsheet-7.25.14.pdf

Domestic Relations in Muslim Marriages

Clearly, Islamic law is not binding on any court in the United States, nor are U.S. courts obligated to make determinations based on the rules and modes of behavior of any particular religion. However, an insight into the cultural and religious underpinnings of custody disputes in Muslim marriages is valuable in order to better understand how cultural norms may influence parties' behavior and explain their motivations. This exercise is also helpful in bridging the proverbial and actual language barriers that can affect the adjudication of domestic relations of Muslim litigants, particularly where domestic violence is involved.

Islamic norms vs. Laws of Muslim majority countries: There is a fair amount of discrepancy between the cultural practices and norms in Muslim majority countries and Islamic law. This is due, in large part, to the prevalence of patriarchy and its influence on the society at large. Patriarchy has influenced the interpretation of religion as well, rendering the understanding of true Islamic values, rules and obligations obsolete. even within Muslim cultures, there is not a deep understanding of religious rules and obligations. Much of what individuals believe to be their rights and obligations in a marriage or in parental relationships are tied to what they have been taught culturally. This, in turn, is often impacted greatly by the laws of Muslim majority countries. It is key to remember that laws of these countries do not necessarily reflect "Islamic family law" as much as they do a particular nation's codification of cultural norms.
Islamic jurisprudence in a nutshell: Islamic law is not monolithic, but is an umbrella term referring to traditions of jurisprudence over thousands of years. For sake of brevity, references to Islamic law are limited to the four major schools of thought in the Sunni tradition (Hanbali, Hanafi, Maliki, and Shafii) and the Jaffri school, the major school of thought in Shiite tradition.

There is often tremendous intellectual disagreement even within the same school of thought and, thus, it is often difficult to speak of "the" Islamic law perspective on any issue (Rafiq, 2014). Marriage Contract: This Islamic marriage contract is a simple contract. Most elements of Islamic marriage contracts are enforceable in American courts because the stipulations within are not contrary to public policy. There is a fair amount of precedent on the enforcement of Islamic marriage contracts in U.S. courts (Ali, 2008).

offer & Acceptance
Mahr (dower): the mahr is a marital gift (usually a sum of money) that is promised to the wife at the time of marriage.

(42) The mahr may be paid at the time of the marriage, at some point during the marriage upon demand by the wife, or at the conclusion of the marriage if the husband chooses to terminate the marriage.
(43) The mahr is the right of the woman, and hers alone. She may do with it as she chooses. The Qur'an enjoins men to give their prospective wives a mahr upon contracting the marriage: "and give the women [upon marriage] their gifts graciously (saduqaatihinna nihlah). But if they give up willingly to you anything of it, then take it in satisfaction and ease." (Qur'an, 4:4. An-Nisa' The Women).
(44) The wife may choose to terminate the marriage if the Mahr mahr is not paid prior to consummation of the marriage.
(45) If the wife chooses to terminate the marriage, she usually foregoes the right to mahr if it has not been paid or is asked to repay the sum if it has already been given to her. If she chooses to terminate the marriage because of harm, such as in a domestic violence situation, she is still entitled to receive her marital gift.
(46) The mahr may be neither speculative, nor usurious. and, if the amount of mahr is not spelled out in the marriage contract, the wife is still entitled to a compensatory payment.

Additional Requirements: While there is large consensus as these three components, there is debate about two additional elements:

(47) Witnesses: there is virtual consensus that witnesses are required to solemnize the marriage, but there is fluidity about whether witnesses must observe the actual contract execution or what qualifications the witnesses must have.
(48) Guardianship: although adults of both genders are given the right to choose their own spouse and to contract a marraiage on their own, some schools of thought require that the bride should be represented by a guardian or "wali," who acts as her agent and gives the bride away.

Sitipulations: women are and have historically included stipulations in the marriage contract and, except those stipulations that void the purpose of the marraige marriage itself, most stipulations are enforceable.

Dissolution of Marriage

Talaq: The talaq divorce is generally initiated by the husband. Contrary to popular belief, it can be initiated by the wife if she stipulated her ability to do so in the marriage contract (see section II.5 above). The talaq is a unilateral divorce. Once pronounced, the couple then enters a period of separation called the ‘idda period. At any time during the ‘idda period, the couple can reconcile. Once the ‘idda period is over (generally three months unless the wife is pregnant in which case it lasts until the end of the pregnancy), one divorce can be finalized. In a talaq divorce, the wife is entitled to her mahr and to maintenance during the separation period.
Kuhl’: A khul’ divorce is initiated by the wife. This form of divorce is often misunderstood. Historically, the Prophet Muhammad granted this form of divorce to a woman who sought it because she was was not happy in her marriage. One particular woman informed the Prophet that there was no defect, moral or religious, in her husband, but that she simply could not stand him. The Prophet asked her if she would be willing to return the mahr (and only that) to her husband. She agreed. The reason why this is so misunderstood, is that many believe that any time a divorce is initiated by the wife, she must return her mahr. It is key to note that in this story, the husband had no defect nor did he treat his wife poorly. If he had harmed her, such as in DV situations, she would be entitled to keep her marital gift. (al-Hibri 2005).
Divorce by Judge: This third type of divorce available in Muslim majority countries is similar ot the legal process in the US. A judge who is knowledgeable of the laws of the country as well as of the religious beliefs of the parties makes an adjudication of divorce after a presentation of facts, witnesses, and other evidence.

Financial Rights of the Wife at Divorce

Support during the ‘idda (separation) period.
Mahr: There is agreement that if the man does not pay a mahr to his wife at the time of contracting the marriage, whether the mahr was stipulated in the contract or not, it shall be considered an outstanding debt of the man to his wife, unless she unequivocally waives it. If the husband dies before he pays his wife her mahr, the unpaid mahr becomes a senior debt against the husband’s estate.
Separate property: A women’s separate property is not divided upon divorce and is not part of the assets that could be part of litigation. Whatever a woman owns, earns or is given as a gift before and during the course of marriage remains her sole property when the marriage ends: “But if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin? and how could you take it while you have gone in unto each other and they have taken from you a solemn covenant?” (Qur’an 4: 20-21).

Child Custody: In domestic abuse cases, fathers/husbands often use the issue of child custody to scare the mother and prevent her from seeking legal assistance. In most Muslim majority countries, custody laws largely favor the father. Thus, many Muslim men (and women) believe that it is the father's God given right to have all children, regardless of age. This leads to the very real threat by fathers that they will take away the child or children and abscond from the United States. The reason is simple. Once the father manages to get to a country where custody rules are based on Islamic jurisprudence, there is virtually nothing a woman can do to regain custody. However, Islamic jurisprudence on the issue of child custody is far more nuanced than the laws of various Muslim majority countries.

Types of Custody: of the major Sunni schools of thought, custody is split into legal and physical custody.

(49) Legal Custody (Guardianship): virtually all of the major schools of thought grant the father with primary legal custody upon divorce, although each school recognizes the importance of the mother in the child's life.

(50) Physical Custody: the consensus among Sunni jurists is that the mother should have exclusive physical custody of children until such time as the children reach an age where they are no longer dependent on the mother. At that point, the children revert to the father who then exercises sole legal and physical custody over the children.

(51) The age on which the child must return to the father's guardianship differs among the various schools, the Maliki school allows a mother to retain primary physical custody of a male child until he reaches puberty and to retain primary custody of a female child until she marries.

(52) It is also worth noting that oral traditions show a great preference for children staying with the mother during their formative years. In fact, according to these traditions, the mother (and maternal relatives) have primary right to custody of children until such time as the mother is proven to be unfit or she remarries.

(53) A mother is given preference for physical custody provided she is of sound mind, has not remarried, and lives a trustworthy life.

Support: During the time that the mother exercises physical custody, she is entitled to support from the father. A mother is never required to spend of her own wealth or earnings for the support of the child, even if she is better off financially than the father. It is recognized that, because the father has all of the financial responsibility for the child, he has preference as to legal guardianship/custody. The logical corollary is that, where the mother has all of the financial responsibility or shares in the financial responsibility for the child/children, she also should have equivalent legal rights to decision-making.

Election by Children: Upon reaching adolescence, children (male and female) may elect the parent with whom they wish to reside. Hadith narrated by An-Nasaa'i (3496) and Abu Dawood (2277), according to which a woman came to the Messenger of Allah (blessings and peace of Allah be upon him) and said: May my father and mother be sacrificed for you. My husband

wants to take my son away even though he benefits me and brings me water from the well of Abu ‘Anbah. Her husband came and said: Who is disputing with me concerning my son? [The Prophet (blessings and peace of Allah be upon him)] said: “O boy, this is your father and this is your mother, take the hand of whichever of them you want.” and he took his mother's hand and she went away with him. (Rafiq 2014).
Children born out of wedlock: There is universal consensus that the mother has preference as to custody of any child born outside of marriage.

Conclusion: These traditions are actually steeped in the same values emphasized in Georgia law, i.e., the best interests of the child. Historically, Islamic judges made determinations of child custody and care based on the “wishes and welfare” of the child. As in Georgia law, the wishes of a child are secondary to what is in his/her best interests. Notably, although Georgia law no longer automatically favors the mother, certainly, it is often in the child’s best interests to stay with the mother during his/her formative years. of course, the mother’s actions to the extent they may be harmful to the child can affect the best interest of the child calculus. Thus, although an argument may be made that the a Muslim father has greater right to custody of his child, the tradition clearly recognizes that parents should split the responsibility of children and that the custodial parent is entitled to some form of child support/maintenance.

Resources For Battered Refugee and Immigrant Women In Georgia

Refugee and Immigrant Battered Women Programs: All caseworkers and advocates from below listed projects are bilingual, bicultural and trained in domestic violence issues.

AGENCY/PROJECT	LANGUAGES	SERVICES
Tapestri Phone: (404) 299-2185 Fax: (770) 270-4184 www.tapestri.org ***Tapestri Men’s Program*** Phone: (678) 698-3612	Amharic, Bosnian, Hindi, Farsi, Spanish, Polish, Russian, Vietnamese Korean, Spanish, English	➢ Information about and referrals to services available to battered immigrant women in metro Atlanta area ➢ Multicultural Training ➢ Legal advocacy ➢ Services to victims of human trafficking ➢ 24 weeks violence intervention program ➢ Community education
International Women’s House Hotline: (770) 413-5557 Fax: (678) 476-6804	Arabic, French, Greek, German, Hebrew, Spanish, Russian, English	➢ Shelter for battered refugee and immigrant women and children (max. stay time for residents: 1-3 months)

AGENCY/PROJECT	LANGUAGES	SERVICES
http://internationalwomenshouse.org/		
Caminar Latino, Inc. Phone: 404-413-6348 Fax 678-527-8700 www.caminarlatino.org	Spanish	➢ Counseling ➢ Legal advocacy ➢ Support groups for women and children; *FVIP for Latino men
RAKSHA, Inc. Helpline: (404) 842-0725 Phone: (404) 876-0670 Toll free: (866) 725-7423 Fax: (404) 876-4525 www.raksha.org	Bengali, Hindi, Gujarati, Tamil, Telegu, Punjabi, Urdu and other South Asian languages, English	➢ Crisis counseling ➢ Legal advocacy/referrals ➢ Support groups and counseling ➢ Community education ➢ Youth services
New American Pathways Phone: (404) 663-3946 www.newamericanpathways.org	Arabic, Bosnian, Burmese, Kurdish, Farsi, French, Russian, Spanish, Somali, Swahili, Sudanese, Vietnamese, Kirundi, Kinyarwanda, Nepali, English	➢ Crisis counseling ➢ Legal advocacy/referrals ➢ Employment assistance ➢ Community education ➢ ESL classes ➢ Immigration Services
Jewish Family and Career Services Phone: (770) 677-9300 Fax: (770) 677-9400 https://jfcsatl.org/	Hebrew, Yiddish, English	➢ Crisis counseling ➢ Support groups for women ➢ Community education ➢ Referrals
Center for Pan Asian Community Services Phone: (770)-936-0969 Fax: (770) 458-9377 www.cpacs.org	Korean, Chinese, Vietnamese, Thai, and 16 other Asian Languages	➢ Social Service Assistance ➢ Translation and Interpretation ➢ Food Pantry Servic ➢ Family Violence Intervention Program ➢ Shelter

AGENCY/PROJECT	LANGUAGES	SERVICES
Catholic Charities Client Intake Line: (678)-222-3920 (English and Spanish) Phone: (for current clients and general calls only): (678)-222-3920 (English and Spanish) Fax: 678-222-3966 www.catholiccharitiesatlanta.org	Spanish, French, English They have access to many other languages through volunteers	➢ Pro-bono Legal assistance in filing VAWA Applications, U Visas, special immigrant juvenile status cases, deferred actions for childhood arrivals, asylum.
Georgia Asylum and Immigration Network (GAIN) Phone: (404) 572-2609 Fax: (404) 572-5140 http://www.georgiaasylum.org/	Hindi, Spanish, English They have access to many other languages through volunteers	➢ Pro-bono legal representation for asylum , VAWA, U and T Visas.
Latin American Association Phone: (678) 205-1018 Fax: (678) 205-1027 http://thelaa.org/	Spanish	➢ Immigration Services, VAWA, U Visas, deferred action for childhood arrivals.
Cherokee Family Violence Center office: (770)-479-1804 Hotline: (800)-3342836 English: (770)-479-1703 TTY (770)-479-7703 En Español: (770)-720-7050 www.cfvc.org	Spanish	➢ Support Groups ➢ Immigration Services/Legal Services ➢ Shelter ➢ Transitional Housing

Natonal Resources

AGENCY/PROJECT	SERVICES
National Center for Missing and Exploited Children Hotline: (800) THELOST (1-800-843-5678) www.missingkids.org	➢ International kidnapping cases ➢ Connections to Department of State

AGENCY/PROJECT	SERVICES
American Citizen Unit with US Embassy Toll Free Phone from the U.S./Canada: (888)-407-4747	➢ Help getting US citizens/children of US citizens back to the United States if abandoned
ASSISTA Phone: (860)-758-0733 http://www.asistahelp.org /	➢ Immigration technical assistance
NIWAP:National Immigrant Women Advocacy Project Phone (202)-274-4457 http://niwaplibrary.wcl.american.edu/	➢ Family law, immigration technical assistance ➢ Referrals ➢ Website with legal resources and videos
Karamah: Muslim Women Lawyers for Human Rights Phone: (202)-234-730 http://karamah.org/	➢ Technical assistance regarding Islamic law
Mexican Consulate- Atlanta office Phone: (404)-266-2233 http://consulate-atlanta.com/mexico.html	➢ Assistance for detained Mexican nationals and survivors of violence

Appendix I. MENTAL ILLNESS AND THE COURT

What Is Mental Illness?

The definition of "mental illness" put forward by Goldman and Grob (2006) reinforces the notion that changing times coincide with changing definitions. The study of "psychiatry as a specialized branch of medicine and academic discipline" has significantly evolved and progressed over time (Vogel, Stephens, & Siebels, 2014). Therefore, the definition of "mental illness" has unsurprisingly fallen subject to controversy and change over the past century as well.

The term "mental illness" commonly conjures up the term "mental health"; consequently, the two terms are oftentimes thought of as being polar opposites, but should instead "be thought of as points on a continuum" (1999 Mental Health Report of the U.S. Surgeon General). Goldman and Grob (2006) utilize the 1999 mental health report of the U.S. Surgeon General to distinguish the definition of "mental health" from the definition of "mental illness". According to the 1999 report:

"Mental health is a state of successful performance of mental function, resulting in productive activities, fulfilling relationships with other people, and the ability to adapt to change and to cope with adversity…mental illness is the term that refers collectively to all diagnosable mental disorders. Mental [illnesses] are health conditions that are characterized by alteration in thinking, mood, or behavior (or some combination thereof) associated with distress and/or impaired functioning" (1999 Mental Health Report of the U.S. Surgeon General).

The definitions provided by the Surgeon General's report uphold "convention in psychiatric epidemiology and mental health policy by defining subpopulations on the basis of degree of impairment" (Goldman & Grob, 2006). As previously referenced, the definition of "mental illness" has succumb to controversy throughout history, as there are discrepancies among scholars and professionals alike as to how "mental illness" should be defined in certain contexts. It should be noted that in both scholarly literature and medical jargon, the term "mental illness" is purely conditional. The definition is frequently tailored to its subject matter, and is determined by the severity and persistence of symptoms.

Who Suffers From Mental Illness In Domestic Violence Cases?

Either the victim or the perpetrator can suffer from mental illness in domestic violence cases. However, it is important to determine whether or not mental illness is present in order to better understand the situation. If symptoms of mental illness are present in the offender, then it should be determined whether or not the mental illness caused or exacerbated the acts of domestic violence. The role that mental illness plays in the victim is typically more convoluted. This is because mental illness can either be present before the acts of domestic violence occur, or mental illness can materialize in the victim as a result of prolonged exposure to physical, emotional, and sexual abuse. This appendix further examines mental illness in both the offender and victim, as well how to recognize symptoms of mental illness in the courtroom setting.

Why Is It Important To Detect A Mental Illness?

Research suggests that the ability to provide mentally ill people with the services they need in the U.S. has significantly diminished over the past 50 years (Vogel, Stephens, & Siebels, 2014). As a result, mentally ill people are left with very few options and are frequently filtered through the criminal justice system rather than a mental health facility (Vogel et al., 2014). It is acknowledged by Vogel et al. (2014) that the relationship between mental illness and domestic violence is a multifaceted one, and suggests that an individualized approach is required to better understand the relation between the two. As a judge, it is important to detect when a mental illness is present in court, because it allows you to better understand the stories and testimonies of those present in courtroom. People who suffer from a mental illness often have a difficult time accurately recounting and relaying a string of events in the order in which they occurred. It can also be very difficult to determine a mental illness in a victim, because many symptoms of mental illnesses mimic side effects and symptoms of trauma.

If the survivor of domestic violence shows symptoms of mental illness, it is helpful to determine whether or not the mental illness is a pre-existing condition, or if the mental illness is a result of prolonged exposure to domestic violence and victimization. It is also important to note that signs of distress, fear, anxiety or even paranoia are natural responses to physical and emotional abuse or coercive control. Therefore care should be taken not to pathologize such.

Perpetrators of domestic violence, who suffer from mental illness, make up a subgroup of offenders that can be broken down further into two groups: a smaller group in which the mental illness may have caused the crime, and a larger group in which the symptoms of the mental illness and the crime committed are not related (Peterson, Kennealy, Skeem, Bray, & Zvonkovic, 2014). For the former group research suggests that the rate of recidivism would decline if offenders were provided with better access to mental health treatment, since “the majority of inmates with mental health problems do not receive treatment while incarcerated” (Peterson et al., 2014 & Vogel et al., 2014, p. 630). In contrast, for the latter group recidivism may be part of a pattern of battering or intimate terrorism- type behavior.

Overall, it is helpful that any mental illness present in either the victim or offender is detected in the early stages of the case. If there is any question as to whether or not a mental illness is present, then a psychiatric evaluation may need to be ordered by the court.

Are There Special Considerations Regarding Psychiatric Evaluations and Domestic Violence?

It should never be assumed that an individual with a mental health diagnosis does not know right from wrong. Determining whether someone is a 'batterer' is not a clinical decision. It is not a diagnosis of a psychological disorder, but a determination based on reviewing information provided by collateral sources (such as social service reports and criminal , mental health, and medical records) and by the alleged abusers and victims, and by observing and documenting abusive or coercive conduct that appears in meetings with practitioners, clinicians, and other relevant personnel. (Aldarondo & Mederos, 2002)

When domestic violence is not mentioned by the parties involved, and goes unrecognized by the court (See Appendix C Screening for Domestic Violence), the nonviolent party is often at a disadvantage. "The Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996) notes that "evaluators not trained in domestic violence may contribute to this process by ignoring or minimizing the violence and by giving inappropriate pathological labels to women's responses to chronic victimization. Terms such as 'parental alienation' may be used to blame the women for the children's reasonable fear or anger toward their violent father."

For an evaluation that truly assists the court in these difficult cases and provides for the safety of victims of domestic violence, attorneys and the court should check the credentials of all Mental Health professionals they utilize. Where domestic violence training was received, the focus, length and dates, of each training should be determined. Local domestic violence shelters can often provide names of area professionals with the requisite training or assist the court in assessing a professional's credentials.

"A psychological evaluation is not credible if it ignores a documented and consistent pattern of coercive control and physical abuse that is corroborated by sources such as a criminal record, police arrest reports and information provided by the partners or children. At worst, it may echo the abuser's victim blaming and denial of violent behavior. At best, it will be based on incomplete information" (Aldarondo & Mederos, 2002).

As A Judge, How Can I Discern Whether A Mental Illness Is Present in the Courtroom?

The following section provides a brief guide for Judges to determine whether or not a mental illness is present in the courtroom, and if mental illness is present, the following information will help guide you in how to approach the case at hand. The information in this section has been reprinted with permission from The Council of State Governments Justice Center, and the

original version can be found online at http://csgjusticecenter.org/wp-content/uploads/2013/04/Judges-Guide-to-Mental-Illnesses-in-the-Courtroom.pdf.

When Mental Illness Seems to be a Factor, Consider:

Prevalence:

- Serious Mental Illness: 17% of adults booked into jails (31% of women; 15% of men)
- Substance Use Disorder: 65% of adults in U.S. corrections systems
- Co-Occurring Mental Illness/Substance Use Disorder: 72% of adults with serious mental illnesses in jail also had co-occurring substance use disorders

Contextualizing Observations: *While these categories of observation are provided to alert judges that an individual may have a mental illness that requires different judicial action and/or attention by a mental health professional, they are:*

- Appearing in court is an anxiety-provoking experience for most people.
- Individuals may not be prepared to navigate a system as complex and demanding as the criminal justice system.
- Individuals may bring to court skills that have allowed them to survive in their communities but are poor fits for interacting with the court (e.g., toughness, argumentativeness, silence).

Categories of Observation: *Do you see something in one of the following areas that does not make sense in the court context?*

Appearance: Age, hygiene, attire, ticks/twitches

Courtroom Observations:

- Looks older/younger than listed date of birth
- Wears inappropriate attire (e.g., multiple layers of clothing in summertime)
- Trembles or shakes, is unable to sit or stand still

Cognition: Understanding/appreciation of situation, memory, concentration

Courtroom Observations:

- Does not understand where s/he is
- Seems confused or disoriented
- Has gaps in memory of events
- Answers questions inappropriately

Attitude: Cooperativeness, appropriate participation in court hearing

Courtroom Observations:

- Stays distant from attorney or bench
- Acts belligerent or disrespectful
- Is not attentive to court proceedings

Affect/Mood: Eye contact, outbursts of emotion/indifference

Courtroom Observations:

- Does not make eye contact with judge or court staff
- Appears sad/depressed or too high-spirited
- Switches emotions abruptly
- Seems indifferent to severity of proceedings

Speech: Pace, continuity, vocabulary (Note: Can this be explained by discomfort with English language?)

Courtroom Observations:

- Speaks too quickly or too slowly
- Misses words
- Uses vocabulary inconsistent with level of education
- Stutters or has long pauses in speech

Thought Patterns and Logic: Rationality, tempo, grasp of reality

Courtroom Observations:

- Seems to respond to voices/visions
- Expresses racing thoughts that may not be connected to each other
- Expresses bizarre or unusual ideas

Before interaction takes place, consider:

- Are there noises or distractions in the courtroom that are negatively affecting the defendant?
- Is there a family member or defense attorney who can help calm the person?
- Safety for yourself, the court staff, and the individual.
- What is being asked and said in open court and how this may affect future proceedings.

While interaction takes place, consider:

The following are commonly observed courtroom scenarios. Each scenario is provided with a recommendation for immediate response and situation management.

<u>Situation #1:</u>

When a mental illness is affecting a defendant's courtroom participation
Immediate Response:

- Speak slowly and clearly
- Avoid jargon
- Explain what is happening
- Write down instructions if dates or addresses are involved
- Treat the individual with the respect you would give other adults If appropriate, use the principles of Motivational Interviewing*:
  - Express empathy
  - Point out discrepancies between goals and current behavior Roll with resistance
  - Support self-efficacy

Situation #2:
Loss of reality**: *When the defendant appears confused or disoriented*
Immediate Response:

- Ground the defendant in the here and now**

Situation #3:
Loss of hope: *When the defendant appears sad, desperate*
Immediate Response:

- As appropriate, instill hope for a positive end result
- To the extent possible, establish a personal connection

Situation #4:
Loss of control: *When the defendant appears angry, irritable*
Immediate Response:

- Listen, defuse, deflect
- Ask the defendant about why s/he is upset
- Avoid threats and confrontation

Situation #5:
Loss of perspective: *When the defendant appears anxious, panicky*
Immediate Response:

- Seek to understand
- Reassure and calm the defendant
- Deflect concerns

* Motivational Interviewing is a counseling approach initially developed by William R. Miller and Stephen Rollnick.
**The Loss of Reality, Hope, Control, and Perspective and the immediate responses are based on the LOSS Model developed by Paul Lilley.

When Taking Action, Consider:

- Having the defendant approach the bench: Would this de-escalate the situation or create a safety risk?
- Re-calling the case later in the session/calendar: Could this help the defendant calm down?
- Determining whether to proceed: Is a fitness or competency evaluation appropriate?
- Setting conditions of release:
  - Does the defendant have the capacity to understand the conditions?
  - Does the defendant have the ability to adhere to the conditions?
  - What effect will these conditions have on the regularity of treatment?
  - What effect will time in jail have on mental health, access to medication, benefits maintenance, etc.?
  - How will conditions/time in jail affect the defendant's access to a primary caregiver?
- Requesting mental health information: What exactly do you need to make the decision facing you?
- Making a referral (to a mental health services provider or other services):
  - What are the goals of the referral?
  - How might the defendant's cultural background and linguistic needs impact access to services?
  - What are the expectations for reporting back to the court?

Do Some Mental Illnesses Commonly Coincide With Domestic Violence?

There are many different mental illnesses that people suffer from, however there are some disorders that studies have shown to positively correlate with domestic violence. The American Psychiatric Association's (APA) Diagnostic and Statistical Manual of Mental Disorders, referred to as DSM-V in this appendix, puts forth an in depth analysis of mental disorders. The most recent version of the DSM-V was published in 2013, and establishes twenty-four mental disorder classifications. This section of the appendix briefly discusses eight of the twenty-four disorders found in the DSM-V.

This section presents a brief summary of mental illnesses that commonly coincide with domestic violence for informational purposes only, as a perpetrator with a mental illness may pose increased the danger for the victim, while a victim with a mental illness may be more susceptible to violence. This section should not be used in any diagnostic capacity. The medical diagnoses of mental health disorders and illnesses should be left up to mental health professionals and specialists. For an evaluation that truly assists the court in these difficult cases

and provides for the safety of victims of domestic violence, attorneys and the court should check the credentials of all mental health professionals they utilize. Local domestic violence shelters can often provide names of professionals in the area who are trained in assessing mental illnesses in cases of domestic violence, or the shelter can assist the court in assessing a professional's credentials. For further information regarding symptoms, causes, and course of treatment for mental illnesses, please reference the 5th edition of the APA's Diagnostic and Statistical Manual of Mental Disorders.

Schizophrenia and Psychotic Disorders

Delusional Disorder

A person may experience delusions from past or on going trauma or stressors in their life. The APA notes that delusions could be related to one's culture or religion, and these factors should be taken into account when assessing for the presence of mental illness.

Schizophrenia

Schizophrenia is a serious mental illness that can be very difficult for people to live with. The mental illness negatively impacts the person's social life, ability to work, as well as their ability to complete menial daily tasks. Symptoms of schizophrenia include: hallucinations, delusions, disorganized speech and/or thought process, and movement disorders. Symptoms of schizophrenia in individuals will vary from person to person, and some negative symptoms mimic symptoms of depression (e.g., little or no facial expression, minimal talking).

Mood Disorders

Depression Disorder

Many adults and children experience short-lived periods of sadness from time to time, however, the mental disorder is an ongoing illness that requires medical intervention in order to accurately diagnose and treat. There are various types of depressive disorders, and they are defined by factors such as persistence, hormonal or physical changes, or presence of psychosis. A person with depression will show symptoms of persistent sadness, fatigue, lack of interest, worthlessness, insomnia, or even thoughts of suicide.

Bipolar Disorder

People who suffer from bipolar disorder experience extreme changes in their mood, which usually results in completely opposite actions, thoughts, and feelings. Unlike depression disorder, people with bipolar disorder go through

manic periods of happiness or euphoria. Such a drastic change in one's mood can be detrimental to themselves as well as to other around them.

Anxiety Disorders

Anxiety disorders are commonly associated with those involved in cases of domestic violence. People who suffer from anxiety disorders show symptoms similar to other disorders, such as trauma, stress, and depression. Common symptoms of anxiety are: excessive worry, feeling of no control over their life, knowing that they worry too much, being easily startled. In a courtroom setting, with anxiety disorders may present with uneasiness, fear, or anxiousness.

Obsessive Compulsive Disorders

Obsessive-compulsive disorders (OCD) are characterized by the presence of obsessions and/or compulsions. The APA defines obsessions as being recurrent or persistent thoughts, urges, or images that are experienced as intrusive and unwanted, and compulsions are repetitive behaviors or mental acts that an individual feels driven to perform in response to an obsession or according to rules that must be applied rigidly (DSM-V). By carrying out the compulsive act in response to the obsession, the person suffering hopes to reduce their anxiety/distress, or prevent a dreadful situation from happening.

Trauma/Stressor Disorders

We each deal with various kinds of stressors on a daily basis, and occasionally we experience some forms of trauma. Therefore, it can sometimes be difficult to determine whether or not certain events or factors result in a person's mental health deterioration. To combat this difficulty, the APA has clearly laid out certain circumstances and criterion to distinguish between mental disorders that stem from trauma and/or stress.

Post-Traumatic Stress Disorder (PTSD)

A person with PTSD must have had exposure to actual or threatened death, serious injury, or sexual violence, by either directly experiencing the traumatic event, witnessing the event in person, learning that the event occurred to a loved one, or experiencing repeated or extreme exposure to aversive details of the traumatic event. A person with PTSD will experience and display various symptoms relating to the traumatic event, such as: recurrent or intrusive memories of the event, distressing dreams of the event, flashbacks of the event, and psychological distress triggered by either internal or external cues that symbolize or resemble the traumatic event. PTSD is frequently studied in cases of domestic violence, and can be present in both the offender and the survivor.

Adjustment Disorders

An adjustment disorder is present when a person experiences emotional or behavioral symptoms in response to an identifiable stressor occurring within 3 months of the introduction to the stressor. The emotional and/or behavioral symptoms must be marked by distress that is out of proportion to the severity of the stressor, and/or significant impairment in social, work, and other areas of functioning.

Dissociative Disorders

When traumatic events occur, we usually find ourselves wanting to push those negative memories, thoughts, or certain details under the rug. Such desires and actions are not abnormal, however such tendencies become abnormal when there is a disruption of and/or discontinuity in the normal integration of consciousness, memory, identity, emotion, perception, and behavior. There are various types of dissociative disorders, and the symptoms, actions, and behaviors of the person suffering differ on a case-by-case basis. Dissociative amnesia may be noticeable in the courtroom if someone cannot recall autobiographical information, which is inconsistent with ordinary forgetfulness. Another dissociative disorder is depersonalization/derealization disorder, in which the person persistently detaches themselves from their own feelings and actions, almost as if they were an outside observer to their own life. People with derealization disorder may believe that other individuals and objects are not real, but are instead dream-like, foggy, or lifeless.

Disruptive, Impulse-Control, Conduct Disorders

Symptoms that are associated with this class of disorders usually involve acts of physical and verbal aggression, outbursts, tirades, and the act of intimidating or threatening others. Specific mental illnesses that fall under this classification of disorders are defined by the severity and persistence of the person's symptoms. People suffering from a disruptive, impulse-control, or conduct disorder are more prone to use violent force against others and act in an abusive manner.

Substance Use Disorders

The DSM-5 no longer uses the terms substance abuse and substance dependence, rather it refers to substance use disorders, which are defined as mild, moderate, or severe to indicate the level of severity. This is determined by the number of diagnostic criteria met by an individual. Substance use disorders occur when the recurrent use of alcohol and/or drugs causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home. A diagnosis of substance use disorder is

based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.

*All information in this section can be found in greater detail in the DSM-V, as well as on the web page for the National Institute of Mental Health at: http://www.nimh.nih.gov/health/publications/publications-in-english.shtml

Is Mental Illness A Lethality Factor?

Mental illness can be a lethality factor when the victim suffers from a mental illness, the offender suffers from a mental illness, or if both the offender and victim suffer from a mental illness. The literature surrounding mental illness and its complex relationship to domestic violence, whether perpetration or victimization, is still a relatively new field of research and study. However, researchers Desmarais, Van Dorn, Johnson, Grimm, Douglas, and Swartz (2014) found that "between 11% and 52% of adults with mental illnesses have been violent within a 12-month period" (p. 2342). Desmarais et al. (2014) also found that "violent victimization is 23 times higher in adults with mental illnesses" (p. 2324). In 540 intimate partner homicides in the United States 13% of perpetrators (11% of males, 15% of females) had a history of mental illness, compared to 3% (not reported by gender) of non-family murderers (Zawitz 1994). This is not to say that all people with a mental illness are violent, but rather certain mental illnesses may present violent symptoms that could increase the risk of serious injury or death of the victim (e.g., delusions or hallucinations), or the symptoms of one's mental illness may exacerbate the perpetrator's naturally violent mentality (e.g., PTSD or depression).

Appendix J. GUARDIANS AD LITEM IN FAMILY VIOLENCE CASES

Value of Guardians Ad Litem in Family Violence Cases

Protecting the interests of children affected by domestic violence poses special challenges for the court. In a domestic violence case, both parents are typically caught up in a control dynamic that may distort their judgment or compromise their ability to discern their children's needs and best interests. Furthermore, batterers frequently employ their "parental rights" to manipulate and maintain control over their victims following separation. Given this dynamic, it is particularly appropriate for a court to utilize guardians ad litem to assist it in protecting the interests of children affected by family violence.

Children who are subjected to violence or witness violence by one parent against the other suffer serious and often long-term consequences. These children frequently have behavioral, social, and emotional problems, including: higher levels of aggression, anger, hostility, oppositional behavior, and disobedience; fear, anxiety, withdrawal, and depression; poor peer, sibling, and social relationships; and low self-esteem. They also may develop cognitive and attitudinal problems such as: lower cognitive functioning; poor school performance; limited conflict resolution and problem solving skills; pro-violence attitudes; and belief in rigid gender stereotypes and male privilege. Long-term, survivors of violent childhood homes may manifest higher levels of adult depression and trauma symptoms, and increased tolerance for and use of violence in adult relationships.

A GAL can offer information, insight and recommendations to assist the court in tailoring its orders to protect children from a violent parent, to assist children in overcoming the effects of domestic violence, and to reduce the opportunities for children to continue to be used as tools of a batterer's efforts to control his victim.

A GAL can ensure that domestic violence issues are addressed. In many high-conflict custody cases, domestic violence may be a silent issue. It may not be mentioned in the pleadings and the victim may not have disclosed the issue to anyone. A case may be permeated with domestic violence issues, but there may be no Temporary Protective Order, police report or medical records. Appointment of a GAL provides independent eyes and ears to assist the court in determining whether domestic violence is a factor and in evaluating its scope and impact in a case.

A GAL can make the parties and the Court aware of the availability and advisability Protective Orders, batterer's intervention, survivor support and other protective or assistive services in a given case. Since children's primary caretakers are more often victims than perpetrators of domestic violence, advocating safety measures often falls within the GAL's duty to represent the children's best interests. Furthermore, a properly trained GAL can evaluate the particular circumstances of a family and assist the parties and the court in identifying appropriate services for the parents and the children.

The GAL can recommend specific measures to shield children from the violent dynamics of their parents' relationship. The GAL can assist the court in achieving adequate specificity in orders involving on-going contact among the parents and children. When violence has been present in the home, neither the Court nor the GAL can assume the parties will be able to reasonably resolve any issue on which they disagree. Moreover, in a relationship tainted by domestic violence, parental decision-making is often driven by the control dynamic between the adults, rather than by the needs of the children. Consequently, orders governing on-going interaction among family members must be especially clear and specific—nothing may be left to interpretation or chance.

Among other things, the GAL's report should address:

The advisability of prohibiting visitation until completion of a batterer's intervention program, restricting visitation to a therapeutic setting for some period, or requiring supervision of visits by an individual or agency capable of controlling the interactions between the batterer and the children to prevent further violence or manipulation.
Appropriate visitation procedures such as where the exchange of the children will take place (For safety, the exchange may need to be at a neutral, public location, specified by the court), how long the custodial parent will be required to wait before the visit is deemed cancelled, and what circumstances or actions justify cancellation or termination of a visit.
On-going parental decision-making—Joint custody arrangements should be avoided in domestic violence cases, because any power over decision-making gives the batterer on-going opportunities to assert control over the victim. If the Court is not inclined to make the victim the sole legal custodian, however, the decision-making process needs to be clearly delineated and the custodial parent should retain final decision-making authority. A GAL may assist the court by recommending means of communication, deadlines for response and other particulars to circumvent the control dynamic. (See Appendix C)

Uniform Superior Court Rule 24.9 -- Appointment, Qualification and Role of a Guardian ad Litem.

Appointment

The Guardian ad Litem ("GAL") is appointed to assist in a domestic relations case by the superior court judge assigned to hear that particular case, or otherwise having the responsibility to hear such case. The appointing judge has the discretion to appoint any person as a GAL so long as the person so selected has been trained as a GAL or is otherwise familiar with the role, duties, and responsibilities as determined by the judge. The GAL may be selected through an intermediary.

Qualifications

GAL shall receive such training as provided by or approved by the Circuit in which the GAL serves. This training should include, but not be limited to, instruction in the following subjects: domestic relations law and procedure, including the appropriate standard to be applied in the case; domestic relations courtroom procedure; role, duties, and responsibilities of a GAL; recognition and assessment of a child's best interests; methods of performing a child custody/visitation investigation; methods of obtaining relevant information concerning a child's best interest; the ethical obligations of a GAL, including the relationship between the GAL and counsel, the GAL and the child, and the GAL and the court; recognition of cultural and economic diversity in families and communities; base child development, needs, and abilities at different ages; interviewing techniques; communicating with children; family dynamics and dysfunction, domestic violence and substance abuse; recognition of issues of child abuse; and available services for child welfare, family preservation, medical, mental health, educational, and special needs, including placement/evaluation/diagnostic treatment services.

Role and Responsibilities

The GAL shall represent the best interests of the child. The GAL is an officer of the court and shall assist the court and the parties in reaching a decision regarding child custody, visitation and child-related issues. Should the issue of child custody and/or visitation be tried, the GAL shall be available to offer testimony in accordance with provision 6 and 7 herein.
The GAL holds a position of trust with respect to the minor child at issue, and must exercise due diligence in the performance of his/her duties. A GAL should be respectful of, and should become educated concerning, cultural and economic diversity as may be relevant to assessing a child's best interests.
A GAL's appointment, unless ordered otherwise by the Court for a specific designated period, terminates upon final disposition of all matters pertaining to child custody, visitation and child-related issues. The GAL shall have the authority to bring a contempt action, or other appropriate remedy, to recover court-ordered fees for the GAL's services.

Duties

By virtue of the order appointing a GAL, a GAL shall have the right to inspect all records relating to the minor child maintained by the Clerk of the Court in this and any other jurisdiction, other social and human service agencies, the Department of Family and Children Services, and the Juvenile Court. Upon written release and/or waiver by a party or appropriate court order, the

GAL shall have the right to examine all records maintained by any school, financial institution, hospital, doctor or other mental health provider, any other social or human services agency or financial institution pertaining to the child which are deemed confidential by the service provider. The GAL shall have the right to examine any residence wherein any person seeking custody or visitation rights proposes to house the minor child. The GAL may request the court to order examination of the child, parents or anyone seeking custody of the child, by a medical or mental health professional, if appropriate. The GAL shall be entitled to notice of, and shall be entitled to participate in all hearings, trials, investigations, depositions, settlement negotiations, or other proceedings concerning the child.

Release to GAL of a Party's Confidential Information from Non-Parties

GAL's right to request and receive documents and information from mental health professionals, counselors, and others with knowledge of a confidential nature concerning a party is conditional upon the party agreeing to sign a release allowing the GAL access to such records and information.
Upon receipt of a party's signed waiver/release form, the GAL shall have the right to inspect all records, documents and information relating to the minor child(ren) and/or the parties maintained by any mental health professionals, counselors and others with knowledge of a confidential nature concerning a party or minor child.

Written Report

Unless otherwise directed by the appointing judge, the GAL shall submit to the parties or counsel and to the Court a written report detailing the GAL's findings and recommendations at such time as may be directed by the assigned judge. At trial, the report shall be admitted into evidence for direct evidence and impeachment purposes, or for any other purposes allowed by the laws of this state. The court will consider the report, including the recommendations, in making its decision. However, the recommendations of the GAL are not a substitute for the court's independent discretion and judgment, nor is the report a substitute for the GAL's attendance and testimony at the final hearing, unless all parties otherwise agree.

Contents of Report

The report shall summarize the GAL's investigation, including identifying all sources the GAL contacted or relied upon in preparing the report. The GAL shall offer recommendations concerning child custody, visitation, and child-related issues and the reasons supporting those recommendations.

Release of Report to Counsel and Parties

The Report shall be released to counsel (including counsel's staff and experts) and parties only, and shall not be further disseminated unless otherwise ordered by the Court.

Release of GAL's File to Counsel

If ordered by the Court, the parties and their counsel shall be allowed to review and/or copy (and shall pay the cost of same) the contents of the GAL's file.

Unauthorized Dissemination of GAL's Report and Contents of File

Any unauthorized dissemination of the GAL's Report, its contents or the contents of the GAL's file by a party or counsel to any person, shall be subject to sanctions, including a finding of contempt by the Court.

Sealing of Written Report

If filed, the Report shall be filed under seal by the Clerk of Superior Court in order to preserve the security, privacy, and best interests of the children at issue.

Role at Hearing and Trial

It is expected that the GAL shall be called as the Court's witness at trial unless otherwise directed by the Court. The GAL shall be subject to examination by the parties and the court. The GAL is qualified as an expert witness on the best interest of the child(ren) in question. The GAL may testify as to the foundation provided by witnesses and sources, and the results of the GAL's investigation, including a recommendation as to what is in a child's best interest. The GAL shall not be allowed to question witnesses or present argument, absent exceptional circumstances and upon express approval of the Court.

General and Miscellaneous Provisions

Requesting Mental Fitness and Custody Evaluations

Based upon the facts and circumstances of the case, a GAL may request the Court to order the parties to undergo mental fitness and/or custody evaluations to be performed by a mental health expert (See Appendix I, Paragraphs 1-2), approved by the Court. The Court shall provide for the parties' responsibility for payment of fees to the appointed experts.

Filing Motions and Pleadings

If appropriate, the GAL may file motions and pleadings if the GAL determines that the filing of such motion or pleading is necessary to preserve, promote, or protect the best interest of a child. This would include the GAL's right to file appropriate discovery requests and request the issuance of subpoenas.

Upon the filing of any such motions or pleadings, the GAL shall promptly serve all parties with copies of such filings.

Right to Receive Notice of Mediations, Hearings and Trials

Counsel shall notify the GAL of the date and time of all mediations, depositions, hearings and trials or other proceedings concerning the children(ren). Counsel shall serve the GAL with proper notice of all legal proceedings, court proceedings wherein the child(ren)'s interests are involved and shall provide the GAL with proper and timely written notice of all non-court proceedings involving the child(ren)'s interests.

Approval of Settlement Agreements

If the parties reach an Agreement concerning issues affecting the best interest of a child, the GAL shall be so informed and shall have the right and opportunity to make objections to the Court to any proposed settlement of issues relating to the children prior to the Court approving the Agreement.

Communications Between GAL and Counsel

A GAL may communicate with a party's counsel without including the other counsel in the same conversation, meeting or, if by writing, notice of the communication. When communicating with the GAL, counsel is not required to notify opposing counsel of the communication or, if in writing, provide opposing counsel with a copy of the communication to the GAL.

Ex Parte Communication Between GAL and the Court

The GAL shall not have ex parte communications with the Court except in matters of emergency concerning the child's welfare or upon the consent of the parties or counsel. Upon making emergency concerns known to the Court, the GAL may request an immediate hearing to address the emergency. Notification shall be provided immediately to the parties and counsel of the nature of the emergency and time of hearing.

Payment of GAL Fees and Expenses

It shall be within the Court's discretion to determine the amount of fees awarded to the GAL, and how payment of the fees shall be apportioned between the parties. The GAL's requests for fees shall be considered, upon application properly served upon the parties and after an opportunity to be heard, unless waived. In the event the GAL determines that extensive travel outside of the circuit in which the GAL is appointed or other extraordinary expenditures are

necessary, the GAL may petition the Court in advance for payment of such expenses by the parties.

Removal of GAL from the Case

Upon motion of either party or upon the court's own motion, the court may consider removing the GAL from the case for good cause shown.

Distinguishing the Roles of Guardian ad Litem and Child's Attorney

In some domestic violence cases it may be necessary or desirable for a child to have independent legal counsel, whether or not the court has chosen to utilize the services of a guardian ad litem, and it is necessary for the court and the parties to recognize the differences in these roles.

A guardian ad litem is an investigator and expert witness, and does not enter into any attorney-client relationship. A guardian ad litem has no duty of confidentiality (except the duty under Rule 29.4(6) (d) to prevent unauthorized dissemination of the GAL's report and file), and no work-product privilege. A guardian ad litem generally may not question witnesses or present argument, but is expected to submit a report of his or her investigation to the parties and the court and to testify at trial. The GAL is also expected to exercise his or her independent judgment in defining a child's best interests and recommending a course of action to the parties and the court.

In contrast, an attorney for a child enters into a normal attorney-client relationship with the child. The attorney is bound by the duty of confidentiality (Georgia Rule of Professional Conduct 1.16(a); and generally is prohibited from acting as legal counsel in any case where he or she is a necessary witness. (Georgia Rule of Professional Conduct 3.7). An attorney for a child is expected to offer evidence and argument and to cross-examine witnesses, as necessary pursuant to the duties to provide competent and diligent representation (Georgia Rules of Professional Conduct 1.1 and 1.3). Furthermore, at least to the extent the child is capable of making adequately considered decisions, the attorney is bound by the child's direction concerning the objectives of the representation (Georgia Rules of Professional Conduct 1.2 and 1.14).

Appendix K. MEDIATION

Introduction

The Georgia Supreme Court's Commission on Dispute Resolution is responsible for establishing policies governing court-connected alternative dispute resolution programs in Georgia. The Commission has established policy in the form of written guidelines on mediation in domestic violence cases. The Commission's Guidelines for Mediation in Cases Involving Issues of Domestic Violence and Guidelines for Screening for Domestic Violence by the Court and the ADR Program were originally issued in 1995 and revised by the Commission in 2003. The Commission's Guidelines are set forth in their entirety in Section B.

When these guidelines were developed and later revised, there was strong resistance to the use of mediation in cases involving domestic violence. It was generally believed that mediation is inconsistent with the needs of victims of domestic violence who would not be able to speak up against their abusive partners during the process. However, a growing number of scholars and advocates are recognizing that mediation—done properly—may actually better serve victims and survivors of domestic violence than the alternative of litigation.

Throughout 2017-2018, a multi disciplinary team worked to create new rules for mediation in Georgia. These rules were reviewed and endorsed by the Georgia Commission on Family Violence, and adopted by the Georgia Commission on Dispute Resolution August 22, 2018 and are found in their entirety in Section C. A joing committee of the two Commissions will oversee training, implementation, review and revision of the rules going forward.

Why is mediation in domestic violence cases so controversial?

Cases involving allegations of domestic violence present a unique controversy in divorce mediation policy. The use of mediation to resolve family court issues began in 1980 in California when every divorcing couple was required to go through mediation to resolve custody and visitation issues. Throughout the 1990s, similar measures spread across the country because mediation reduces the burden on the court system and improves the efficiency of the divorce process. However, there was concern from domestic violence advocates that victims of domestic violence would be unable to voice their true interests in the presence of their abusers. Conceptualizing domestic violence as a systematic effort to gain power and control over the victim through a

variety of abusive tactics (cross reference Appendix A for discussion of different theories and definitions of domestic violence), advocates argued that the power imbalance present in abusive relationships would impede the victim's ability to advocate for child support, alimony, and custody rights. Pressure from battered women's advocates led policymakers in most states to include limitations to the standard mediation requirements in domestic violence cases. These provisions generally rest on the assumption that mediation is never appropriate for a victim of domestic abuse and litigation is better suited to protect the interests of the victim. Standard provisions include some sort of screening for domestic violence in order to obtain informed consent to participate from the victim as well as to give a chance to opt out of the mediation process.

Is mediation sometimes appropriate in cases involving domestic violence?

Sometimes, yes. First of all, not every act of family violence as defined by statute occurs within a context of control Some violence is episodic, and there may not be a significant power imbalance in these relationships. Even in relationships where there is a dynamic of control, mediation is a non-adversarial process, takes less time, and can give the victim more control over the outcomes. Some studies have shown that divorcing parties report greater satisfaction with mediation than with litigation, even in cases that involved emotional or physical abuse (Davies, Ralph, Hawton, & Craig, 1995; Depner, Cannata, & Ricci, 1994). Scholars also point out that low-income victims of domestic violence often have no access to legal representation, and if screened out of mediation may be at greater risk than if they were able to mediate their issues (Beck & Raghavan 2010).

Safeguards for the protection of domestic violence victims have been developed and used effectively in mediation settings. These include:

- establishment of security measures for the arrival and departure of the victim and abuser
- meeting with the parties alone prior to the start of mediation
- establishing a distress signal for victims to discreetly alert the mediator to stop the session
- use of caucus or shuttle in mediation, or frequent use of caucus in joint sessions just to check in with the victim
- permission to have a friend, advocate, or attorney at the mediation.

Using these and other safeguards, a mediator takes steps to ensure the safety of the parties during the mediation, and produces a settlement with specific guidelines to prevent future violence.

It is important for the mediator to recognize the abusive or controlling history before beginning the mediation. Differentiation between types of domestic violence and proper training on how to correct the power imbalance allow a mediator to promote safety while maximizing the benefits of an agreement specific to the couple's situation.

The most severe cases of domestic violence should go through litigation rather than mediation. However, mediation should not automatically be ruled out for domestic violence cases if mediators with the proper training are available.

What steps could we take to improve the mediation process?

First, the domestic violence screening process could focus on indicators of the parties' ability to represent themselves in a standard mediation setting or a specialized mediation process that takes domestic violence into account (Adkins, 2010). Rather than only obtaining informed consent, the goal of the screening could be to better prepare mediators to evaluate the couple's situation and offer a mediation setting suitable to the power dynamic present. The current screening emphasizes informed consent for the victim of violence, when several factors—including the level of coercive control in a relationship, the degree of the power imbalance between a couple, and the context of control, whether violent or emotional—affect the dynamics between the couple (Johnson 2009).

These indicators are significant delineations for the court and the mediators to evaluate. In fact, some scholars contend that measuring coercive control is the most efficient screening mechanism in the mediation context (Beck & Raghavan, 2010), thus utilizing an instrument designed to reveal its presence (including questions about coercion, isolation, jealousy, history of emotional and sexual abuse, threats and escalation of violence) would potentially improve safety for victims.

Although it is not the mediator's responsibility to stop post-divorce violence, the mediation process is a keystone to establishing a responsible post-divorce arrangement for at-risk couples. Effective mediations depend on knowledge of the couple's history and coercive relationship; therefore, effective screening ought to focus on so informing the mediator.

Some scholarship suggests that both parties in the divorce, regardless of past criminal record, ought to go through the same screening questions. Both parties should receive counsel during private meetings with the mediator regarding the specifics of the process and the style of mediation to be used (Adkins, 2010).

Next, domestic violence training for all mediators could be made mandatory to reduce the number of possible domestic abuse cases that go through mediation unrecognized. This way, when a domestic violence case is not caught through the screening process, any mediator would be able to recognize the signs of coercive and controlling behaviors, and would also be equipped to implement the necessary safety precautions for abuse cases including meeting privately with the parties before mediation, caucusing in mediations, staggered arrival times, and specific terms of agreement. Mandating periodic continuing education in domestic violence for all mediators would help ensure that they are up to date in their understanding of this complicated issue.

After the discovery of domestic abuse, mediators could also offer the victim resources and contacts in local domestic abuse centers. Services for domestic violence victims provide the resources to help them move on both psychologically and legally. It could easily become a standard of practice for all mediators to keep literature available about nearby shelters or centers.

Georgia Rules for Mediation in Cases Involving Issues of Domestic Violence

RULES FOR MEDIATION IN

CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE[1]

(Also Referred to As *Intimate Partner Violence and Abuse [IPV/A]*)

As adopted by the Georgia Commission on Dispute Resolution, August 22, 2018

Effective January 1, 2021

The Georgia Commission on Dispute Resolution has studied the issue of domestic violence (DV) and its impact on the mediation process intermittently since 1994. In 1994, the Domestic Violence advocacy community was divided, with some members of the community believing mediation could be beneficial in these cases while others remained skeptical. The drafters ultimately decided that depriving a survivor of domestic violence the right to mediate could be seen as another form of victimization. Decreasing survivor autonomy by delaying or denying mediation rights could reduce empowerment and self-determination while increasing the costs associated with family law matters. On April 6, 1995, the Commission adopted the Guidelines for Mediation in Cases Involving Issues of Domestic Violence.

The Guidelines put in place were innovative for their time, however, a great deal of research and practice occurred in the intervening years. Therefore, in 2015, the Commission decided to revisit and update the processes used in Georgia for addressing these concerns in mediation. This effort became a collaboration between the Georgia Commission on Dispute Resolution, the Georgia Commission on Family Violence and individuals with expertise in the issue of domestic violence and/or mediation.

Throughout 2016-2018, a domestic violence working group composed of individuals with knowledge and experience in the areas of domestic violence, family violence, mediation, and Alternative Dispute Resolution (ADR) court policies and procedures met to update the guidelines and changed the policies to be consistent with new research in the field of domestic violence. Furthermore, the working group recommended that the Guidelines be changed to rules. The group also considered how courts currently address the issues and how clients experience

[1] The Guidelines for Mediation in Cases Involving Issues of Domestic Violence, promulgated by the Georgia Commission on Dispute Resolution, are hereby repealed, effective January 1, 2021.

mediation in court, as well as information from collaboration across fields.

As a key partner and contributor, the Georgia Commission on Family Violence has both endorsed these rules and is committed to continued collaboration with the Georgia Commission on Dispute Resolution.[2]

GUIDING PRINCIPLES:

The Working Group developed the following Guiding Principles to frame the work done.

a) **Safety:** The rules should maximize safety for all participants. Cases referred to mediation must be properly screened for a history of violence and abuse. Mediators and program directors must be properly trained to understand the safety needs of victims during the process of mediation and understand the safety needs of victims and children in terms of any agreement obtained as a result of mediation.

b) **Self-Determination:** Mediators and program directors must be properly trained to understand the dynamics of domestic violence and potential power imbalances between the parties to provide the victim a meaningful opportunity for self-determination and the ability to use her (or his) voice to advocate for a desired outcome.

c) **Best Practices:** The rules should align with current best practices for providing safety to victims of violence and or abuse, conducting mediations, and training mediators.

d) **Practical Implementation:** As applied on an individual and program level, the rules should be reasonable to implement so that mediators and local mediation programs are able to fully comply while continuing to provide speedy, efficient, and inexpensive resolution of disputes.

DEFINITIONS:

a) **Domestic violence** (also known as Intimate Partner Violence and Abuse (IPV/A)): causing or attempting to cause physical harm to a current or former intimate partner or spouse/ partner; placing that person in fear of physical harm; or causing that person to engage involuntarily in sexual activity by force, threat of force, or duress. In addition to acts or threats of physical violence, for purposes of these rules, domestic violence may include abusive and controlling behaviors (such as intimidation, isolation, and emotional, sexual or economic abuse) that one current or former intimate partner or spouse/partner may exert over the other as a means of control, generally resulting in the other partner changing her or his behavior in response. Even if physical violence is not present in these circumstances, such a pattern of abusive behavior may be a critical factor in whether or not a party has the capacity to bargain effectively. Therefore, a person conducting

[2] On June 22, 2018, the Georgia Commission on Family Violence voted unanimously to endorse the Rules and to support a joint committee with the Commission on Dispute Resolution to oversee implementation, training, review, and revision of the Rules

screening for domestic violence must be alert to patterns of behavior that, while not overtly violent, may indicate a pattern of domestic abuse that shall be treated as domestic violence for purposes of these rules.

b) **Screening**: the evaluation of individuals to assess their suitability for participation in mediation; gathering information from parties to determine the presence of DV risk factors; the verification of the existence of a current or past temporary protective order through the Georgia State registry; the optional examination of available records to determine if domestic violence is an issue in the case[3]. ADR Program staff will endeavor to encourage full and honest disclosure of any domestic violence history or concerns by reassuring the party that their sensitive information will be handled appropriately and their concerns are taken seriously.

c) **ADR Program Staff**: individuals charged with administering the ADR program.

d) **At-Risk Party**: the individual who is the focus of the domestic violence screening done to determine suitability for mediation.

GODR AND LOCAL PROGRAM REQUIREMENTS:

a) The Georgia Commission on Dispute Resolution and the Georgia Office of Dispute Resolution (GODR) will develop rules to assist courts in designing appropriate intake procedures and training for intake personnel. Existing programs shall send a description of their intake and screening procedures based on these rules to the Georgia Commission on Dispute Resolution for review. New programs shall provide a description of intake and screening procedures with any rules submitted to the Commission for approval.

b) The Georgia Commission on Dispute Resolution and the Georgia Office of Dispute Resolution will assist courts in developing appropriate screening training.

c) Every program should have no fewer than two mediators who are registered in Specialized Domestic Violence Mediation. All domestic violence mediators shall have completed 14 hours of *specialized issues of domestic violence in mediatio*n training and shall be registered in the category of Specialized Domestic Violence Mediation.

RULES FOR MEDIATION IN CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE (Also referred to as Intimate Partner Violence and Abuse IPV/A)

RULE 1. REFERRAL TO MEDIATION

a) Criminal cases that involve domestic violence shall never be referred to mediation from

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[3] Temporary Protective Order, O.C.G.A. § 19-13-4 (2010).

any court.

b) Cases arising solely under the Family Violence Act shall not be referred to mediation from any court.[4] Mediators shall not facilitate the negotiation of issues related to criminal charges or the terms of any protective order in a domestic relations matter.

c) All court programs shall screen domestic relations cases using the screening process outlined below.[5] Those domestic relations cases referred to mediation directly from the bench are also subject to the domestic violence screening process.

RULE 2. SCREENING

a) Purpose of screening. The purpose of the mediation screening is to determine whether mediation can be done safely and free from coercion. Screening for domestic violence is a shared responsibility of court personnel, ADR program directors and staff, attorneys, mediators, and parties. However, the final determination as to the appropriateness of mediation will be made by the ADR program staff. Mediation brochures and parenting seminars for divorcing couples may be vehicles for dissemination of this information. GODR will provide ADR Programs with a link to community resources and the statewide hotline number (1.800.33HAVEN).

b) **Informed consent**. The Ethical Standards for Neutrals (Appendix C, Chapter 1, Alternative Dispute Resolution Rules) place primacy on the principles of self-determination and voluntariness. These standards also require that parties be fully informed about the mediation process. In keeping with these principles and the necessity of protecting at-risk parties, ADR staff and court personnel, at-risk parties will be given the opportunity by the screener to exercise choice about whether to proceed with mediation prior to assignment of the case. The dynamics of a relationship characterized by a pattern of intimate partner violence and abuse may manifest in mediation. Thus, an at-risk party in such a relationship is provided with the choice of whether to mediate or not, in order to avoid further victimization and/or endangerment. To ensure that the at-risk party's choice to proceed with mediation is self-determined, the at-risk party must be provided with sufficient information about the process to make an informed choice.

Listed below are the elements of mediation that must be shared with the at-risk party to ensure informed consent.

1. Neutrality: an explanation of the role of the mediator as a neutral person who will

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[4] A case filed as a divorce action or other domestic relations matter that contains a count under the Family Violence Act is not precluded from referral to mediation and should be screened pursuant to these rules. Mediators are specifically prohibited from mediating away protective orders or criminal charges related to criminal cases of domestic violence. This provision was added by the Georgia Commission on Dispute Resolution on March 22, 2005.

[5] While it is intended that the intake and screening protocol will be routinely applied to all domestic relations cases, programs should also use the screening process when allegations of domestic violence arise in other types of cases such as magistrate, juvenile, probate, and other court matters.

facilitate the discussion between the parties but who will not coerce or control the outcome; explanation that the mediator will not allow abusive behavior and, while having skills in balancing power, will not in any way serve as an advocate for the at-risk party.

2. Confidentiality: an explanation of confidentiality of the mediation session and any limitations on the extent of confidentiality.
3. Termination: an explanation that the mediation can be terminated at any time by either party or the mediator.
4. Legal counsel: an explanation that the at-risk party may bring an attorney to the mediation or consult her or his attorney by telephone during the mediation as needed; and an explanation that if the at-risk party does not have an attorney, she or he may bring a DV advocate.
5. Expert advice: an explanation that the mediator will not provide any legal or financial advice to the parties.
6. Process: an explanation of how mediation is conducted (joint sessions, caucus, etc.) with an explanation of the option of shuttle (caucus only) mediation.
7. Good faith: an explanation that parties will be expected to negotiate in good faith and therefore should be prepared to make full disclosure of matters material to any agreement reached; but that good faith does not in any way require parties to enter an agreement about which they have any reservations.
8. Effect of agreement: an explanation that a mediated agreement, once signed, can have on these indications of domestic violence and continue with the Tier II screening process.

c) **Confidentiality in Screening for Domestic Violence**. ADR program directors and staff conducting screening for domestic violence shall keep information elicited confidential. Such information shall not be communicated to the court unless absolutely necessary for the safety of the parties and court personnel. If ADR program staff determine that the case is inappropriate for mediation based on the screening process, then the court will simply be notified of that determination.

RULE 3. CONTACTING THE AT-RISK PARTY

a) If the at-risk party is represented by counsel, ADR program staff should consult with her or his attorney regarding the need to contact the at-risk party to conduct an interview to learn more about the allegations and to provide information about mediation so that the at-risk party can make an informed choice about whether to participate in mediation.

b) When communicating with either party about the mediation, the ADR program staff should take care not to provide the at-risk party's address or other contact information to the other party.

c) When calling to arrange an interview, ADR program staff should take precautions to ensure that the party is able to speak privately before beginning the screening; i.e. asking if the party is comfortable speaking on the subject at that time, or if they would prefer to reschedule.

d) During the phone contact with the at-risk party, ADR program staff should explain how the case came to his/her attention for further screening and the purpose of the screening, which is to allow the person to make an informed choice.

RULE 4. PHASES OF SCREENING

(a) **Initial Screening of All Domestic Relations Cases.**

(1) During the initial screening, the ADR program shall make a diligent effort to check all available resources to inquire whether either party has filed a petition under the Family Violence Act[6]. For purposes of these rules, a petition filed pursuant to the Family Violence Act against the other party is considered an indication of domestic violence, as is any verbal or written statement alleging domestic violence made in pleadings or in the screening process. In such cases, programs may proceed to Tier II screening.

(2) Screening if there is no protective order**.** If there has been no petition for a protective order under the Family Violence Act, it is the responsibility of the program to conduct Tier I screening process and inquire about domestic violence in every domestic relations case. It is also the responsibility of the parties and their attorneys to inform the ADR program of any domestic violence allegations. When the party and/or attorney have indicated that there may be domestic violence, it is the responsibility of the program to follow up on these indications of domestic violence and continue with the Tier II screening process.

(b) **Tier I.** During Tier I screening, a questionnaire is emailed or sent out via U.S. mail by ADR Program staff that includes an online link to complete the survey. If there is an attorney of record, the questionnaire shall initially be sent to the attorney. If there is no attorney, the questionnaire shall be sent directly to the parties. If parties do not complete the survey online, they can email, mail, or call program staff to conduct the survey over the phone. The following statement shall be included in the questionnaire: "If you are concerned about the privacy of your responses or if you prefer to answer the question by telephone, please call_." The information from the screening will be easily accessed as needed by ADR program staff and mediators.

(c) If parties do not return the Tier I survey prior to the scheduled mediation OR if the Tier I survey is returned and a party answers yes to any question, then a screener shall conduct Tier II screening, contacting each party, preferably by phone; if a phone number is not available, the contact shall be made by mail or e-mail.

a. If parties appear for mediation having never completed a DV screening, either

[6] O.C.G.A. 19-13-1 (2010)

the ADR program staff or the mediator shall conduct Tier I screening.

b. If there has been no response to the Tier I screening survey, it cannot be determined that there is no domestic violence, and therefore the mediation should only be conducted by mediator who is registered in the category of specialized domestic violence.

(d) **Survey Questions for Tier I.**

1. Is there now or has there ever been a protective order, restraining order or stalking order sought or issued for you and/or the other party? If yes, please explain.
2. Is the Division of Family and Children Services (DFCS) and/or Adult Protective Services (APS) involved in this case? If yes, please explain.
3. Have you or the other party ever been arrested? If yes, please explain.
4. Were the arrests related to drug or alcohol abuse? If yes, please explain.
5. Are you afraid of the other party? If yes, please explain.
6. Do you have any concerns when the other party does not get his or her way?
7. Have you or the other party ever tried or threatened to:
    i. Commit suicide
    ii. Harm the other party
    iii. Harm the children
    iv. Harm other family members
    v. Harm family pets
    vi. Use a weapon
    vii. If yes, please explain
8. Are you still living in the same home with [name]? If so, do you think you would feel safe in returning home after discussing the issues in your case in mediation?
9. Are there any other concerns about safety? If yes, please explain.

(e) **Survey Questions for Tier II**

1. Review Tier I Questions.
2. Do you know what mediation is and why it has been ordered in your case?
3. What happens when you speak your mind and express your point of view to [insert name]?
4. Has the other party ever denied you the right to access family resources such as money, transportation, a phone, etc.? If yes, please describe.
5. Are you afraid of disagreeing with [name]? If yes, what happens when you disagree? Would you feel able to disagree with [name] if the two of you were in separate rooms and the mediator worked with you one on one?
6. Has [name] discouraged you from spending time with friends and family?
7. Has the other party ever sent you repeated e-mails, calls, social media contacts or other unwanted communication after you asked him/her to stop? Has the other party monitored your communication, social media, or your whereabouts? If yes, please explain.
8. Have you ever cancelled a temporary protective order or allowed one to expire

against [name]?

9. Has [name] interfered with your ability to speak to an attorney or other advocate?
10. Has [name] discouraged you from working, accepting promotions, going to school, and being independent in general? If yes, how so?
11. Have you and the other party ever hit, strangled, pushed, or slapped one another?
12. Do you believe that mediation will be beneficial? Why or why not?

(f) **Mediation Recommendation**. Based on the answers from the Tier II questions and on the presence or absence of any other indicators of abuse or coercion as perceived by the screener, the screener or ADR program director should determine if the case is appropriate for mediation. If it is determined that the case is appropriate for mediation, screeners shall discuss the following with the at-risk party:

a. If arrangements need to be made for the parties to arrive and leave the mediation session separately.
b. If arrangements need to be made for the session to be held entirely in caucus.

RULE 5. NEXT STEPS AFTER SCREENING

After presenting information about the process of mediation and discussing the information elicited by the questions in Rule 4(e), the screener shall ask whether the at-risk party needs any further information about the mediation process in order to decide whether or not the at-risk party is willing to mediate.

The mediation process should proceed only if accommodations can be put in place that will enable the parties to:

- speak up and negotiate for themselves,
- feel safe and secure during and after the mediation, and
- reach a voluntary, un-coerced agreement.

When screening, ADR program staff should be aware that the screening process itself could place an at-risk party in danger, and must therefore ensure that the screening is conducted under safe and confidential circumstances.

RULE 6. REFERRAL TO MEDIATION IF DOMESTIC VIOLENCE ALLEGED

After Tier II screening and the subsequent discussions described in Rules 4(e) and 5, the at-risk party may choose whether or not he or she wants to proceed with mediation. If represented, the party should be encouraged to discuss that decision with counsel and be given an opportunity to do so before making that decision.

a) If the ADR program staff determines that the case is inappropriate for mediation based on the information from the screening, then they should convey this information to the court.

b) If the at-risk party prefers to proceed with mediation, the case shall be sent to mediation unless the ADR program staff or the court determines that there is a compelling reason that this particular case should not be referred.

c) If referred, the ADR program must take reasonable steps to ensure that the safeguards set forth in Rule 7 herein are in place for the mediation session.

d) ADR program staff has final decision-making authority as to whether the mediation shall proceed, with great weight given to the preferences of the party who is perceived by ADR program staff to be at risk.

e) ADR program staff and/or mediators shall provide the Georgia's Statewide Domestic Violence Hotline (1.800.334.2836) and a link to community resources to at-risk parties as provided by GODR.

RULE 7. SAFEGUARDS FOR THE MEDIATION SESSION IN CASES INVOLVING ISSUES OF DOMESTIC VIOLENCE

a) If screening was not completed prior to the time of mediation, the program or mediator shall screen the parties separately immediately prior to the scheduled mediation. If domestic violence is indicated during this screening, mediation cannot proceed without appropriate Tier I and II screening.

b) ADR program staff and the mediator shall exercise care to avoid disclosure of the parties' place of residence, telephone numbers, email address, etc., by either the program staff or the mediator.

c) The ADR program staff and/or mediator should encourage at-risk parties to have an attorney or DV advocate available for the entire session or sessions.

d) The ADR program staff and/or mediator shall offer to arrange for the parties to arrive and leave the mediation session separately and shall make such arrangement if requested.

e) The ADR program staff and/or mediator shall offer the option of the entire session being in caucus and shall make such arrangement if requested.

f) All mediations sessions in cases involving issues of domestic violence must be held in a secure venue. The ADR program staff shall take reasonable steps to make the mediation session safe.

g) ADR Program staff is responsible for ensuring that the mediator knows the status of the case and the outcomes of the screening. And, the mediator is responsible for ensuring that he or she is aware of the status of the case.

h) If there has been no response to the screening survey, it cannot be determined that there is no domestic violence, and therefore the mediation should only be conducted by

mediator who is registered in the category of specialized domestic violence.

i) At the earliest possible point in the mediation, the mediator should explore power dynamics in order to:
    a. confirm the comfort of each party with the mediation format, and
    b. confirm the ability of each party to bargain for her/himself.

Safeguards for Judicial Consideration in Mediated Agreements

Below is a list of issues for judges to look for in mediated agreements in order to minimize the adverse affects to families where domestic violence is present and reduce the number of times the parties return to court. In general, these orders should be specific and clear with appropriate timetables for events to happen. Do not leave any issue to be "mutually agreed upon by the parties". This requires the parties to negotiate which is simply fertile ground for conflict and future litigation.

The suggestions outlined focus almost entirely on agreements made with regard to the children. When an abuser is no longer in a position to control the victim directly, as when the parties are married, the children become the vehicle for control. What follows are suggestions about how to ensure that any Order a judge approves is effective in separating the children from the control abusers exert if they attempt to press the limits of the mediated agreement.

Custodial Arrangements

Joint Physical Custody. Successful joint physical custody arrangements require that the parties have proven, effective communication skills and a balance of power. Neither exists in relationships where violence has been an issue. Frequent moves by children between homes require that parents talk on a regular, sometimes daily basis. Few decisions can be made without one parent consulting the other as all decisions affect both households. Families where violence has occurred and where the parties share joint physical custody inevitably return to the Court for assistance in settling disagreements.

Joint Legal Custody. It's preferable that the victim/parent be awarded sole legal and physical custody. Consultation as required by joint legal custody is fruitless; the parties will never agree on what is in their child's best interest, even on the most obvious of issues. The result is more litigation, with the batterer bringing the victim back to court alleging he/she has not consulted on all issues. If the parties are going to be awarded or have agreed on joint legal custody, the victim must also be awarded final decision making authority. When batterers are awarded final decision-making authority on any issue, the decisions are never based on the best interest of the child. Rather, they make decisions that will have the most impact on the victim's life.

Visitation Arrangements

Provisions surrounding visitation must be very specific and leave little to chance. Nothing should be allowed to be "mutually agreed upon." Following are questions that need to be answered before an Order is entered:

(1) Who is responsible for transportation?
(2) Where does drop-off and pick-up take place, specifically? Which CVS parking lot on Peachtree Street? Which corner of the parking lot? Public places where people regularly gather are preferable to either party's home.
(3) How long does the custodial parent have to wait for the visiting parent before the visitation is deemed cancelled? If that batterer knows that his/her former spouse has a date on the same night the children are supposed to be picked up, is the pick-up going to be timely?
(4) Who can be present at the transfers? It's probably not a good idea for Mom's new boyfriend or Dad's new girlfriend to be there.

Weeknight visitations should be discouraged. These visits require a lot of coordination, more than the parties are capable of. Issues surrounding extra-curricular activities, homework and test preparation, etc., all must be addressed each time one of these visitations occurs.
If visitation is going to be supervised, it must be clear who's going to supervise, who must pay, where it can take place, under what circumstances supervision may cease and what the process will be if the arrangements need to change. The supervisor should not be someone who does not believe the violence ever occurred, e.g. the batterer's mother.

Telephone Contact

Be realistic about telephone contact. What's the purpose of calling a 6-month-old child? Such contact is often used as an opportunity for an abuser to maintain contact with his/her victim and find out information otherwise unavailable.
If telephone contact is ordered, there needs to be a window of time during which the call can occur. For example, the caller must call between 7:30 and 8:00 p.m. on a specific day of the week. Requests for daily phone contacts should be evaluated thoroughly to assure it is not a veiled stalking attempt. If the person being called has caller identification on the phone, allow the child to answer the phone, thus minimizing contact between the parties.
Include in the Order that the caller not discuss with the child anything involving the custodial parent. While hard to enforce, the victim/parent needs to be able to file a Petition for Citation of Contempt should it become an issue.
Place the responsibility of calling on the non-custodial parent, not the child.

Financial Issues

If the obligor is employed, have **payments made through Income Deduction Order**. This allows for less contact between the parties and ensures payment as long as the employment status remains the same. If child support is ordered, alimony payments can be paid via Income Deduction Order, as well.

DO NOT allow the batterer to be responsible for paying directly for things that affect the victim's life (mortgage, utilities, car payments, etc.). All monies should go directly to the victim so he/she can be in charge of making necessary payments.

Make sure the parties did not make any agreement that leaves them connected financially. If one party is awarded the house or a car, it must be refinanced to remove the other party's name if both are on the title or loan. If a Qualified Domestic Relations Order needs to be prepared, it needs to be clear who prepares it and by when. If the parties are splitting up debt, make every effort to ensure the batterer cannot damage the credit of financial status of the victim by not making payments as required by the Order.

Appendix L. UNIFORM FORMS

Introduction

The Georgia Protective Order Registry (GPOR) was created to serve as a statewide, centralized database for protective orders. It is managed by the Georgia Crime Information Center (GCIC) and linked to the National Crime Information Center (NCIC) Network. Law enforcement, prosecutors, and courts may access the database 24 hours per day, 7 days per week to assist in the enforcement of orders and ensure the safety of victims. (O.C.G.A. § 19-13-52)

As part of the registry, O.C.G.A. § 19-13-53 dictates the use of standardized forms, which are to be promulgated by the Uniform Superior Court Rules. "The standardized form or forms for protective orders shall be in conformity with the provisions of this Code, (the Family Violence and Stalking Protective Order Registry Act, (O.C.G.A. § 19-13-50 et al.) shall be subject to the approval of the Georgia Crime Information Center and the Georgia Superior Court Clerks' Cooperative Authority as to form and format, and shall contain, at a minimum, all information required for entry of protective orders into the registry and the National Crime Information Center Protection Order File."

For further information about, and to access the GPOR, see Appendix M - Georgia Protective Order Registry.

Family Violence Forms

Access the most current Uniform Forms here:
https://www.gsccca.org/file/family-violence-forms

The Clerk of each Superior Court is able to provide the uniform forms as well.

Uniform Forms List:

Family Violence Ex Parte Protective Order
Family Violence Twelve Month Protective Order
Family Violence Three Year / Permanent Protective Order
Stalking Ex Parte Temporary Protective Order
Stalking Twelve Month Protective Order
Stalking Three Year / Permanent Protective Order
Stalking Permanent Protective Order Pursuant to Criminal Conviction
Dismissal of Temporary Protective Order
Order for Continuance of Hearing and Ex Parte Protective Order
Order to Modify Prior Protective Order

Appendix M. GEORGIA PROTECTIVE ORDER REGISTRY

The Creation of the Georgia Protective Order Registry

The Georgia Protective Order Registry (GPOR) was created to serve as a statewide, centralized database for protective orders. It is managed by the Georgia Crime Information Center (GCIC) and linked to the National Crime Information Center (NCIC) Network. Law enforcement, prosecutors, and courts may access the database 24 hours per day, 7 days per week to assist in the enforcement of orders and ensure the safety of victims. (OCGA 19-13-52)

Everyone recognizes the inherent danger of domestic violence cases and the difficulty faced by the court due to the private nature of these acts of family violence. Add to this a report by the Research Division of the Administrative office of the Courts (2005) that indicates 17,600 Georgia protective orders were litigated pro se in 2004, and the tremendous responsibility placed on the court becomes clear.

In 2015, the Georgia legislature passed HB 452 which expanded the registry to include pretrial release orders (such as bond orders) that prohibit contact with others.

Used together NCIC and Georgia's Registry provide a comprehensive resource for the court.

Specific Benefits of GPOR to the Court

There is a general misunderstanding of what is available on GPOR that may account for the under use of this valuable resource by the court. It is generally thought that the National Crime Information Center (NCIC) site provides the same information. This is not the case. There are two main differences that are important to the court.

The Georgia Protective Order Registry accepts 100% of all orders filed in Georgia. The Georgia Registry will attempt to transmit all orders to NCIC for inclusion in the National Protective Order file. Approximately 96% of all orders received from the Georgia Registry are successfully transmitted to NCIC. Approximately 3% - 5% are rejected by NCIC due to lack of required information – information that many petitioners, particularly stalking victims may not have.

Additionally, the original order in its entirety is available on GPOR. The original order provides detailed information on the respondent, petitioner and the children that is may not be available on the NCIC site. Some counties are currently scanning the petition itself, which includes a narrative of events in the petitioner's own words, that led up to the request for protection. Particularly with witnesses in criminal cases or petitioners in civil cases, who fear going forward with a case, this information can be very helpful to the court.

The court sometimes receives petitions from the same petitioner that are then withdrawn or dismissed. This can raise a concern about the use of court resources but ultimately may indicate the presence of domestic violence. A search of previous orders may assist the court in identifying petitioners who dismiss orders out of fear and capitulation to the intimidation tactics of the abuser. (See Section 2.4.3 D. - Repeat Petitioners)

The Georgia Crime Information Center has worked on re-designing the POR web site. The goal of the re-design was to enhance the Protective Order Registry program by improving the accuracy and completeness of records, enhancing delivery of services, and expanding access to services and records.

Other Search Features of the Registry

Search for orders by civil action file number, county, or respondent name
View PO conditions; effective, expiration and service dates; respondent and petitioner information
View or print an image of the order
Run reports by expiration date of order, order type, order status and county

File Retention and Standardized Forms

Inactive records will be maintained on-line for the remainder of the year in which the record was cleared or expired, plus five years.

All standardized forms that appear in Appendix L - Uniform Forms of this benchbook are accepted in the registry. In addition, pretrial release and sentencing orders that prohibit contact with a person are also included in the registry. In order for the registry to be most effective, it behooves the court to use these state promulgated forms. Unfamiliar forms impact the data entry time and can cause confusion for the law enforcement officers and deputies charged with enforcing orders across county lines.

Agencies with GPOR Access

Sheriff's offices
Police Departments
911 offices
State, county and private probation offices
Superior and Magistrate courts

District attorney's offices'
Solicitor's offices'
Department of Corrections
Department of Pardons and Parole

Gaining Access to GPOR Website

Judicial access through the Sidebar is not available at this time. While this method of access is being explored, judicial officers may gain access similar to other agencies:

Obtain a user ID/password form from GCIC
Fill out form and return to GCIC
GCIC will assign a user ID/password
Confirmation form will be faxed/emailed back to the user

For More Information

Ms. Daryl Beggs at (404) 270-8464 or email: daryl.beggs@gbi.ga.gov

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Appendix N. VISITATION, CUSTODY, PROTECTION AND SUPPORT OF CHILDREN

But He Seems Like A Good Dad! The Abuser as a Parent

"The court's greatest initial challenge is to identify those cases in which domestic violence is an issue. It is far easier to identify cases of substantiated child abuse and cases where the parties are legally sparring with each other. However, the intended consequences of domestic violence (i.e., intimidation, silence, and fear), coupled with ill-trained attorneys and the growing pro se population of litigants, increase the odds that the court simply will not know enough about the parties to be concerned about safety issues." (Jaffee et.al 2005, pp84-85)

Researcher and trainer Lundy Bancroft described what he sees in family courts around the country: "I train family court personnel all over the U.S., and at each workshop there are a few judges and evaluators who make comments such as, 'I think most abuse allegations come from women trying to get a leg up in the divorce,' and, 'Women are just bitter about the break-up so they try to cut the father off from the children.' (Bancroft 2018) Bancroft also relates that judges tell him that with all the fathers out there that aren't part of their kids' lives, it's hard for them to imagine limiting the parenting time of a father who wants to be involved.

But, Bancroft and other researchers warn, domestic violence is inherently destructive to the family. (RCMP 2017) It is committed by people who have made the intentional decision that their desire for control outweighs their children's need for a safe, stable, and secure family unit.

Children exposed to violence are more likely to have behavior problems and are more likely to become abusers or victims themselves as adults. This holds true even once the abuser and victim are separated. Boys exposed to domestic violence in their youth are show dramatically elevated rates of battering their own partners as adolescents or adults. (Hotaling & Sugarman 1986; Doyne et.al 1999) Children of both genders who are exposed to violence seem to accept parts of the abuser's world view, such as that the victim is to blame, that women exaggerate when they make reports, and that men are superior. (Doyne et.al 1999)

In general, custody and parenting time decisions are geared towards maximizing children's' time with each parent. O.C.G.A §19-9-3(d). In a healthy family, that may be in the child's best interest. But in a family experiencing violence, it's not.

Case Study: Jack and Diane[7]

Jack was a firefighter and Diane had been a stay-at-home mom since their oldest child, now 16, was born. They had 4 children together, including a toddler. Throughout the marriage there was intermittent violence, but Diane always blamed it on Jack's PTSD from serving in Afghanistan. They had very strict gender roles, where Diane took care of everything involving the kids and the home, paid bills with the money Jack gave her for them, and Jack worked extra shifts whenever he could to earn more.

When Diane brought up the idea of separating, Jack became furious. His first step was to cut off Diane's access to funds. He would not let her have any money. If she needed money, he gave it to the oldest child and insisted she monitor how Diane spent it. Once Diane and their toddler were stranded for two hours when the car ran out of gas and Diane had no way to refill it. Jack also took over the bills, but he refused to make payments on the van Diane drove. It was repossessed a few months later, and she was left with no way to drive the children places or run errands. She was stuck in the home. Jack also cut off Diane's cell phone, forcing her to ask permission to use his phone or borrowing a phone from the children. This infantilized Diane in the eyes of the children, who no longer saw their mother as an authority figure.

One night, after an argument, Diane wanted to call her sister to pick her up. She tried to get Jack's phone, reaching across him. Jack began yelling that she was attacking him and instructed their oldest daughter to call the police. As a firefighter, Jack knew many police officers, including the ones who arrived on scene. He met them outside, told them Diane had tackled him and tried to take his phone away. Their oldest daughter confirmed she saw her mom on top of her dad, and they arrested Diane. Diane spent a few days in jail before pleading guilty and getting pretrial diversion (she never spoke with an attorney before taking the plea). While she was in jail Jack brought their oldest daughter to court to file for a protective order, so Diane could not go home. He dropped it at the hearing, and Diane was ordered to have no violent contact with Jack. Diane returned home and continued to act as the homemaker. Anytime Diane began to argue with Jack or disobey him, he told her that she was acting violently and scaring him and threatened to call the police.

Jack then filed for divorce. In court at the temporary hearing, he and his lawyer presented evidence that he was the sole breadwinner in the house; that she was the one with criminal charges. Jack portrayed himself as the victim of his wife's anger; he cried saying he just wanted the old Diane back but that was impossible. He talked about how the children all relied on the oldest daughter for things because their mother didn't take care of them. He said she was irresponsible with money, as evidenced by her car being repossessed. He said he was the only parent who could care for the children.

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[7] Names and some details have been changed

Recognizing Patterns of Abuse in the Courtroom

Abusers are often charming, well dressed, gainfully employed, and skillfully paint themselves as the victim in the case. According to the National Council of Juvenile and Family Court Judges (2008) abusers may exhibit some or all of the following traits[8]:

(1) Believe or claim that the other parent is stupid, unsophisticated, or inflexible; behave in an arrogant or superior manner; and/or patronize the other party, counsel, and even the court. For example, an abuser may claim he is able to assist with homework, or that he is better able to make decisions for the children due to higher education. He may try turning questions back on opposing counsel. Abusers will often show up in uniform, if they have one, and talk about how important their work is, even when not related.

(2) Angers easily. Abusers are not used to being challenged and may become frustrated or angry when an attorney for the victim (if she has one) confronts him on job losses, inability to pay bills, or other failures. Abusers in these situations may become combative, arguing with counsel, asking "what are you implying" and refusing to answer questions because they are deemed insulting.

(3) Attempt to present as the true victim in the relationship; appear vulnerable or otherwise engender empathy with the court or with third parties. Abusers skillfully present themselves as the "real" victim in the case, usually of the other parent's abuse or neglect. Many will even cry in court. This can be effective because court personnel are trained to want to hear people and help them, and this can create feelings of sympathy.

(4) Advocate or adhere to strict gender roles. Abusers often insist on traditional gender roles, where the wife stays home and keeps house and cares for the children, while the husband works. This keeps the victim in a financially dependent situation. This allows for two forms of manipulation in court. First, it allows the working parent to portray as more industrious and stable. Second, when the court considers who was the primary caregiver, the working parent can complain of being "discriminated against" for working long hours.

(5) Minimize, deny, blame others for, or excuse inappropriate behavior. When the evidence of violence is strong, the abuser will try to explain it away. An abuser may claim a victim bruises easily or injured herself. He may try to excuse it as anger over an alleged affair, or the result of stress at work. It is never, according to the abuser, his fault.

Victims, on the other hand, may not present as well in court.

[8] All examples come from actual incidents in Gwinnett County Superior Court

1. They "may present as angry, distrustful, and suspicious with all professionals related to the court proceedings." (Jaffee and Crooks 2005)
2. Some survivors suffer from post-traumatic stress disorder (PTSD), can cause them to be very "flat" when describing abuse, or even laugh at inappropriate times.
3. Trauma can also affect memories, and victims may have a hard time describing events events in chronological order. This may be interpreted as a sign that the victim is lying or not credible. (Jaffee and Crooks 2005)
4. Victims who show anger when describing the other party may even appear to be the perpetrator, who, as described above, may appear calm, rational, and charming.

Domestic Violence and the Best Interests of Children

OCGA §19-9-3(a3) sets out several factors for the court to consider. Section (P) specifically calls on the court to determine if there have been acts of Family Violence, which is crucial, because the other factors must be viewed in light of that violence. While in healthy families these factors can lead to decisions serving the best interests of the children, in families that have experienced violence, the dynamics of the violence, the effects on the victim parent and the kids, and the narcissism of the abuser can lead to the abuser gaining custody.

Sections (A), (B), and (C) instruct the court to look at the love, affection, and bonding between the parent and child, and between the child and other siblings.

(6) In homes with family violence, this can be very tricky. Studies have found that abusers may "play favorites" among siblings, preferring perhaps the oldest child, or preferring boys over girls. Favored children may develop a sense of superiority over both their siblings and the other parent, which leads to friction and conflict between siblings and difficulty for the battered parent to bond. (see e,g, Johnston & Campbell 1993 and Hurley & Jaffe, YEAR)

(7) The children may have been conditioned not to respect the victim or to believe that the victim does not care about them. "Domestic violence is inherently destructive to maternal authority because the batterer's verbal abuse and violence provide a model for children of contemptuous and aggressive behavior toward their mother. The predictable result, confirmed by many studies, is that children of battered women have increased rates of violence and disobedience toward their mothers." (Jaffe & Geffner 1998)

(8) Finally, abusers who decide to pursue custody may suddenly start paying close focused attention to children that they had little connection to prior to the separation. This can have a powerful effect on children who have been starved for the abuser's attention and suddenly receive it. (Bancroft 2018)

Sections (E) and (H) focus on the ability of each parent to provide for the children, financially and with the support of family.

(9) Most victims are financially dependent on their abuser, often as the result of economic abuse. (Adams 2011, finding that in one study, 102 of 103 victims had been financially abused)

i. Victims have much higher job instability than their non-abused counterparts. This may be due to the batterer alternately forbidding the victim from working and then demanding they do and/or to disrupting the victim at work. (Adams 2011). The more jobs the victim has over a time period, the harder it is for her to get hired, contributing to the cycle.

ii. Victims also tend to be debt heavy and asset poor. If the victim does work, the abuser may insist she take out credit cards or loans. At the same time, property like homes and cars are more likely to be titled in the abuser's name.

(10) Owning the house and having the reliable car and a stable job all contribute to the abuser appearing far more stable and financially able to care for the children.

(11) Abusers are more likely to have family and community support, as well. It is common for abusers to isolate their victims, keeping them away from family, friends, and support. All the family dynamics are with the abuser's family; the family friends are his friends. This is done as part of an overall pattern of controlling the victim, making her dependent on the abuser. However, in the context of a court case, the abuser may try to bring in a parade of witnesses who are part of his support system, while the victim does not have discernible support.

Section (F) looks at the ability of each parent to provide nurturance and a feeling of safety. Unfortunately, the battering dynamic may cause the batterer to appear better able to do that.

(12) Bancroft (Winter 2002) finds that batterers undermine the children's faith in the victim's ability to protect them by, among other things, beating or punishing the victim parent for trying to do so. This leads to children believing that the parent is unable or unwilling to do so.

(13) Because the abuser is the sole decision maker and voice of authority, children may feel unmoored or confused when the batterer is not around. This can lead to problems once the batterer finally leaves (or is removed from) the home, since the children have been conditioned not to listen to the victim parent. (Jaffe & Geffner 1998) Children may say they prefer to live with the abuser or begin to act out when the victim parent tries to assert authority. (Bancroft 2005)

Section (N), sometimes called the "friendly parent factor" is potentially the most perilous for victims of domestic violence.

(14) Section (N) looks to "The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interest of the child;"

i. When the battered parent does not want contact with the abuser, or wants it limited, or if she has disappeared with the children in the past, she may look like she is refusing to facilitate the relationship with the abuser.

ii. Abusers may claim that the victim is alienating the children from him, and that the abuser needs to get custody in order to "de-program" them.

(15) There is no credible evidence that Parental Alienation Syndrome exists.

i. "Despite having been introduced 30 years ago, there remains no credible scientific evidence supporting parental alienation syndrome (PAS, also called parental alienation (PA) and parental alienation disorder (PAD)). The concept has not gained general acceptance in the scientific field, and there remains no test, no data, or any experiment to support claims made concerning PAS. Because of this lack of scientific credibility, many organizations—scientific, medical, and legal—continue to reject its use and acceptance." "Parental Alienation Syndrome: 30 Years On and Still Junk Science" | Judicial Division. (2018). Americanbar.org. Retrieved 1 August 2018, from https://www.americanbar.org/publications/judges_journal/2015/summer/parental_alienation_syndrome_30_years_on_and_still_junk_science.html

ii. Carole S. Bruch (2001) extensively repudiates the theory of Parental Alienation Syndrome on multiple counts. Additionally, in 1996 the Presidential Task Force on Violence and the Family found there was insufficient data to support the existence of parental alienation syndrome. *Statement on Parental Alienation Syndrome*. (2008). http://www.apa.org. Retrieved 1 August 2018, from http://www.apa.org/news/press/releases/2008/01/pas-syndrome.aspx

(16) There are sometimes good reasons to prevent contact between an abuser and the children. In a 2003 study by Sara R. Jaffee et al., using data from an epidemiological sample of 1,116 pairs of 5-year-old twins and their parents, the researchers found that children whose fathers engage primarily in healthy, pro-social behaviors show better behavior and have better outcomes than children who spend relatively little time with good fathers; but, children whose fathers engaged in high levels of antisocial behavior showed more conduct problems and more antisocial behaviors than the children who spent little time with their fathers. (Jaffee 2003) Additionally, Bancroft & Silverman

find that abusers often use unsupervised parenting time to monitor the victim's activities through the children and perpetrate the narrative that the abuser is the "real victim" and the separation is the victim's fault.

Section (O) calls for the court to consider any recommendation by a custody evaluator or Guardian Ad Litem.

(17) It is important not to rely too heavily on child custody evaluators and Guardians Ad Litem. "Three important studies suggest that, in the context of custody evaluations at least – the outcomes of family law cases have more to do with the evaluators' beliefs than what is actually going on in the family." Haselschwert 2010.

(18) Batterers can be incredibly charming, polite, reasonable, and not appear to be violent. Conversely, victims are healing from trauma and may, at times, seem erratic, moody, or "flakey." (Bancroft 2018) Combined with stronger financial resources and family supports, an evaluator may believe that the abuser is in fact the better parent. (*See* Jaffee, Crooks & Wong 2005)

(19) When using custody evaluators or Guardians Ad Litem, if family violence is suspected, it is important to ensure that the evaluator has specialized training in dealing with family violence (NIJ 2017).

Once the court has found that there has been domestic violence, other factors come into consideration, placing the safety of both the victim and the children as a top priority. O.C.G.A. §19-9-3(a4)

(20) Important note: just because there was no prior finding by a court, no arrests or convictions, does not mean there was not violence.

(21) O.C.G.A § 19-9-3(a4) specifically states that "the judge shall not refuse to consider relevant or otherwise admissible evidence of acts of family violence merely because there has been no previous finding of family violence."

(22) Why do victims not report? See Appendix A, Section K 2 & 3.

Crafting Court Orders and Parenting Plans

Twenty-two states and Washington D.C. have laws that create a rebuttable presumption that is not in the best interests of children to give custody to a parent who has committed family violence. The burden is on the abuser to show why he or she should have legal or physical custody. While Georgia law does not have such a presumption, once the court has determined there has been family violence in the relationship, the court is required by O.C.G.A. §19-9-3(a4) to consider safety and craft orders accordingly. In some cases, that may mean prioritizing the safety of the victim parent and the children over the rights of the abusive parent.

In general, orders should be specific and clear with appropriate timetables for events to happen. Below are some ideas for crafting safety focused parenting plans:

Legal Custody & Parental Communication

(23) Joint legal custody requires a lot of communication and provides methods of control for the abusive parent.

i. Consultation as required by joint legal custody is often fruitless; the parties will never agree on what is in their child's best interest, even on the most obvious of issues. The result is more litigation, with the batterer bringing the victim back to court alleging he/she has not been consulted on all issues.

ii. If the parties are going to be awarded or have agreed on joint legal custody, the victim parent should be awarded final decision making authority. When batterers are awarded final decision-making authority on any issue, it provides them a means of control over the victim's life.

iii. Do not leave any issue to be "mutually agreed upon by the parties". This action requires the parties to negotiate which simply encourages conflict and future litigation.

(24) If parents will be consulting, consider having the parents use a service that tracks their communications, so neither one can delete messages or change them.

i. Our Family Wizard (https://www.ourfamilywizard.com/) is popular, as it has tools for parents to communicate, keep a joint calendar, and submit expense items. Prices start at $99 per year and can include "Tone Meter" which warns parties when their language becomes hostile.

ii. Talking Parents (https://www.talkingparents.com) is a free app that allows parents to communicate securely. Parties can see when a message was viewed, when attachments were downloaded, and when the reply was made, and neither party can delete or modify the messages. Parties can also order certified transcripts of the communications for use in court.

iii. The parents should not talk on the telephone, as that nearly always leads to conflict and the potential for violence. Parties should text in an emergency and use a communication tool or email for non-emergencies.

Physical Custody and Parenting Time Considerations

(25) Consider requiring the abusive parent to complete a Family Violence Intervention Program before allowing extended or unsupervised visitation.

i. It's not uncommon to require drug or alcohol intervention when a parent has a substance abuse problem, and a history of domestic violence can be just as, if not more, destructive to children.

ii. Family Violence Intervention Programs can address issues of parenting and reduce the chances of parenting time being used to control the victim.

(26) Consider waiving the requirement for the victimized parent to attend the co-parenting class, and instead require targeted counseling.

i. While there is no doubt that in typical families the co-parenting class is worthwhile and needed, in families that experienced violence it can lead to confusing messages for the victim. (Nauert 2006) As a society, we tell victims to get away from their abusers, but then tell the same victim to send their children to the abuser with no safeguards in place; to trust the abuser and not interfere with his/her parenting; and to communicate openly with the abuser.

ii. One study found that mandatory co-parenting classes caused substantial feelings of guilt in victims who left their abusers. (Nauert 2006)

(27) Weeknight visitations should be discouraged. These visits require a lot of coordination, more than the parties are capable of. Issues surrounding extra-curricular activities, homework and test preparation, etc., all must be addressed each time one of these visitations occurs.

Transportation

(28) Be aware of the ways batterers can use the transportation to harass or control the victim. For example, allowing the batterer to call if he is going to be late makes it harder for a victim to enforce a no contact order; requiring the victim to be in a specific place, even in public, might endanger her; and having a set time can put her at the mercy of traffic.

(29) If the abuser already knows where the victim and the children live, pick-up and drop off at the victim's home can be the safest arrangement. The abuser remains in the car and honks the horn or sends a text that he or she has arrived. The children then walk out the door to the car. After the victim has closed the door, the abuser can get out to help the kids buckle in, if necessary. They can do the same in reverse.

i. This allows the victim to remain in a safe place and keep substantial distance between him or herself and the abuser.

ii. If the abuser is late, cancels last minute, or is a no-show, the victim has not been inconvenienced or compromised.

iii. It takes away control from the abuser by allowing the victim and children to wait in a safe, comfortable environment, rather than sitting in a parking lot waiting for the abuser to arrive.

(30) If the abuser does not know where the victim and the children live, pick up and drop off at school or daycare can serve the same purpose, or they can exchange at a friend or relative's house, with the same curbside procedures.

Child(ren)'s Property that needs to go back and forth

(31) Parents should each keep items for the child at their own homes. It should not be the victim's responsibility to send clothing and other necessary items.

i. This can be used as a form of financial abuse by keeping the items and not returning them.

ii. Having a child bring toys or stuffed animals back and forth allows the batterer to insert listening or tracking devices.

Contacting the Child(ren)

(32) Be realistic about telephone contact. What's the purpose of calling a 6-month-old child? Such contact is often used as an opportunity for an abuser to maintain contact with his/her victim and find out information otherwise unavailable.

(33) If telephone contact is ordered, there needs to be a window of time during which the call can occur. For example, the caller must call between 7:30 and 8:00 p.m. on a specific day of the week.

(34) Require the parent calling to call from a certain number, not blocked, so that the child can answer the phone, thus minimizing contact between the parties.

(35) Requests for daily phone contacts should be evaluated thoroughly to ensure it is not a veiled stalking attempt.

Supervision

(36) If visitation is going to be supervised, it must be clear who's going to supervise, who must pay, where it can take place, under what circumstances supervision may cease and what the process will be if the arrangements need to change.

(37) The supervisor should not be someone who does not believe the violence occurred, e.g. the batterer's parent or sibling.

(38) Many times, when there is not an easy supervision solution in the community, judges are reluctant to order it.

Safety Focused Parenting Plan—see sample in Section K

Jack and Diane Part II:

As part of the temporary divorce order, the judge in Jack and Diane's case split custody of the children, with Diane having the kids during the day while Jack was at work, and Jack having the kids at night. The Judge did award Diane child support of $500 per month, even though they were splitting the time pretty evenly. The judge also told Diane she was expected to get a job as soon as possible.

Diane tried to work, but she had her toddler with her all day, plus the older children after school, so she could only work at night. She got a job waitressing, working from 10 p.m. to 3

a.m., only to be back at the house to get the kids ready for school by 7 a.m. That lasted a few weeks until she collapsed. She tried to do childcare, but didn't have any of the certifications she needed.

Shortly after court, Jack's position changed and he went on 12 hour shifts. Diane was happy to have the kids for longer, caring for them from 6 a.m. until 8 p.m., but when school ended she realized she had to feed and care for them on just the $500 per month. They were asleep most of Jack's hours, while the kids were asking her for money for activities, food, and she was driving the children around town.

Throughout this time, Diane was still living in the marital home most of the time, just leaving when Jack was there. Jack constantly checked to make sure she had not taken anything from the house, threatening to call the police and report stolen property if she did. She was not able to take any of her books, pictures, dishes, or furniture from the house, and she would not have had a good place to keep them anyway.

Child Support and Alimony

Financial support is crucial. As discussed above, most victims are financially dependent on their abuser, often as the result of economic abuse. (Adams 2011) A combination of job instability, long periods between work, the needs for child care, and the full-time nature of healing from trauma, financial supports are necessary. A lot of victims have their first contact with the court system when they obtain a civil protective order. It is the first opportunity the court has to put systems into place to allow the family freedom and safety. The trick is ordering appropriate support without creating new opportunities for the abuser to exert financial control.

> "Inadequate material resources render women more vulnerable to violence. Inadequate material resources increase the batterers' access to women who do try to separate. Inadequate material resources are a primary reason why women do not try to separate . . . [T]hose women who are economically vulnerable have an increased vulnerability to violence. So you see this kind of interactive effect." (Coker 2003)

It is essential not to view financial illiteracy, repossessions, or lack of funds as a reflection on the person leaving a violent relationship. The abuser is creating a reality where he appears to be the only responsible adult.

It is appropriate and proper to order child support and alimony as part of a Family Violence Protective Order.

(39) Financial reasons are some of the most common reasons victims either stay in abusive relationships, or return to their abusers even after involving the courts.

(40) Having provisions for financial support is a key element to dealing with domestic violence in any kind of meaningful way. (Conner 2014)

(41) The protective order statute (O.C.G.A. §19-13-4(a6)) gives judges wide discretion for crafting any orders necessary to "bring about a cessation of acts of family violence." OCGA §19-13-4.

i. Perpetrators may be ordered to pay child support and alimony, attorney's fees, and for alternate housing for the victim.

ii. Some judges view the permissive language in the statute as discouraging the award of child support or alimony as part of a protective order, asserting that is a function of a divorce or child support case. However, the language is equally permissive about ordering a stay away provision, but few judges would consider that optional.

iii. TPO hearings can also take on the appearance of mini-criminal hearings, where much of the focus is on the act or acts of violence. What attention is given to the orders focuses on no-contact and stay-away provisions, and less time is spent on crafting orders that deal with economic issues. (Coker 2003)

"For a woman to remain free from abuse, protections must be put in place both to secure her safety and to ensure her economic independence." (Conner 2014)

(42) Failing to address financial issues in a protective order case, or any kind of case involving domestic violence, may result in the victim being in an impossible situation.

(43) Domestic violence is a leading cause of homelessness among women and children. In one study, 40% of homeless women had been abused. In another, 85% of shelter residents returned to a violent relationship because of impending homelessness. (Crenshaw 1991)

i. Without adequate funds, a victim cannot relocate, activate utilities, obtain transportation, or hire legal representation.

ii. Faced with potential homelessness, many women either stay in violent relationships or return to them.

Crafting Support Orders (In Any Kind of Case)

Judges are not required to impute minimum wage to non-working parents.

(44) The child support statute permits the court to impute income to a parent where there is no "reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to pay child support…[and] no other reliable evidence of the parent's income or income potential." O.C.G.A. § 19-6-15f(4A)

i. Often this is seen as a default measure when one party is not working.

ii. In families where there is domestic violence, the court must consider all the other factors before imputing income to the abused parent, such as

1. The effect the violence has had on the victim's ability to hold a job in past.
2. A parent's caretaking responsibilities. For example, if a parent is providing childcare for young children, he or she cannot also work full time.
3. The amount of time a parent leaving an abusive situation will need to get settled and heal from the abuse.

Judges can and should deviate from the presumptive child support based on the best interests of the children

(45) Consider how the abuser might manipulate his parenting time to control the victim. If the abuser does not utilize his time, how will that impact the victim's finances? Will she be responsible for more costs? Utilize parenting time deviations to increase support if parenting time is not utilized.

(46) Consider things like counseling for the children and the victim as part of "extraordinary medical expenses" (schedule E).

(47) Roll as many expenses into child support as possible, including childcare, healthcare, extracurricular activities, tutoring, etc so as to minimize contact between the parents. Do not let the victim be put in the position of having to ask for support.

(48) Whenever possible, the money should go to the custodial parent so he or she can decide how best to use it.

i. Only allow the perpetrator to make direct payments if he will be as impacted as the victim if payments are not made, such as joint car insurance or a mortgage.

ii. If payments are being made directly, include a backup plan, such as that if a payment is more than 3 days late, the other person may make the payment and bill the one who was supposed to pay.

(49) Consider immediately ordering Income Deduction Orders for both child support and alimony, even in temporary orders.

i. This prevents the victim from having to pursue the support, and removes the issue of money from any communications.

ii. It provides a stable supply, and does not allow the abuser to control the victim through late payments, stopped or bounced checks, or the abuser deducting money for things he paid for.

(50) Consider spelling out in the order that buying things for the children does not count towards child support payments.

Alimony is also essential for the person leaving the violent relationship.

(51) Child support is meant for the children, and may not cover the needs of the spouse escaping the abuse.

(52) Even people without children who are leaving violent relationships need support while transitioning to safety.

(53) It can be expensive leaving a violent relationship, and temporary alimony can help cover these costs.

i. Moving costs: The victim may not want to utilize friends who may report to the abuser where she is living. She will likely need to hire movers.

ii. Startup costs: Without a credit history, victims must pay expensive deposits to turn on utilities. Landlords may also require a larger deposit or rent in advance since there is no rental history.

iii. Financial planning or classes: If the victim has not been allowed to manage money, she may not know where to start, or what are good and bad choices with money. One advocate noted, "After leaving, a survivor may not know how to open a bank account, apply for credit or pay their monthly bills." (DomesticShelters.org, 2018)

1. A study published in the *Journal of Consumer Affairs* found that a program on financial education created by the Allstate Foundation and the National Network to End Domestic Violence led to better financial outcomes for people coming out of abusive relationships, as well as more confidence. (Palmer 2015)
2. The National Coalition against Domestic Violence teamed up with the National Endowment for Financial Education (NEFE) to create classes specifically for domestic violence survivors.

iv. Legal fees: Having a lawyer in court is essential for survivors. Women who are represented are far more likely to be successful in court, but few victims can afford one, especially if the abuser has controlled the finances. Awarding attorney's fees in cases involving domestic violence will make it easier for survivors to hire attorneys, and will help fund legal services agencies who provide representation *pro bono*.

Tort remedies are another means a victim can use to gain financial freedom

(54) Tort remedies are available even between spouses once there is no "marital harmony" to be preserved. Smith v. Rowell, 176 Ga. App. 100 (1985)

i. “Who soever a man has laid open his wife's head with a bludgeon, put out her eye, broken her arm, or poisoned her body, he is no longer exempt from [***6] liability to her on the ground that he vowed at the altar to 'love, cherish and protect' her. Civilization and justice have progressed thus far with us, and never again will 'the sun go back ten degrees on the dial of Ahaz.' Isaiah, 38:8."" Bogen v. Bogen, 219 N.C. 51, 53, 12 S.E.2d 649, 651 (1941)

ii. Catlett v. Catlett (193 Ga. App. 399, 1989), woman sued her former husband for assault, battery, and false imprisonment stemming from his conduct during the marriage. She was granted both compensatory and punitive damages.

iii. Shoemake v. Shoemake, 200 Ga. App. 182, (1991).-- Doctrine of interspousal tort immunity bars actions between spouses in respect to personal torts committed by one spouse against the other, except when the traditional policy reasons for applying interspousal tort immunity are absent, i.e., when there is no marital harmony to be preserved and when there exists no possibility of collusion between the spouses.

(55) Suing for damages can provide remedies for a host of issues, as well as provide additional funds needed to obtain safety.

i. Medical/psychological care: Abusers may cut off medical insurance or access to health savings accounts in retaliation for reporting the abuse. They may also prevent a victim from seeking medical care for fear of being caught. Suing for medical care, and for present or future pain and suffering, can hold a perpetrator liable for the physical damage caused.

ii. Intentional Infliction of Emotional Distress. This can be important for victims because the law tends to focus on physical damage, but many describe the emotional damage as more lasting.

iii. Lost work and diminished capacity to work: if the abuse or abuser has caused the victim to lose hours at work or even complete jobs, they may be liable for lost wages. This can provide a cushion while the survivor gets education or training needed to re-enter the workforce.

iv. Moving costs (see above, C3a)

v. Miscellaneous damages: O.C.G.A. § 51-1-6 allows for the recovery of damages upon breach of legal duty.

1. When the law requires a person to perform an act for the benefit of another (or to refrain from doing an act which may injure another), although no cause of action is given in express terms, the injured party may recover for the breach of such legal duty if he or she suffers damage thereby.

2. This could include suit for failing to pay debts and ruining the victim's credit, for example.

These tort remedies can help people ineligible for alimony or child support.

(56) Family law remedies can only get people so far. If the parties were not married or don't have minor children together, or if the marriage was short term, alimony and child support may not be available.

(57) Tort laws provide a remedy for unmarried parents whose children have reached majority; people who live together later in life; or even elderly parents abused by their children. They may need much of the same financial assistance, as well.

(58) People find the idea of suing an abuser surprising, especially when there was an intimate or familial relationship. But if a stranger hit someone and caused injury, we would expect the victim to sue them. Why should a romantic partner, or an adult child, be different?

Property division issues

(59) In dividing marital property, it is important to consider how the power differential and violence affects property rights.

i. Many "standard" final judgments and decrees of divorce award each party the property in his or her possession, and assigns each party the debts in his or her name.

ii. However, it is not uncommon for abusers to put property in their own name, and debts in the victim's name. (NCADV 2015)

(60) Do not assume that if one party has moved out of the marital home that the property has been divided.

i. If the victim moved out, make sure she has had an opportunity to take personal belongings, separate property, and an equitable share of joint property and furniture.

1. Do not let the abuser pack up items for the victim. This can lead to the abuser damaging property or placing surveillance tools into the property.
2. The victim should have an opportunity to go through the house without the abuser there and make a list of property she is seeking, so that can be addressed in court.

3. This can be a good use of a Request for Entry and Inspection of Premises (O.C.G.A. §9-11-34)

ii. If the perpetrator has moved out, make sure he has returned all keys and garage door openers.

(61) Consider how the power dynamic has affected the victim's ability to save for the future

i. Victims may be less likely to have a retirement account. It can be equitable to award more of a retirement account to make up for decreased earning potential.

ii. Consider awarding real property or other valuable items that a victim can use as an investment or to make income while the family is recovering from the abuse.

Jack and Diane: Part III

After the temporary hearing, Jack dragged out the court case for over a year. The original court date for the final hearing was set for four months after the temporary. Jack served discovery 21 days before court and then filed for a continuance. Sixty days later he filed a motion to compel saying the discovery responses were incomplete. After the court date was taken off calendar, he dismissed his motion. After the oldest daughter and Diane got into an argument and the daughter called the police (who threatened to arrest her, not Diane), Jack took the daughter to file a Family Violence Protective Order, which she dismissed the day of the hearing. While the ex parte was pending, he filed a motion for modification of the temporary order. The court set another date for the final hearing, and he filed for mediation, telling Diane he was ready to settle and move on. The court date was pushed off again. At mediation, Jack demanded sole custody and limited visitation for Diane. When another final date was issued, he filed for a Guardian ad Litem. When he tried to withdraw that motion, the court refused and insisted he appear. After ruling against the appointment of a Guardian, the court specially set a date, noting that the short-term temporary order had been in effect for fifteen months.

How Abusers Use the Court System to Maintain Control Over the Victim

Family courts allow for frequent contacts between abusers and their victims, even after separation.

(62) Especially when one or both parties are *pro se*, there may be numerous court hearings to resolve issues.

(63) Additionally, there are few costs to filing motions while a case is pending, whether it's asserting contempt for small things, asking for modifications, disagreeing over discovery responses, or requesting evaluators.

(64) Each time an abuser files, the victim must take time to come into court and address the issue. This can cause lost work time, create childcare expenses, and increase anxiety for the victim.

The National Council of Juvenile and Family Court Judges: Family Violence Department put out a list of ways perpetrators can use the judicial process to continue controlling their victims, and suggested remedies.

ABUSE TYPE	POTENITIAL REMEDIES
Excessive filings or court appearances	• Award attorney's fees to the non-filing party • Order the parent who files frivolous motions to reimburse lost wages and other expenses of the other parent • Excuse the at-risk parent from appearing at hearings or permit the at-risk parent to appear by telephone • Order that no court appearances may be scheduled without your prior approval
Excessive Discovery Requests	• Prohibit any discovery or court appearances that directly involve the children, like depositions • Ensure that the at-risk parent has adequate resources to comply with appropriate discovery • Control the discovery process by requiring that the abusive parent show the relevancy of requested deposition testimony and other potentially harassing discovery • Ensure that the abusive parent has no physical access to the at-risk parent during the discovery process • Ensure that the at-risk family members are adequately protected during the pretrial process (e.g., private security, to be paid for by the controlling party, or orders that the abusive parent not be present during depositions)
Filing frequent motions to change unfavorable orders	• Keep in place any orders you have made that enhance the safety of the at-risk parent or child • Require compliance with your orders unless there has been a significant change in circumstances • Prohibit contact between the parents, including during visitation exchanges • Keep all protections in place, including no contact with the child, if that term was part of your original order, absent strong evidence of change and compliance
Multiple requests for continuances	• Deny requests for excessive or unnecessary delay

Excessive *ex parte* filings	• Determine whether the at-risk parent is available for the hearing and whether adequate notice was given • Determine whether a true emergency exists • Use collateral information to assist you in making a decision; for example, determine whether any protection orders have been entered against either parent • In post-divorce proceedings, attempt to determine whether the claims asserted in the ex parte motion were raised in prior litigation • Consider the length of time since any prior custody litigation • Consider whether prior allegations of abuse have been raised in prior court proceedings or with children's protective services

Safety Focused Parenting Plan

_____COUNTY SUPERIOR COURT
STATE OF GEORGIA

_____,		
Plaintiff,		Civil Action
vs.		Case Number _____
_____,		
Defendant.		

PARENTING PLAN

( ) The parties have agreed to the terms of this plan and this information has been furnished by both parties to meet the requirements of OCGA Section 19-9-1. The parties agree on the terms of the plan and affirm the accuracy of the information provided, as shown by their signatures at the end of this order.

( ) This plan has been prepared by the judge.

This plan ( ) is a new plan.
( ) modifies an existing Parenting Plan dated _____.
( ) modifies an existing Order dated _____.

Child's Name	Date of Birth

I. Custody and Decision Making:

A. Legal Custody shall be (choose one:)

( ) with the Mother
( ) with the Father
( ) Joint

B. Primary Physical Custodian

For each of the children named below the primary physical custodian shall be:

	d/o/b:	( ) Mother	( ) Father	( ) Joint
	d/o/b:	( ) Mother	( ) Father	( ) Joint
	d/o/b:	( ) Mother	( ) Father	( ) Joint
	d/o/b:	( ) Mother	( ) Father	( ) Joint
	d/o/b:	( ) Mother	( ) Father	( ) Joint

WHERE JOINT PHYSICAL CUSTODY IS CHOSEN BY THE PARENTS OR ORDERED BY THE COURT, A DETAILED PLAN OF THE LIVING ARRANGEMENTS OF THE CHILD(REN) SHALL BE ATTACHED AND MADE A PART OF THIS PARENTING PLAN.

C. Day-To-Day Decisions

Each parent shall make decisions regarding the day-to-day care of a child while the child is residing with that parent, including any emergency decisions affecting the health or safety of a child.

D. Major Decisions

Major decisions regarding each child shall be made as follows:

Educational decisions	( ) mother	( ) father	( ) joint
Non-emergency health care	( ) mother	( ) father	( ) joint
Religious upbringing	( ) mother	( ) father	( ) joint
Extracurricular activities	( ) mother	( ) father	( ) joint
_____	( ) mother	( ) father	( ) joint
_____	( ) mother	( ) father	( ) joint

E. Disagreements

Where parents have elected joint decision making in Section I.D above, please explain how any disagreements in decision-making will be resolved.

_____

_____

_____

_____

II. Parenting Time/Visitation Schedules

A. Restrictions (Check is applicable)

( ) 1. No Parenting Time

The non-custodial parent shall have no contact with the children until further court order. All parenting decisions shall be made by the residential parent.

( ) 2. Supervised Parenting Time

Whenever parenting time is exercised by the non-custodial parent as outlined below, including day-to-day visitation and holiday or vacation visitation, it shall be conducted with a supervisor present. Supervised parenting time shall apply during the day-to-day schedule as follows:

Place: _____

Person/Organization supervising: _____

Responsibility for cost
( ) mother ( ) father ( ) divided equally

B. Visitation Schedule

During the term of this parenting plan the non-custodial parent shall have at a minimum the following rights of parenting time/ visitation (choose an item):

( ) The weekend of the first and third Friday of each month.

( ) The weekend of the first, third, and fifth Friday of each month.

( ) The weekend of the second and fourth Friday of each month.

( ) Every other weekend starting on _____.

( ) Each _____ starting at _____a.m./p.m. and ending _____ a.m./p.m.

( ) Other: _____

For purposes of this parenting plan, a weekend will start at _____ a.m./p.m. on [Thursday / Friday / Saturday / Other: _____] and end at _____ a.m./p.m. on [Sunday / Monday / Other: _____].

Any weekday visitation will begin at _____ a.m./p.m. and will end [___p.m. / when the child(ren) return(s) to school or day care the next morning / Other:_____].

This parenting schedule begins:

( ) _____ OR ( ) date of the Court's Order
(day and time)

C. Major Holidays and Vacation Periods

1. Thanksgiving

The day to day schedule shall apply unless other arrangements are set forth:
_____
_____
_____ beginning _____.

2. Winter Vacation

The day to day schedule shall apply except as follows (check if appropriate):

( ) The non-custodial parent shall have the child(ren) beginning on
_____ at ____m. and ending on _____ at ____m.

( )The ( ) mother ( ) father shall have the child(ren) for the first period from the day and time school is dismissed until December _____ at _____ a.m./p.m. in ( ) odd numbered years ( ) even numbered years ( ) every year. The other parent will have the child(ren) for the second period from the day and time indicated above until 6:00 p.m. on the evening before school resumes. Unless otherwise indicated, the parties shall alternate the first and second periods each year.

( ) Other agreement of the parents:
_____
_____
_____
_____.

3. Summer Vacation

Define summer vacation period:
_____

The day to day schedule shall apply unless other arrangements are set forth:
_____
_____
_____ beginning _____.

4. Spring Vacation (if applicable)

Define:_____

The day to day schedule shall apply unless other arrangements are set forth:
_____
_____
_____ beginning _____.

5. Fall Vacation (if applicable)

Define:_____

The day to day schedule shall apply unless other arrangements are set forth:

_____

_____

_____ beginning _____.

6. Other Holiday Schedule (if applicable)

Indicate if child(ren) will be with the parent in ODD or EVEN numbered years or indicate EVERY year:

	MOTHER	**FATHER**
Martin Luther King Day	_____	_____
Presidents' Day	_____	_____
Mother's Day	_____	_____
Memorial Day	_____	_____
Father's Day	_____	_____
July Fourth	_____	_____
Labor Day	_____	_____
Halloween	_____	_____
Child(ren)'s Birthday(s)		
Mother's Birthday	_____	_____
Father's Birthday	_____	_____
Religious Holidays:	_____	_____
_____		
_____		
_____		
_____		
Other: _____		
	_____	_____
	_____	_____
	_____	_____
	_____	_____
Other: _____	_____	_____
Other: _____	_____	_____
	_____	_____

7. Other extended periods of time during school, etc. (refer to the school schedule)

_____

_____

_____

D. Start and end dates for holiday visitation

For the purposes of this parenting plan, the holiday will start and end as follows (choose one):

( ) Holidays shall start at ___ a.m. on the day of the holiday.
( ) Holidays shall end at ___ p.m. on the day of the holiday.
( ) Holidays that fall on Friday will include the following Saturday and Sunday
( ) Holidays that fall on Monday will include the preceding Saturday and Sunday
( ) Other: _____

E. Coordination of Parenting Schedules

Check if applicable:

( ) The holiday parenting time/visitation schedule takes precedence over the regular parenting time/visitation schedule.

( ) When the child(ren) is/are with a parent for an extended parenting time/visitation period (such as summer), the other parent shall be entitled to visit with the child(ren) during the extended period, as follows:
_____
_____

F. Transportation Arrangements

For visitation, the place of meeting for the exchange of the child(ren) shall be:
_____
_____

The _____ will be responsible for transportation of the child at the beginning of visitation.

The _____ will be responsible for transportation of the child at the conclusion of visitation.

Transportation costs, if any, will be allocated as follows:
_____
_____
Other provisions: _____

G. Contacting the child

When the child or children are in the physical custody of one parent, the other parent will have the right to contact the child or children as follows:

( ) Telephone

( ) Other:_____
_____

( ) Limitations on contact
_____
_____

( ) The ( ) mother ( ) father shall pay for a cell phone for the child(ren) and shall contact the child(ren) only at that number during the times identified above. The parents shall not contact each other directly except when urgent circumstances require it.

H. Communication Provisions

Please check appropriate provision:

( ) Each parent shall promptly notify the other parent of a change of address, phone number or cell phone number. A parent changing residence must give at least 30 days notice of the change and provide the full address of the new residence.

( ) Due to prior acts of family violence, the address of the child(ren) and victim of family violence shall be kept confidential. The protected parent shall promptly notify the other parent, through a third party, of any change in contact information necessary to conduct visitation.

III. Access to Records and Information

Rights of the Parents

Absent agreement to limitations or court ordered limitations, pursuant to O.C.G.A. § 19-9-1 (b) (1) (D), both parents are entitled to access to all of the child(ren)'s records and information, including, but not limited to, education, health, extracurricular activities, and religious communications. Designation as a non-custodial parent does not affect a parent's right to equal access to these records.

Limitations on access rights:

( ) Access to the child(ren)'s records and information outlined above poses a potential safety concern for the child(ren) or parent; therefore, access to such documents is restricted as follows:
_____
_____
_____

Other Information Sharing Provisions:
_____
_____
_____
_____

IV. Modification of Plan or Disagreements

Parties may, by mutual agreement, vary the parenting time/visitation; however, such agreement shall not be a binding court order. Custody shall only be modified by court order. No parent may coerce, intimidate, threaten, or harm the other parent to secure an agreement to changes in this parenting plan.

V. Child Safety

The parents shall follow the safety rules checked below (check all rules that apply):

( ) The following person(s) present a danger to the child(ren) and shall not be present during parenting time:_____

( ) The child(ren) shall not be physically disciplined.

( ) There shall be no firearms in the parent's home, car, or in the child(ren)'s presence during parenting time.

( ) Neither party shall consume alcohol or illegal drugs and then operate a motor vehicle when the child(ren) is/are in his or her custody.

( ) Neither parent shall be intoxicated or under the influence of any controlled substance (e.g. illegal or non-prescribed drugs) during the period of time that s/he is with the child(ren).

( ) The child(ren) shall not be left alone until they reach at least ___ years of age.

( ) Other: _____
_____

VI. Special Considerations

Please attach an addendum detailing any special circumstances of which the Court should be aware (e.g., health issues, educational issues, etc.)

( ) There has been family violence by the _____ against the _____ and the safety of the victim and the child(ren) shall be the primary focus of interactions between the abuser, the victim, and the child(ren).
( ) _____

VII. Parents' Consent

Please review the following and initial:

1. We recognize that a close and continuing parent-child relationship and continuity in the child's life is in the child's best interest.

Mother's Initials: _____ Father's Initials: _____

Reason for not signing:
( ) There has been domestic violence by the _____against the _____ and/or minor child(ren) and a close and continuing parent-child relationship or continuity in the child(ren)'s life is not in the child(ren)'s best interest. O.C.G.A. §19-9-3(a)(4).

2. We recognize that our child's needs will change and grow as the child matures; we have made a good faith effort to take these changing needs into account so that the need for future modifications to the parenting plan are minimized.

Mother's Initials: _____ Father's Initials: _____

3. We recognize that the parent with physical custody will make the day-to-day decisions and emergency decisions while the child is residing with such parent.

Mother's Initials: _____ Father's Initials: _____

( ) We knowingly and voluntarily agree on the terms of this Parenting Plan. Each of us affirms that the information we have provided in this Plan is true and correct.

_____ _____
Father's Signature Mother's Signature

ORDER

The Court has reviewed the foregoing Parenting Plan, and it is hereby made the order of this Court.

This Order entered on _____, 20 _____ .

_____
JUDGE
_____ COUNTY SUPERIOR COURT

Appendix O. CHILDREN AND DOMESTIC VIOLENCE

Introduction

Children often are involved in cases of domestic violence that come before the court. It may be instinctive to assume that children would be severely and negatively impacted by remaining in a home where domestic violence has occurred, or by remaining with a parent who was a victim of domestic violence. However, it would be counterproductive and sometimes harmful to the children to assume that the negative impacts of witnessing domestic violence outweigh the negative impacts of removal. In situations where children are involved, regardless of whether or not they actually witnessed the violence, the court should consider the context of the situation and a number of variables that can help assess what types of assistance are in the children's best interest.

A New York District Court decision, *Nicholson v. Williams,* (203 F. Supp. 2d 153, 2002), included a number of variables and findings by various experts on the impact of domestic violence on children, and on determining whether removal from the home is in the best interest of the child. The experts emphasized that there is a great deal of variability in the effects of domestic violence on children, and though children can be negatively impacted by witnessing such violence (including post-traumatic stress disorder, sleep disturbances, separation anxiety, more aggressive behavior, passivity or withdrawal, greater distractibility, concentration problems, hypervigilance, desensitization to other violent events, propensity to use violence in future relationships, propensity to hold a pessimistic view of the world, increased risk for depression and anxiety and disruptive behavior disorders, issues with compliance with authority, higher level of aggression, and higher rate of academic difficulties), such an impact is by no means certain and depends on a number of factors.

Collectively, the experts suggest in order to assess the impact of domestic violence, one should examine: the level of violence in families; degree of child's exposure to the violence; child's exposure to other stressors; child's individual coping skills, age, frequency and content of what the child saw or heard; the child's proximity to the event, the victim's relationship to the child; and the presence of a parent or caregiver to mediate the intensity of the event.

Further, experts emphasized that in some cases, children experienced no negative effects or impact from having witnessed domestic violence. They also noted that domestic violence against a mother does not necessarily result in violence against the child; however, if such violence did occur, the perpetrator of the violence would be the same in both situations. The

experts found it extremely unlikely that a victim of domestic violence would then perpetrate violence on his or her child.

The court should remove children from the home after witnessing domestic violence only as a last resort. Children most benefit from having a mature, nurturing and caring relationship with an adult who can be a parent, teacher or a therapist, from being able to talk about what they've witnessed, and from having a safe environment. Judges should consider other resources, such as Children 1st (which serves as a single point of entry for public health-based programs and services for at-risk children) as part of case plans for children exposed to violence. Not every child needs or benefits from the same intervention, and help should be gender and age specific.

Effects of Domestic Violence on Children

There is a great deal of variability on children's experience and the impact of those experiences. Several factors have been identified that influence children's responses to being exposed to domestic violence (*Nicholson v. Williams,* 203 F. Supp. 2d 153 (2002).

Factors that influence child response to exposure to domestic violence.

Level of violence in families;
Degree of child's exposure to the violence;
Child's exposure to other stressors;
Child's individual coping skills;
Child's age;
Frequency and content of what the child saw or heard;
Child's proximity to the event;
Victim's relationship to the child; and
Presence of a parent or caregiver to mediate the intensity of the event.

Effects of exposure to domestic violence.

> The effects of exposure to domestic violence can manifest in several different ways. The experts who testified in *Nicholson v. Williams,* regarding the effects on children witnessing domestic violence, identified short-term, long-term, and other effects.

Short-term effects can include:

(1) Post-traumatic stress disorder;
(2) Sleep disturbances;
(3) Separation anxiety;
(4) More aggressive behavior;
(5) Passivity or withdrawal;
(6) Greater distractibility;
(7) Concentration problems;

(8) Hypervigilance; and
(9) Desensitization to other violent events.

Long-term effects

(10) Propensity to use violence in future relationships;
(11) Propensity to hold a pessimistic view of the world; and
(12) May not occur when a child has a period of safety after
(13) watching domestic violence.
(14) Other effects
(15) Increased risk for depression and anxiety and disruptive
(16) behavior disorders;
(17) Issues complying with authority;
(18) Higher level of aggression; and
(19) Higher rate of academic difficulties.

Impact of witnessing arguments or domestic violence.

Betsy McAlister-Groves, in her book Children Who See Too Much, more generally studied the impact of witnessing arguments, or domestic violence, on children (McAlister-Groves, Betsy. Children Who See Too Much. Boston: Beacon Press, 2002. Print.)

Children who witnessed arguments in the home as infants showed reactions of distress when exposed to "background anger," such as their parents arguing or yelling (McAlister-Groves 56). When older, children are likely to try to distract, comfort, or problem solve for arguing parents (McAlister-Groves 56). When parents resolve arguments, children are much less likely to be affected (McAlister-Groves 57).

Witnessing physical aggression between their parents is more harmful to children than witnessing verbal aggression (McAlister-Groves 57). Exposure to domestic violence affects children's emotional development, social functioning, ability to learn and focus in school, moral development and ability to negotiate intimate relationships as adolescents and adults. Witnessing domestic violence is also associated with greater rates of juvenile delinquency, antisocial behavior, substance abuse, and mental illness (McAlister-Groves 57-58).

Victoria Thornton collected data on young children. In response to domestic violence children demonstrated their coping responses such as: (1) Keeping adults close; (2) acceptance of the domestic violence and developing skills in self-reliance; and (3) taking responsibility for the violence and for their mothers. (Thornton, Victoria. "Understanding the emotional impact of domestic violence on young children." Educational & Child Psychology. 2014.)

Effects of domestic violence based on gender.

Richard Gelles studied the effects of domestic violence on children by comparing children, based on gender, who experienced violence with those who witnessed violence. Generally, children who experienced or were exposed to more violence at home and children who had only experienced violence had more problems than those who were only exposed to violence or who were neither exposed nor experienced family violence (Gelles, Richard. "Partner Violence and Children." From Ideology to Inclusion 2009: New Directions in Domestic Violence Research and Intervention. California Alliance for Families and Children. The LAX Marriott, Los Angeles, CA. 26 June 2009. Plenary.)

School Troubles

(20) Boys who experienced violence had more problems than boys who were exposed to violence, or who were exposed to and experienced violence.
(21) Girls who experienced and were exposed to violence had more problems than girls who either only experienced violence or were only exposed to violence.

Delinquency

(22) Experience or exposure to violence made no difference in children's delinquency.

Problems with Adults

(23) Boys who experienced violence only had more problems than boys who were exposed to violence, or both experienced and were exposed to violence.
(24) Girls who experienced and were exposed to violence had more problems than girls who either experienced only or were exposed only to violence.

Physical Aggression

(25) Boys who experienced or were exposed to violence are more likely to develop physical aggression than girls who experienced or were exposed to violence.

Impact of violence on family units.

Jodi Klugman-Rabb studied the impact of violence on family units as a whole. Generally, violence increases risk of self-destructive behaviors (such as gang involvement, self-mutilation, substance abuse, inability to manage emotions and impulses, sexual promiscuity, cutting school, and future violence). She also found that children living in violence are more likely to have developmental delays or cognitive

and language problems. She also found that violence had indirect effects on families. (Klugman-Rabb, Jodi. "Working with Parents and Families: The Effects of Domestic Violence on Family Systems." From Ideology to Inclusion 2009: New Directions in Domestic Violence Research and Intervention. California Alliance for Families and Children. The LAX Marriott, Los Angeles, CA. 26 June 2009. Plenary.)

Indirect effects of violence

(26) Harsh parenting;
(27) Inconsistent parenting/discipline/reinforcement;
(28) Insecure attachment styles; and
(29) Increased clinical-level anxiety and depression overall.

Thornton collected data children whose representation of family demonstrated the disrupting impact on the dynamics of the family resulting from domestic violence. Impacts such as: (1) Disruption to the care available for children; (2) Reducing opportunities for communication and collaboration in decision making; (3) Forcing divided loyalties; (4) Disrupting routines and predictability; and (5) Reducing parents' capacity to provide containment and security for children. (Thornton 95).

Correlation between witnessing domestic violence and maltreatment or abuse of children

There is some correlation between the presence of domestic violence in a household and direct maltreatment of children. Abuse tends to flow from the batterer. Generally, the victim of abuse does not then abuse his or her children; a scenario in which a man hits his wife, and she hits the child, is rare (Nicholson 203 F. Supp. 2d at 198). In those cases in which the victim of domestic violence abuses his or her children and are then prosecuted for battery and assault against the children, Georgia courts have allowed those victims to admit evidence of battered person syndrome to show a lack of the requisite intent (*Pickle v. State,* 280 Ga. App. 821 (2006).

Witnessing domestic violence, itself, does not constitute maltreatment. Many children who witness domestic violence show no negative effects, and some show strong coping abilities (Nicholson 203 F. Supp. 2d at 198).

Termination of Parental Rights

Georgia courts have terminated parental rights of both the batterer and the victim, in the right circumstances. In the Interest of D.O.R., the court terminated the parental rights of the batterer and the victim, where the victim suffered from depression, was unwilling to take a drug test, and failed to meet with a domestic violence assessor among other things. The victim's failure to comply with previous court orders and case plans was reason to find that giving her parental rights would harm the child (287 Ga. App. 659 (2007))

Best Practices

Judges should do a careful assessment of risks and protective factors in every family before drawing conclusions about the risks and harm to children (Nicholson 203 F. Supp. 2d at 198). Consideration should be given whether the effects of the separation of children from their mothers is significant enough to measure against the effects of witnessing domestic abuse (Beller, Lynn F. "When In Doubt, Take them Out: Removal of Children from Victims of Domestic Violence Ten Years After Nicholson v. Williams." Duke Journal of Gender Law & Policy. 2015.).

Child protection services and courts should avoid strategies that blame the non-abusive parent for failure to protect because of the system's inability to hold the actual perpetrator of the violence accountable (Nicholson 203 F. Supp. 2d at 200). In cases which mothers are subjected to coercive control by their abuser the risk of neglect towards their children is typically a result of constraints the abused must endure rather than the incapacity or inability to provide or protect her children. Judges should take into consideration studies that reveal that domestic violence victims do not suffer the same degree of psychological or behavioral problems as other clients. This is because domestic violence victims enter the caseload almost exclusively because of what their partner has done to them, not because of their own risk to their children. (Stark, Evan. "Nicholson V. Williams Revisited: When Good People Do Bad Things." Denver University Law Review. 2005.)

Children should be protected by offering battered parents appropriate services and protection (Nicholson 203 F. Supp. 2d at 202). This could include referring the victim to a local domestic violence center or shelter, or referring to the public health program, Children 1st. The form and further information are found at http://dph.georgia.gov/children1st.

Children who witness violence may need professional psychotherapeutic help depending on changes in behavior and how long they have been occurring, the severity of the violence witnessed, and whether there is ongoing risk to the child, or the parent is unable to care for the child adequately (McAlister-Groves 86-87). Children are best helped by three elements: a nurturing, respectful, and caring relationship with an adult; giving children permission to talk, to tell their stories about what they have seen; and creating a safe environment for children who have witnessed violence (McAlister-Groves 101, 103).

Appendix P. STALKING

What is stalking?

Stalking is targeted violence to maintain an unwanted relationship. Stalking is not about love nor wanting to get back together with the victim, rather stalking is about control. It is a mix of legal and illegal behaviors, and it is important to consider the interplay of both legal and illegal actions in the broader scheme of a stalker's controlling, harassing, or obsessive behavior.

How does Georgia law respond to stalking?

Constitutionality of GA Stalking Law

Georgia's stalking law uses broad language that can be interpreted to cover technology, both current and future. Subject to a case-by-case interpretation by the court, the language allows the state to argue that any conduct, electronic or otherwise, with the purpose of harassing or intimidating another person, is stalking; and includes, but does not limit, the meaning of "contact" to electronic communications. Though over-broad statutory language can lead to challenges of the law's constitutionality, Georgia's stalking law has been found constitutional, by Johnson v. State, 264 Ga. 590 (1994), and was found not to be vague or overbroad.

Definition of Stalking

Stalking in Georgia is defined in O.C.G.A. §§ 16-5-90. a. "A person engages in 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." O.C.G.A. § 16-5-90(a) The statute further defines the following terms: (1) "computer" and "computer network." (2) "contact" (3) "place or places" (4) "harassing and intimidating" b. Stalking also occurs when a person violates an existing stalking order by broadcasting or publishing "the picture, name, address, or phone number" of the person protected by the order. O.C.G.A. § 16-5-90(a)(1) and (2). c. The Family Violence Act does not

list aggravated stalking specifically. However, as a felony offense, aggravated stalking falls within the definition of "any felony". See O.C.G.A. § 16-5-91; O.C.G.A. § 19-13-1 (1) & (2). 1:5 d. Conduct, which meets the statutory definition of stalking might justify both a family violence order and a stalking order. (See Section 3.2.7 - Stalking Order Remedies). e. Stalking cannot occur in the defendant's home. O.C.G.A. § 16-5-90(a)(1).

How can I recognize stalking strategies?

Stalking strategies fall into 4 generalizable categories: surveillance, life invasion, intimidation, and interference. While it is possible that victims won't use the term "stalking," they may describe stalking behaviors instead (Logan, 2018). Specific tactics, such as following, sending harassing messages, and threatening the victim, are examples of actions which, when taken together, comprise a perpetrator's general stalking strategy. Dr. T.K. Logan describes how stalking strategies appear through tactics in the following;

Surveillance: may present itself through following, showing up, spying, and using technology to keep tabs on the victim
Life Invasion: may present itself through repeated unwanted contact in person or by phone, text, email, card/note, message, third party, and social media
Intimidation: may present itself through implicit, explicit and third party threats, forced confrontations, property damage, and threatened suicide
Interference: may present itself through disruption of the victim's life professionally, financially, and socially, as well as physical and sexual attacks

Stalking and Harassment Assessment and Risk Profile (SHARP)

The Stalking and Harassment Assessment and Risk Profile (SHARP) is a web-based assessment developed by T.K. Logan at the University of Kentucky that can be used to evaluate the risk of potential stalking and harassment situations. SHARP works by having participants first answer 43 questions related to stalking which are used to build two narrative reports. The first of the narrative reports gives an overview of the stalking situation at hand, and the second narrative report provides safety suggestions and information about risks pertinent to the case. Together these reports are a helpful tool for understanding stalking situations as a course of conduct rather than as isolated instances of criminal activity. The goals of SHARP are defined as follows:

"To assess the big picture of the *stalking situation* examining the course of conduct, concern for safety, and unwantedness;
To contextualize the person's unique *stalking situation* and examine a wide range of potential harms; and,
To educate about risks and offer safety suggestions."

SHARP can be used as a tool to guide next steps in a stalking situation, but it does not explicitly recommend action and it does not replace the experience and intuition of those

working with stalking victims. The assessment is an important resource that should be utilized for developing a broader understanding of stalking situations, and the research it provides can help steer stalking victims towards useful supports (T.K. Logan, 2013).

Stalking During and Post Break-Up

Stalking can occur at any point during a relationship. Harassing and controlling behaviors should not be discounted as not stalking simply because two individuals are in a relationship. If the contact is unwanted and unsolicited, then repeated attempts of the stalker to engage with the victim are potential stalking behaviors. In a review of 57 fatal stalking cases in which the relationship had ended prior to the fatal event, the Georgia Fatality Review found that in 35 of the cases stalking was only known to have occurred after the end of the relationship, but in another 19 of the cases stalking was known to occur both before and after the end of the relationship. Another study reported on by T.K. Logan in 2010 revealed that between 63% and 69% of attempted and actual femicide victims were stalked while in the relationship. Although studies show that partner stalking is more common and/or more intense post break-up, stalking while in a relationship is a serious crime and a serious indicator of intimate partner violence (Logan, 2010).

How does the use of technology affect stalking?

Digital abuse is the use of technologies such as e-mailing, texting, and social networking to bully, harass, stalk or intimidate a partner. Technology advances rapidly, and so do stalkers' means of controlling, harassing, watching, and contacting their victims. New technologies and electronic communications, such as GPS locators, untraceable phones, tiny hand-held video cameras, and online social networking sites such as Facebook, Twitter, Instagram and Snapchat, all allow perpetrators to have an unprecedented amount of access to information about their victims, as well as giving them a means by which they can perpetrate harassment easily, quickly, and at a distance.

A 1999 Department of Justice report defined cyberstalking as the use of the e-mail or other electronic communications devices to stalk another person. O.C.G.A. § 16-5-90 defines stalking as occurring when a person "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." Harassing is further defined as "a knowing or willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear…by establishing a pattern of harassing and intimidating behavior." Contact includes communication by computer, by computer network, or by other electronic device. It is classified as a misdemeanor, but upon the second and subsequent convictions, is classified as a felony. The Violence Against Women Act also provides, under 42 U.S.C.S. § 14043b, grants to, among other things, develop safe uses of technology, to protect against abuses of technology, or providing training for law enforcement on high tech electronic crimes of domestic violence, dating violence, sexual assault and stalking.

Forms of Computer and Electronic-Based Harassment

The Internet allows stalkers to access personal information about their victims easily, quickly and from the privacy of their own homes. The means by which a stalker or harasser can communicate with his or her victim is continuously evolving; as new social media and electronic communications are created, new ways for perpetrators to contact their victims are created as well. Some recently identified forms of computer and electronic-based harassment include:

(1) Monitoring e-mail communication either on the victim's computer or through other programs.
(2) Sending threatening, insulting and harassing e-mails, text messages, or social media messages (such as Facebook messages, Google Chat instant messages, or messages via Twitter).
(3) Disrupting victim's e-mail by flooding a victim's e-mail inbox with unwanted mail or by sending a virus program.
(4) Using the victim's e-mail identity to send false messages or to purchase goods or services.
(5) Using the Internet to seek and compile a victim's personal information for use in harassment.
(6) Using prepaid calling cards to harass victims, making the caller difficult to trace.
(7) Use of GPS devices, which use satellite navigational technology to pinpoint a person or object's particular location, to track a victim's location.
(8) Use of Caller Identification (Caller ID) to identify the name, phone number, and location of victims.
(9) Use of technologies such as walkie-talkies, baby monitors, radio scanners, in order to intercept cordless telephone calls.
(10) Use of computer monitoring software that allows a stalker to monitor the activities of his or her victim.
(11) Use of tiny hidden video cameras to monitor a victim's activities. (Southworth 2007.)
(12) Use of Snapchat to communicate with victim and/or to track the victim's location.
(13) Use of Find My Friends, or similar location-sharing applications, to track the victim's location.
(14) Use of social media (including but not limited to: Snapchat, Instagram, Facebook, Twitter, Tumblr, YouTube, GroupMe, Whatsapp, Skype, etc.) to send unwanted and unsolicited messages to victim.

As with offline stalkers, digital abusers are motivated by a desire to exert control over their victims. Evidence suggests that the majority of cyberstalkers are men, and the majority of their victims are women. Though cyberstalking does not involve physical contact, it is not necessarily more benign than offline stalking. The Internet provides increased access to personal information, and ease of communication, to potential stalkers. Digital abuse can also foreshadow more serious behavior, such as physical violence. (Stalking and Domestic Violence: Report to Congress, 2001).

Effective July 1, 2015, O.C.G.A. § 16-11-39.1 was amended relating to harassing phone calls to include other forms of contact through technology including "telecommunication, e-mail, text messaging, or any other form of electronic communication." The statute also states that jurisdiction for this cause of action could be either in the county where the communication was sent, or where it was received.

The National Network to End Domestic Violence instituted the Safety Net project to educate victims, advocates and the general public to find safety using technology. The project also trains law enforcement, social services and community response teams to hold perpetrators accountable when using technology to harass, stalk, use surveillance and threaten.

When domestic violence cases or temporary protection order petitions involving cyberstalking or cyber harassment appear, it is important to take digital abuse seriously, even though the stalking may be conducted at a distance. In cases where the technology was recently developed, or is unknown to the court, it is also important to take advantage of the many online and organizational resources available to explain cyberstalking tools. The Court can include language in temporary protection orders addressing cyberstalking and cyber harassment to prevent electronic communication, harassment, threats and stalking.

"Revenge Porn" Statute O.C.G.A. § 16-11-90

Georgia's revenge porn statute was passed in 2014. Revenge porn is also known as non-consensual pornography, which is the distribution of sexually graphic images of individuals without their consent. Victims of revenge porn have been threatened with sexual assault, stalked, harassed, or lost their jobs. The use of non-consensual pornography can be a form of control in a domestic violence situation – a victim of domestic violence may be compelled to stay in the relationship or avoid reporting abuse due to the threat to expose explicit photographs or videos. Non-consensual pornography is a form of sexual abuse and an invasion of privacy.As set forth in 16-11-90 (b): A person violates this Code section if he or she, knowing the content of a transmission or post, knowingly and without the consent of the depicted person:

(1) Electronically transmits or posts, in one or more transmissions or posts, a photograph or video which depicts nudity or sexually explicit conduct of an adult when the transmission or post is harassment or causes financial loss to the depicted person and serves no legitimate purpose to the depicted person; or

(2) Causes the electronic transmission or posting, in one or more transmissions or posts, of a photograph or video which depicts nudity or sexually explicit conduct of an adult when the transmission or post is harassment or causes financial loss to the depicted person and serves no legitimate purpose to the depicted person.

SB 337 which went into effect August 2020, revises the statute to include falsely created video or still images of other persons.

A violation of O.C.G.A. § 16-11-90 is a high and aggravated misdemeanor, and second or subsequent violations are felonies.

Although this is a relatively new subject area, as of 2019, the District of Columbia and 41 states have statutes criminalizing revenge portn. Other states have revenge porn bills pending in their legislatures.

Application of Stalking Laws in Cyberstalking Cases

The Federal Interstate Stalking Punishment and Prevention Act

The Federal Interstate Stalking Punishment and Prevention Act, 18 U.S. Code § 2261A, was passed in 1996, and amended in 2006, to specifically account for and criminalize cyberstalking. Some parts of the statute, particularly the section criminalizing the use of interactive computer service to cause substantial emotional distress, have been called into question by Federal courts. Specifically, the section is susceptible to challenges based on whether the use of public social media (such as Twitter, Instagram, Facebook, etc.), which is not specifically targeted to the victim, can constitute harassment. These challenges highlight the increasing complexity of regulating and criminalizing cyberstalking, cyber harassment, and cyber bullying behaviors.

Interpretation of Stalking Laws to Include Cyberstalking

Courts across the country have been forced to interpret outdated and limited stalking laws in order to determine whether new technological means of stalking or harassing victims constitute crimes. Many courts have been willing to interpret statutes to include new forms of technology that fit the spirit of stalking laws.

(15) In New York v. Munn, 179 Misc. 2d 903, 688 N.Y.S.2d 384 (1999), a man was held liable for posting a message on an Internet newsgroup asking others to kill a specific police officer, mentioning him by name, as well as all other NYPD police officers. The court found that a communication made on the Internet is initiated by electronic means or written, and is directed at the complainant was covered under the stalking statute, and that the message was directed at the complainant by the inclusion of his name in the message.

(16) In Remsburg, Administratix for the Estate of Amy Boyer v. Docusearch Inc., 149 N.H. 148 (2003), a man purchased his victim's personal information from an information broker, set up a Web site referencing stalking and killing his victim, who he later shot and killed. The court held that information brokers, in cases such as those, may be held liable for the sale of such personal information. The New Hampshire stalking statute references the state's harassment statute to define "communicates", (,") which defines communications almost exactly as does the Georgia statute, which includes specific electronic communications while not limiting prohibited contact to communications by those means (RSA 644:4).

(17) In Colorado v. Sullivan, 53 P.3d 1181 (Colo. Ct. App. 2002), a Colorado man was in violation of the state's stalking law after installing a GPS on his estranged wife's car in order to check on her whereabouts during their

divorce. The Colorado stalking statute prohibits any form of communication between the perpetrator and the victim, and does not specifically designate electronic communications as prohibited (C.R.S. 18-9-111).

(18) In H.E.S. v. J.C.S., 815 A.2d 405 (NJ 2003), a man was held liable under the state's stalking law for watching his estranged wife for months via a small camera placed in a tiny hole in her bedroom wall. The New Jersey stalking statute includes broad statutory language, and prohibits communicating by any means: harassing, or conveying written or verbal threats by any means of communication to cause a reasonable person to fear for his or her safety (N.J. Stat. §2C:12-10(1))

However, in Chan v. Ellis, 296 Ga. 838 (2015), the Georgia Supreme Court reversed a trial court's ruling that Chan's digital publication of thousands of posts about Ellis violated OCGA 16-5-90 (a) (1), which forbids one to "contact" another for certain purposes without the consent of the other. The Supreme Court found that Ellis was not an unwilling listener, and was not contacted without consent as the statute requires.

Venue in Cyberstalking

With increased means of cyberstalking and electronic communications, perpetrators are able to stalk victims from a distance. Perpetrators can send e-mails, text messages, use GPS tracking, and other means of cyberstalking across state lines. Georgia case law has not clearly addressed when prosecution of an out-of-state perpetrator is appropriate.

In Carlisle v. State, 273 Ga. App. 567 (2005), the defendant mailed a letter to his victim's apartment and was subsequently charged with stalking. Venue was appropriate in the county where the victim's apartment was located, because that was where the letter was received. The ruling of the case was later reversed, but not for lack of venue.

In Huggins v. Boyd, 697 S.E. 2d 253 (2010), a respondent non-resident sent harassing e-mails to a woman living in Georgia, where she resided. She filed for a temporary protection order and the Court of Appeals found that the conduct on which the TPO was based occurred at the physical place where the respondent typed and sent the e-mails, and therefore that the temporary protection order (TPO) should have been filed in South Carolina.

In State v. Stubbs, 879 S.E.2d 716 (Ga. App. 2022), a defendant was charged with terroristic threats for making threats to kill her sister and two nieces using social media. The court held that venue was proper in the county in which the defendant's voice messages were communicated to and received by the defendant's sister and nieces.

Why is stalking a serious issue?

According to the 2017 Georgia Fatality Review, 58% of all fatal domestic violence instances in Georgia included stalking prior to the fatal event. Stalking is a powerful indicator of general controlling behavior, and, in fact, in 98% of stalking cases the abuser had a history of domestic violence against the victim. Media portrayals of stalking often represent the crime as

romantic or as misguided demonstrations of love, but the severity of the crime should not be underestimated (Georgia Commission, 2017).

The effects of stalking can permeate all areas of a victim's life.

(19) Social impact: difficulty trusting others, avoiding group situations where stalker may be present, self-imposed isolation as a way to protect loved ones from stalker, leaving behind friends/ family in move to get away from stalker

(20) Financial impact: loss or reduction in employment, deteriorating work performance, cost of security measures like alarm systems, cost of moving to new location away from stalker

(21) Physical impact: fatigue, effects of chronic stress (i.e. hypertension, headaches), weight fluctuations, increased dependence on drugs and alcohol, sexual dysfunction

(22) Mental and emotional impact: guilt and self-blame, anxiety, panic attacks, constant fear, depression, difficulty concentrating, feelings of isolation and helplessness, suicidal thoughts (Mackenzie et al, 2011)

The idea of stalking seems to imply that the perpetrator is at a distance, but in actuality stalkers are a very real and omnipresent part of stalking victims' lives. The perpetrator made threats to kill the victim in 67% of stalking cases reviewed by the 2017 Georgia Fatality Review. In comparison, threats to kill were only present in 38% of non-stalking cases. Stalking is a lethality factor, and even in non-fatal instances of stalking, the effects of stalking on a victim are emotionally, physically, and professionally damaging.

The presence of stalking in an intimate partner violence case indicates an increased likelihood of strangulation and sexual assault.

What makes stalking a unique issue?

Stalking can be a difficult crime to assess because it is comprised of both legal and illegal behaviors and because fear is a subjective emotion. As stated by the 2017 Georgia Fatality Review, "the fear stalking victims experience comes from their interpretation of the stalker's behavior, often as it relates to their personal history with the stalker. It is not always easy for victims to convey, or for others to understand, why certain behaviors or tactics used by the stalker instill fear in the victim" (Georgia Commission, 2017). As previously stated, stalking is a strategy used over time by stalkers trying to instill fear and gain control over their victims' lives. While some tactics used by stalkers are perfectly legal, they should not be ignored. In order to gain a bigger picture understanding of a stalking strategy, it is important to listen to the response of victims to specific stalking tactics. Most stalkers are current or former intimate partners, and so have a knowledge of what actions will most affect their victims (Georgia Commission, 2017).

Stalking and First Amendment Issues

While threats of violence are generally understood not to be protected speech, what constitutes a "true" threat is not clearly defined. For a number of years, many courts have upheld

criminal liability in cases where a reasonable person would perceive the communication as threatening, but the Supreme Court moved away from that standard in 2015 (129 Harv. L Rev. 321, 2015).

In Elonis v. United States, 135 S. Ct. 2001 (2015), a man made a number of threatening statements against his wife, former employer and others on social media. He was convicted of violating 18 U.S.C. § 875(c) for transmitting threats in interstate commerce. The Supreme Court reversed his conviction, and held that there must be intent to threaten or knowledge that a communication will be perceived as threatening.

Internet Resources

It is nearly impossible to keep up with new technologies that can be used and manipulated to stalk and harass victims. Several Web sites have resources that can be used to keep up to date with new technologies.

The National Center for Victims of Crime: Stalking Resource Center provides links to articles and publications on Internet safety, as well as new means of cyberstalking.
http://www.victimsofcrime.org/our-programs/stalking-resource-center

The National Network to End Domestic Violence: Safety net program assists in training victims, advocates, and law enforcement on cyberstalking and electronic harassment. The page features links and resources related to cyberstalking: http://www.nnedv.org/projects/safetynet.html

Appendix Q. CONFIDENTIALITY OF DOMESTIC VIOLENCE ORGANIZATIONAL RECORDS

Introduction

Communications between a representative of a domestic violence organization and a victim of domestic violence are often initiated in confidence, and, in general, the victim and counselor assume that communications during counseling are meant to be confidential. If the organization's records or communications are not kept confidential, victims may be reluctant to seek counseling or assistance. (Department of Justice, Report to Congress on the Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors, Findings and Model Legislation (1995)). In a variety of cases involving domestic violence—from divorces to custody disputes to criminal cases—a party may attempt to compel testimony or production of documents from shelters.

While nothing in federal statutory law explicitly requires that domestic violence organizational records be kept confidential, when domestic violence organizations receive grants under the Family Violence Protection and Services Act (FVPSA), they are required to prove that procedures are in place to keep records confidential. Domestic violence organizations also receive grants under the Violence Against Women Act (VAWA) in order to develop confidentiality protocols to protect personally identifying information of victims. Domestic violence shelters in Georgia are certified by the Criminal Justice Coordinating Council, and receive funding under FVPSA, with many also receiving funding under VAWA. When domestic violence shelters receive subpoenas or third-party requests to produce documents or testimony, questions may arise as to the legality of their complying with the requests and as to the confidentiality of the organization's records. There is no Georgia statute protecting the confidentiality of domestic violence organization records and communications with victims.

Some domestic violence shelter staff(s) already have privilege, based on the privilege between a patient and a licensed social worker or professional counselor during the psychotherapeutic relationship, as recognized in O.C.G.A. § 24-5-501 (effective January 1, 2013). However, O.C.G.A. § 24-5-509 created a privilege for communications between a family violence or sexual assault victim and counselors, including volunteers, providing services to such victims at family violence shelters and assault centers. However, in both civil and criminal cases, a party may by motion, compel the testimony of an agent of a family violence or sexual assault center to whom disclosures were made by an alleged victim upon showing: that the evidence is material and relevant; that it is not otherwise available; and, that the probative value of the evidence sought substantially outweighs "the negative effect of the disclosure on the victim." Other than evidence of prior inconsistent statements, disclosures will not be ordered if the only purpose of the evidence relates to the alleged victim's character for truthfulness. If the moving party requests disclosure on proper grounds, the court is to take the evidence under seal for in camerareview and may order disclosure of those portions of the evidence which are proper under the code section.

If a communication is not privileged under the Georgia statute, Federal courts can extend privilege on a case-by-case basis where the public interest in keeping the communication confidential outweighs the need for the evidence *Jaffee v. Redmond,* 518 U.S. 1(1996). Courts often use Dean Wigmore's factors to determine whether to apply privilege: (1) the communications must originate in confidence; (2) confidentiality must be essential to the proper maintenance of the relationship; (3) the relationship must be one that society deems worthy of protecting; and (4) disclosure must injure the relationship more than it benefits the litigation. Wigmore, A treatise on the Anglo-American System of Evidence in Trials at Common Law,. Vol. 5, Pg. 2, §2285. Although Georgia state courts are not required to follow Jaffee, there is a history of courts extending privilege beyond the statute, such as extending the psychiatrist-patient privilege to include communications between a general physician and a patient for a therapeutic purpose. *Wiles v. Wiles,* 264 Ga. 594.

Q:2

Overview Chart

Overview	
Violence Against Women Act	Commissioned a report on confidentiality for domestic violence victims, in an effort to improve federal provisions and state provisions protecting domestic violence victims, and provides grants to organizations to allow them to develop procedures and systems to keep personally identifying information of victims confidential.
Family Violence Protection and Services Act (FVPSA)	In order to receive grants under FVPSA, an organization must prove that procedures are in place to ensure confidentiality of records.
Federal Rule of Evidence 501; Notes of Committee on Judiciary (H.R. No. 93-650)	House committee suggests that principles of common law privilege should be interpreted in light of "reason and experience," and that privilege should be recognized on a "case-by-case" basis.
Department of Justice Report to Congress (1995)	Suggested model statutes for states to ensure confidentiality for communications between sexual assault and domestic violence victims and their counselors.
Federal Case Law – Extension of Privilege	Extended privilege to include communications between a psychotherapist and his or her patient. *Jaffee v. Redmond,* 518 U.S. 1 (1996).
GA Right to Privacy	Recognizes right to privacy for communications between certain persons for the public good. *Pavesich v. New England Life Insurance Co.*, 122 Ga. 190 (1905).
GA Privilege Statute O.C.G.A. § 24-5-509	O.C.G.A. § 24-5-509 (effective January 1, 2013) creates a privilege for communications between a family violence or sexual assault victim and counselors, including volunteers, providing services to such victims at family violence shelters and sexual assault centers.
GA Statute – Confidentiality for Domestic Violence Shelter Location	Knowing disclosure of location of a domestic violence shelter without permission of the shelter's director constitutes a misdemeanor. O.C.G.A. § 19-13-23
GA Standards for Certification O.C.G.A. § 19-13-21 et. seq.	CJCC sets minimum standards which shelters must follow to receive state and federal funds administered by CJCC. Residents' personal information shall be kept confidential.

Confidentiality

Violence Against Women Act

42 U.S.C.A. § 13942: Confidentiality of communications between sexual assault or domestic violence victims and their counselors. Provides for a study, report, and recommendations for measures to be taken to protect the confidentiality of communications between domestic violence victims and their counselors. For a summary of the report, see below.
42 U.S.C.S. § 14043b: Grants made to protect the privacy and confidentiality of victims of domestic violence, dating violence, sexual assault, and stalking. Grants are made to ensure that personally identifying information of victims of domestic violence, sexual violence, stalking, and dating violence are not disclosed

(1) 14043b-1: Grants made under this subtitle may be used —
   i. to develop or improve protocols, procedures, and policies for the purpose of preventing the release of personally identifying information of victims (such as developing alternative identifiers);
   ii. to defray the costs of modifying or improving existing databases, registries, and victim notification systems to ensure that personally identifying information of victims is protected from release, unauthorized information sharing and disclosure;
   iii. to develop confidential opt-out systems that will enable victims of violence to make a single request to keep personally identifying information out of multiple databases, victim notification systems, and registries; or
   iv. to develop safe uses of technology (such as notice requirements regarding electronic surveillance by government entities), to protect against abuses of technology (such as electronic or GPS stalking), or providing training for law enforcement on high-tech electronic crimes of domestic violence, dating violence, sexual assault, and stalking.

Family Violence Protection and Services

42 U.S.C.S. § 10402: State demonstration grants authorized.

(2) Grants under this subsection cannot be made unless the organization provides "documentation that procedures have been developed and implemented including copies of the policies and procedure, to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this title and provide assurances that the address or location of any shelter-facility assisted under this title will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public."

Q:4

United States Postal Service

Required to implement regulations to secure confidentiality of shelters and victims' addresses. (42 U.S.C. 13951 (1994).)

GA Statute Requiring Confidentiality of Domestic Violence Shelter

O.C.G.A. § 19-13-23 (2010)

> (3) Any person who knowingly publishes, disseminates, or otherwise discloses the location of a family violence shelter is guilty of a misdemeanor except when done during confidential communications between a client and his or her attorney, or when authorized by the director of the shelter.

State Standards for Certification

O.C.G.A. § 19-13-21 et. seq.
(a) It shall be the duty of the council:

> (1) To establish minimum standards for an approved family violence shelter to enable such shelter to receive state funds;Shelters must comply with DHS standards in order to receive state and federal funding through the Department.
> (6) To evaluate annually each family violence shelter for compliance with the minimum standards.

G. Georgia Certification Standards for Family Violence Shelters (adopted 2016)

> SECTION THREE: CONFIDENTIALITY
> GUIDING PRINCIPLES
> Staff and volunteers of the family violence program maintain the highest ethical standards in all areas of the organization's performance and service implementation. Confidentiality must be guaranteed so that the program can deliver assistance to victims in an empowering way.
>
> Standard 5 – When the executive director finds it necessary to keep the location of the shelter or other facility(ies) confidential, the following practice applies.
>
> Standard 6 – The program holds confidential all communications, observations, and information made by, between, or about victims receiving services.
>
> Standard 7 – Employees and volunteers are prohibited from disclosing victim information to outside sources except in very limited circumstances.
>
> Standard 8 – Program staff and volunteers will adhere to the mandated child abuse and neglect reporting law (GA Code 19-7-5 (c)(1)).

Standard 9 – Employees and volunteers can release confidential information about a victim during a medical emergency or if a disaster occurs.

Standard 10 – Employees and volunteers competently assess whether disclosure of confidential information is appropriate if a victim makes a threat of harm to self or others.

Standard 11 – Employees and volunteers maintain victim confidentiality during attempted enforcement of involuntary commitment orders.

Standard 12 – The organization has a process for handling the confidentiality of records and belongings after the victim is deceased.

Privilege

GA Privilege Statute

O.C.G.A. § 24-9-21 (2010) (O.C.G.A. § 24-5-501(a)(1) (effective January 1, 2013, replaces § 24-9-21)).

(4) There are certain admissions and communications excluded on grounds of public policy. Among these are:

i. (1) Communications between husband and wife;
ii. (2) Communications between attorney and client;
iii. (3) Communications among grand jurors;
iv. (4) Secrets of state;
v. (5) Communications between psychiatrist and patient;
vi. (6) Communications between licensed psychologist and patient as provided in Code Section 43-39-16;
vii. (7) Communications between patient and a licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, or licensed professional counselor during the psychotherapeutic relationship; and
viii. (8) Communications between or among any psychiatrist, psychologist, licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, and licensed professional counselor who are rendering psychotherapy or have rendered psychotherapy to a patient, regarding that patient's communications which are otherwise privileged by paragraph (5), (6), or (7) of this Code section.

(5) As used in this Code section, the term "psychotherapeutic relationship" means the relationship which arises between a patient and a licensed clinical social

worker, a clinical nurse specialist in psychiatric/mental health, a licensed marriage and family therapist, or a licensed professional counselor using psychotherapeutic techniques as defined in Code Section 43-10A-3 and the term "psychotherapy" means the employment of "psychotherapeutic techniques."

(6) Lipsey v. State (170 Ga. App. 770 (1984))

i. Found that there is no privilege created just because a communication is made in confidence. Parties must bear to each other one of the specific relationships recognized as privileged by the statute.

(7) Wiles v. Wiles (264 Ga. 594 (1994))

i. Extended psychiatrist-patient privilege to a communications between a patient and a medical doctor who diagnosed and treated emotional and mental conditions but who was not a licensed psychiatrist.

ii. (9) Communications between family violence counselors.

iii. O.C.G.A. § 24-5-509 (effective January 1, 2013) creates a privilege for communications between a family violence or sexual assault victim and counselors (advocates), including volunteers, providing services to such victims at family violence shelters and rape crisis centers. However, in both civil and criminal cases, a party may by motion, compel the testimony of an agent of a family violence or rape crisis unit to whom disclosures were made by an alleged victim upon showing: that the evidence is material and relevant; that it is not otherwise available; and, that the probative value of the evidence sought substantially outweighs "the negative effect of the disclosure on the victim." Other than evidence of prior inconsistent statements, disclosures will not be ordered if the only purpose of the evidence relates to the alleged victim's character for truthfulness. If the moving party requests disclosure on proper grounds, the court is to take the evidence under seal for in camerareview and may order disclosure of those portions of the evidence which are proper under the code section.

Federal Rule of Evidence 501

General Rule

(8) Privilege must be governed by the rules of common law except in civil actions based on state substantive law, in which privilege should be determined in accordance with state law. (Fed. R. Ev*Id.* 501)

Notes of Committee on the Judiciary (House Report No. 93-650)

(9) Principles of common law should be interpreted in light of reason and experience (House Report No. 93-650)

(10) Recognition of a privilege should be made on a case-by-case basis. (House Report No. 93-650)

Jaffee v. Redmond, 116 S. Ct. 1923 (1996)

(11) Interprets 501 as allowing and requiring Federal courts to establish new privileges where the need for the privilege outweighs the cost in loss of evidence.
(12) Privilege sought to be established must "serve public ends." (116 S. Ct. at 1929)

Jaffee v. Redmond - Federal Caselaw on Privilege

518 U.S. 1, 116 S. Ct. 1923 (1996).

(13) Holding
i. Confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment are protected from compelled disclosure under Fed. Rule of Evidence 501(30 Creighton L. Rev. 319).

(14) Extension of Privilege
i. The court used a balancing test from Trammel v. U.S. (45 U.S. 40, 51 (1980)) in order to determine whether extension of privilege was appropriate. They asked: does privilege promote sufficiently important interests to outweigh the need for probative evidence?
ii. The court suggests that a privilege must serve both important private interests as well as public ends. Jaffee, 518 U.S. at 10.

(15) Psychotherapist-patient Privilege
i. The reasoning used by the Court in Jaffee to justify the expansion of privilege to include communications between a psychotherapist and a patient could likewise be used to justify extension of privilege to include communications between a domestic violence counselor and victim. *Id.*
ii. The court reasoned that the privilege was "rooted in the imperative need for confidence and trust." Jaffee, 518 U.S. at 10 (quoting Trammel, 445 U.S. at 51). The relationship between the domestic violence counselor and victim is likewise rooted in confidence and trust, as a domestic violence counselor is often sought out by a victim looking to escape and hide from a violent partner.

iii. Effective psychotherapy depends upon an "atmosphere of confidence and trust" due to the "sensitive nature of the problems for which individuals consult psychotherapists." *Id.* At 10. A similar statement can be made about the atmosphere of confidence and confidentiality present in a domestic violence shelter, during communications between a domestic violence counselor and victim. The problems for which a victim consults a domestic violence counselor are of a similarly sensitive nature to problems for which an individual consults a psychotherapist.

Development of Privilege

Dean Wigmore's 4 criteria

(16) (John H. Wigmore, A treatise on the Anglo-American System of Evidence in Trials at Common Law, vol. 5, pg 2, §2285) often cited by courts, such as the Jaffee court, as the basis for extending privilege.

(17) Four conditions necessary to establish privilege:

i. The communications must originate in a confidence that they will not be disclosed;

ii. This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;

iii. The relation must be one which in the opinion of the community ought to be sedulously fostered; and

iv. The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

Right to Privacy

GA Right to Privacy

Ga. Const. Art. I, § I (2010)

(18) No person shall be deprived of life, liberty, or property except by due process of law.

Pavesich v. New England Life Insurance Co., (122 Ga. 190 (1905)).

(19) "The right of privacy within certain limits is a right derived from natural law, recognized by the principles of municipal law, and guaranteed to persons in this State by the constitutions of the United States and of the State of Georgia, in those provisions which declare that no person shall be deprived of liberty except by due process of law." 122 Ga. at 197.

(20) The law asserts that certain communications are made private (such as those between husband and wife or between attorney and client) to recognize

that “for the public good some matters of private concern are not to be made public even with the consent of those interested.” 122 Ga. at 201

Appendix R. RESTITUTION, VICTIM'S COMPENSATION, AND PUBLIC BENEFITS

Introduction

Domestic violence, sexual violence or stalking are known to cause emotional, psychological and physical injury to a victim. However, those types of violence can also cause staggering economic injury. As an example, inclusive of medical and mental health care, lost wages and property, and court fees, the lifetime cost of a rape can exceed $145,000 (Delisis, 2010). Overall, the costs of domestic violence, sexual violence and stalking exceed $5.8 billion yearly (NCIPC 2003). These costs, and this type of injury is often overlooked as courts focus on securing the safety of the victim through the criminal justice system and through civil protection orders.

Aside from the justice of ensuring that a victim is reimbursed for all of the expenses caused by domestic violence, sexual violence or stalking, there is a safety issue that occurs with the economic loss, particularly in the instance of domestic violence. When a domestic violence survivor leaves a domestic relationship, and loses the income of the abuser, he or she may be giving up economic security. The survivor may have difficulty paying for basic needs, such as food or shelter, as well as other needs that are a direct result of the domestic violence, such as health care or relocation. These financial difficulties make survivors vulnerable for further abuse and violence, and may serve as a rationale for returning to a violent relationship.

There are two key ways to improve safety for victims and survivors of domestic violence, as well as to reimburse them for all of the associated costs. First, courts have the option of ordering restitution to be paid from the offender to the victim. Second, government programs can provide crime victim compensation to reimburse victims for a variety of crime-related expenses. In addition to those options, there are additional avenues through which victims may receive economic relief or reimbursement for the expenses associated with domestic and/or sexual violence.

Restitution

Restitution is court-ordered payment by an offender, to a victim, for the harm caused by the offender's wrongful acts. Restitution benefits victims by providing them with compensation for economic losses, by holding the offender accountable and by allowing them to see that the criminal justice system responds to their needs and losses. Restitution also impacts offenders by providing them with the experience of taking responsibility for the injuries they've caused and of

being held accountable to the victim and society. In some cases, this might give offenders the opportunity to understand the injury they've caused and the consequences suffered by the victim. In every state, courts have the statutory authority to order restitution. In 18 states, victims have a state-constitution based right to restitution. Generally, when considering whether to order restitution, courts consider state and local policy, the financial burden placed on the victim, and the financial resources of the defendant. Though an abuser can be ordered to pay restitution at several points in the criminal justice process, he or she is most often not ordered to make any restitution to the victim.

(1) Abusers can be held responsible for paying for a wide range of expenses. In domestic violence situations, victims' safety can be increased by allowing restitution for expenses such as: moving costs, credit card fees, attorneys fees, expenses related to participation in the criminal justice system, home security, and future mental health care, among others.

Monitoring and Enforcement

Though it is important to increase the availability of restitution for victims of domestic or sexual violence, obtaining an order of restitution is useless if that order is not enforced. Several states have come up with systems that monitor compliance; for example: in Michigan, probation or parole officers are required to review every case in which restitution was ordered twice a year, to make sure that the payments are being made as ordered, and in Utah the Corrections the Department is responsible for collecting restitution, and files a report if an defendant defaults. The state can also increase the likelihood of payment of restitution by requiring state payments to the defendant to be used to satisfy restitution orders. Some state statutes allow various state payments, such as lottery winnings, witness fees, or bond proceeds, to be applied to restitution. In addition, many state statutes require that prison work programs direct a portion of an offender's wages to the payment of restitution, if it has been ordered.
If an offender defaults on the payment of restitution, probation or parole is a means by which an offender might be compelled to comply. Many states provide that probation or parole may be revoked for failure to pay restitution, if the failure to pay is willful. Because that is difficult to prove, this remedy is rarely invoked. Similarly, some states permit probation or parole to be extended when restitution is unpaid at the time that the supervision would otherwise expire.

Georgia Procedure

If an offender that has been ordered to pay restitution, and is placed on probation, then the restitution is a condition of the probation. O.C.G.A. 17-14-3(b) (2012).
If an offender that has been ordered to pay restitution is granted relief by either the Department of Juvenile Justice, the Department of Corrections or the State Board of Pardons or Paroles, then the order to make restitution becomes a condition of that relief. O.C.G.A. 17-14-3(c)(2012).
There are statutorily outlined factors for the court to consider in determining restitution (O.C.G.A. 17-14-10(2012)):

(2) Financial resources and other assets of offender
(3) Earnings or other income of offender
(4) Financial obligations of the offender, including obligations to dependents
(5) Amount of damages
(6) Goal of restitution to the victim and the goal of rehabilitation to the offender
(7) Previously made restitution
(8) Period of time during which restitution order will be in effect
(9) Other factors which the court deems appropriate

In a criminal case, the burden of demonstrating the victim's loss is on the state and the burden of demonstrating the offender's financial resources
Once restitution has been ordered, it is enforceable as a civil judgment by execution. If an offender fails to comply with the restitution order, the order can be enforced by an attachment for contempt upon the application of the prosecuting attorney or the victim, and such failure can be grounds to revoke or cancel relief, such as earned time allowances. O.C.G.A. 17-14-13 (2012).

Best Practices

In many cases, victims fail to request restitution because they are unaware of their right to do so. Police officers, prosecutors and courts should make victims aware of their right to restitution, to give them the time and opportunity to gather evidence to document economic losses.
The collection of restitution can be improved by conducting a thorough investigation of convicted offenders' assets, either before or after restitution is ordered. In order to do this effectively, there must be a coordinated effort between law enforcement, prosecution, courts, probation, corrections, parole and victim services. This information will allow the court to craft a payment plan for the offender, lessening the likelihood of default. If the offender does default, having this information can assist in collection efforts.
In order to prevent defendants from concealing or wasting assets to avoid paying restitution, prosecutors should seek a restraining order or injunction to preserve assets that may later be used to pay restitution.

(10) A system should be in place to monitor compliance with and enforce restitution orders; options include attaching state payments or prison work program wages, utilizing probation or parole, utilizing private collection agencies, or converting restitution orders to civil judgments.
(11) In Georgia, whichever official is responsible for collecting restitution is required to review the case at least twice per year to ensure that restitution is being paid as ordered. If the restitution is not being paid as ordered, a written report of the violation must be filed with the court. O.C.G.A. 17-14-14(c) (2012).

Victim's Compensation

Generally

Every state has established a compensation program for victims of crime. These programs reimburse medical costs, mental health counseling, lost wages or loss of support, as well as other crime-related expenses. In order to receive compensation, victims must comply with state statutes and rules.

Georgia

The Georgia Crime Victim's Compensation Program is administered by the Criminal Justice Coordinating Council. Compensation is available to people who: are physically injured as a result of a violent crime, personally witnessed or were threatened with a violent crime, were hurt helping a victim of a violent crime, are the parent or guardian of someone killed or injured as a result of a crime, are a dependent of a homicide victim who relied on the victim for support. Compensation is not available to parties that provoked or consented to events that led up to the crime.
In order to be eligible for compensation, the victim or witness must have reported the crime within 72 hours. In cases of domestic violence, obtaining a temporary protective order within 72 hours of the incident will fulfill that requirement. The 72 hour requirement can also be waived for good cause shown. They must also file an application within 1 year of the crime, unless they can show good cause. There are categorical caps for covered expenses in each benefit category; the maximum program amount is $25,000 per victim.

Best Practices

Law enforcement officers, prosecutors, and the courts should ensure that victims are made aware of the availability of compensation. Victims of domestic violence should be referred to the local domestic violence center or shelter or to the victim witness program at the prosecutor's office for assistance in working with the Criminal Justice Coordinating Council on applications for compensation.

Alternative Options

Beyond seeking compensation for injuries that occurred as a result of violence, survivors have other recourses available to them to alleviate economic issues that arise and may persist after the domestic violence relationship has ended.

Child Support

In cases that involve shared children, parents have the ability to file a petition with the court for child support. It should be noted that because control can often be an aspect of a domestic violence relationship, a respondent may attempt to use money, or the payment of child support, to maintain some kind of economic control over the petitioner. There are steps that can be taken by the courts to reduce the likelihood of such control and to ensure the safety of the petitioner.
See also Appendix N

Public Benefits

Victims in Georgia have the option for applying for Temporary Assistance for Needy Families (TANF), Georgia's welfare program. Though Georgia has established a 48-month limit on TANF, it grants hardship waivers to temporarily waive the limit if a family member has been, is, or may become a victim of domestic violence.

Survivors of domestic violence who quit their jobs due to safety reasons can be eligible for unemployment benefits. Scott v. Butler et al., (327 Ga.App. 457 (2014)). The issue presented was whether an employee is automatically disqualified from receiving unemployment benefits when leaving her job based on the reasonable likelihood of experiencing future violence at the workplace by a third party who has no relationship to the employer. The court noted that Georgia public policy favors granting benefits under OCGA § 34-8-2 to "persons unemployed through no fault of their own" and determined that even though the unsafe conditions were not the employer's fault, denying benefits would basically, "require her to work in a dangerous environment wherein she and numerous others would be unnecessarily exposed to the actual threat of violence due to circumstances that are entirely beyond their control. This would be an outcome that is unjust, inequitable, and inconsistent with the expressed purpose of the Act."

The issue of unemployment benefits for survivors of domestic violence was further clarified by the Georgia legislature in 2015. HB 117, provides that benefits may be paid to someone who "leaves an employer:

> (ii) Due to family violence verified by reasonable documentation demonstrating that: (I) Leaving the employer was a condition of receiving services from a family violence shelter; (II) Leaving the employer was a condition of receiving shelter as a resident of a family violence shelter; or (III) Such family violence caused the individual to reasonably believe that the claimant's continued employment would jeopardize the safety of the claimant or the safety of any member of the claimant's immediate family. For purposes of this subparagraph, the term 'family violence' shall have the same meaning as in Code Section 19-13-1 and the term 'family violence shelter' shall have the same meaning as in Code Section 19-13-20."

Appendix S. COMPLIANCE AND ACCOUNTABILITY

Introduction

Even after a court has handled a domestic violence case, and has drafted orders designed to ensure the safety of a domestic violence victim, the victim's safety can be compromised if the abuser fails to adhere to the court's orders. While courts have procedures in place that are designed to hold offenders accountable, they are not always sufficient to ensure victim safety. In criminal cases, offenders are often sentenced to probation. Probation allows for heightened accountability; if an offender fails to adhere to the terms of his or her probation, the probation supervisor may impose graduated sanctions or, if circumstances warrant, may arrest the offender without warrant. O.C.G.A. 42-8-38(a) (2012). The probation officer, or law enforcement officers, has the discretion and the power to hold an offender responsible for failure to comply with terms of probation.

However, in civil cases, there is no government actor or agency that has the same power to hold an offender accountable for failing to comply with court orders. If an offender fails to comply with a civil order, the only way to hold that offender accountable is for the victim report violations to the police or to bring a contempt action in court. This system requires the victim to be the first line of defense against his or her abuser. Victims must expend time and energy to return to court. The victim may also be required to gather and produce evidence of the abuser's failure to adhere to court orders. This system also increases the danger to domestic violence victims. Requiring a contempt hearing requires a victim to interact with his or her abuser, by appearing in court. In some cases, a victim may avoid undergoing the effort of returning to court if he or she is fearful of retribution from his or her abuser or if they believe they will be in danger.

There are many different means by which state agencies and courts can hold domestic violence offenders accountable. Many jurisdictions have established Domestic Violence Courts for just such a purpose. These courts develop an expertise in domestic violence which is used to improve victim safety, increase accountability of offenders through effective intervention and monitoring, and to provide opportunities for offender rehabilitation through counseling and treatment. Other jurisdictions have designated compliance officers, who regularly monitor an offender's compliance with court orders, such as an order to attend Family Violence Intervention Program (FVIP) classes.

Offender Accountability

Many jurisdictions have had difficulty holding offenders accountable, and thus ensuring victim safety. Domestic violence courts and judicial hearings are designed to address that problem. Judges have the opportunity to craft tailored responses to each offender, and the reviews encourage and allow for a coordinated community response. These systems have an enhanced ability to hold offenders to court orders and to quickly respond to those who fail to comply. Court monitoring through periodic court compliance hearings has been shown in studies to increase Family Violence Intervention Program attendance rates. In a multistate evaluation of four different judicial compliance hearing programs, intervention program completion rates rose from under 50% to 65% (Gondolf 1997). Other studies have shown that in jurisdictions with compliance hearings, completion rates increase to over 50% (Cissner 2006).

Domestic Violence Courts

As part of a broad "problem-solving" court movement, which included the establishment of drug courts, mental health courts, and community courts, among others, domestic violence courts have emerged across the U.S. As of 2009, 208 domestic violence courts had been established (Center for Court Innovation 2009). These courts handle domestic violence cases on separate calendars, and are headed by specially trained judges.

Goals

Victim Safety

(1) Many domestic violence courts feature dedicated victim advocates, who facilitate the victim's access to services. These advocates provided a number of services, including accompanying victims to court, safety planning, explaining the criminal justice system, providing housing referrals, and counseling.

Offender Accountability

(2) Regular judicial monitoring of compliance with court-mandated programs and other court orders results in prompt response to violations.
(3) Many domestic violence courts refer offenders to intervention programs. While the most prevalent intervention program used was a batterer program, which attempts to rehabilitate an offender, these courts also require offenders to report to other programs, such as alcohol or substance abuse treatment or mental health treatment, if such intervention is indicated.
(4) Domestic violence courts use various methods to hold offenders accountable. Many use probation supervision, but receive compliance reports from probation officers and offices. Some courts also use judicial monitoring or regular court review hearings.
(5) When an offender fails to comply with court orders, responses include verbal admonishment, immediate return to court, increased court appearances, revocation of probation and jail.

(6) Though studies have shown a lack of consistency across courts, such variation may be a response of the court attempting to tailor responses and consequences to individual offenders.

Administration of Justice

Domestic violence courts attempt to ensure a consistent application of statutory requirements, legally appropriate procedures, and sentences. This is achieved by ensuring that judges in domestic violence courts are specially trained, and by encouraging coordination between criminal justice agencies, victim service organizations and offender programs.

Judicial Review Hearings

Judicial review hearings require an offender to appear before the judge post-conviction or post-civil order review to demonstrate that he or she is complying with either the conditions of probation or the civil order. The purpose of these hearings is to improve offender compliance and victim safety by holding the offender accountable to judicial orders and removing the burden of holding the offender accountable from the victim.

Procedure

Judicial review hearings are regularly scheduled court appearances, often held in intervals of 30 days after sentencing or the issue of a civil protection order.
Probation officers monitor the individual offenders and seek input from victims to draft comprehensive reports, which are provided to the judge prior to the hearings.
The judge uses that review, and a dialogue with the offender, as well as various actors and agencies (probation officers, prosecutors, the defense bar, FVIP programs, victim advocates, etc.) to sanction those with poor compliance and to encourage those who are successfully complying with probation or civil orders.

Judicial Responses

Judicial review hearings provide judges with wide discretion and a range of sentencing options to encourage compliance with court orders; these hearings allow the judge to deviate from a “one-size-fits-all” approach to dealing with domestic violence offenders and allow a judge to tailor his or her responses to individual offenders.
Sanctions can include:
Community service
Fines
Restitution
Intensive probation
Additional FVIP classes
Full and partial jail time

An evaluation of model domestic violence courts found that when the court revoked probation for noncompliance, there was significantly less reabuse (Harrell 2007).

Emerging Trends

A report from the Alliance for Safety and Justice shows that crime victims indicated "their preference for prevention and rehabilitation over punishment and for holding offenders meaningfully accountable outside of penal institutions." (Goodmark 2018 at 75). There are various ways to achieve this goals, some of which are applied within the criminal justice system but post-arrest and some of which are entirely outside of and apart from the criminal justice system.

1. Community-Based Responses
Survivors often trust members of their community more than they trust law enforcement officers or service providers who are unknown to them, making community-based responses an often effective model. Moreover, many survivors belong to communities who have an embedded fear of law enforcement, in particular. (Goodmark 2018). In communities comprised primarily of people of color, there is often a fear of law enforcement. (Sottile 2015). In immigrant communities, many people are fearful of calling law enforcement because the response of the law enforcement officer might impact their immigration status. (Engelbrecht 2018). Thus, in certain communities, this is an especially important consideration.

Moreover, the strength of communities is valuable in preventing intimate partner violence. There is often less intimate partner violence in strong communities "with greater collective efficacy." "developing relationships deters violence," and communities have the ability to intervene in violent relationships when they are given the tools and support necessary to do so. (Goodmark 2018 at 79, 76).

Primary Goals:

(7) Strengthening community-based responses, including the availability of community-based service providers (i.e. emergency and transitional housing, shelters, counseling, employment training, parenting classes). (Goodmark 2018).
(8) Developing community-building strategies that empower community members to respond to interpersonal violence. (Goodmark 2018).

(b) Examples:
(1) Community organizing and community building efforts that lead to project, organizations, coalitions and groups who undertake efforts such as marketing campaigns, response strategy development, policy advocacy, sharing experiences, and sharing survivor stories. (Goodmark 2018).

(2) Groups or organizations develop toolkits to give to community members in how to respond to interpersonal violence. (Goodmark 2018).
(3) Form survivor support and accountability team made up of community members. (Goodmark 2018).
(4) Form a transformative justice plan with survivors and community members who support them. (Goodmark 2018).
(5) Leverage neighborhood violence prevention programs to confront intimate partner violence. (Goodmark 2018).
(6) Cultural Community Based Programs
    i. The Shanti Project – "social marketing campaign targeting intimate partner violence [in] the Gujarati Indian community in a Midwestern city"; collected data surveying the community understanding of IPV that was used to determine what issues to target in the social marketing campaign which featured community-based seminars, radio announcements, articles, and brochures. (Goodmark 2018 at 81).

(7) Friends Are Reaching Out (FAR Out)
    i. Focused on the concept that people who perpetrate IPV "are more likely to listen to the people they love and that people subjected to abuse are more likely to disclose to a friend or family member than anyone else." (Goodmark 2018 at 85); Provides guidance and information to empower family and friends and give them the skillset to help hold offenders accountable and to provide support to survivors; Also gives survivors tools and strategies to help them repair relationships with loved ones and set healthy boundaries. (Goodmark 2018 at 85).; The NW Network (oversees FAR Out) also offers relationship skills classes to help people determine what a healthy relationship looks like and to reach out for help if their relationship is not that. (Goodmark 2018 at 85).

2. Restorative Justice Models

Restorative Justice Defined:

(8) "A term popularized by criminologists in the 1990s . . . [to describe] a victim-centered, dialogue-based practice that attempts to repair the harm caused by crimes. It can be run by the criminal-justice system or outside organizations." (Sottile 2015).
(9) Some studies have shown that restorative justice practices can reduce reoffending by as much as 40%. (Sottile 2015).

Goals:

(10) Empower the person who has experienced abuse in the justice process without futhering their isolation or alienation and without furthering the anger of the person who used violence. (Goodmark 2018 at 87).

(11) Focus on the concept of harm:
   i. What harm was done?
   ii. What was the impact of this harm?
   iii. What redress is available for this harm?

(12) Involves the voices and efforts of all parties involved in the situation, including the victim of the harm and the community. (Goodmark 2018).

(13) Implicates the belief that moral authority can be more impactful in affecting offenders' behavior than legal sanctions can and the belief that a victim-centered approach and an empowerment-based model are essential. (Goodmark 2018).

(14) Employs the concept of reintegrative shaming to show the offender that their act is condemned and disapproved of but that they will be welcomed back into the community when they take responsibility for their actions. (Goodmark 2018 at 89).

(15) Lead offenders to feel remorse and not "[a]nger, shame, guilt, and regret generated by traditional criminal punishment." (Goodmark 2018 at 89).

(c) Benefits:

(1) Alternative solution to contacting the police or law enforcement, especially for individuals such as members of communities of color who often have distrust for law enforcement. (Sottile 2015).

(2) Offers an alternative to the view that a woman in an abusive relationship should always leave the abusive partner and is at fault if she does not. (Sottile 2015).

(3) Addresses the problematic view that people do things because they are bad, failing to account for the common root issue of intergenerational trauma, which is not often adequately addressed by solely incarceration. (Sottile 2015).

(4) Allow perpetrators to humanize victims and recognize victims' thoughts, feelings, and emotional response to the abuse, indicating that restorative justice provides a benefit that pure incarceration likely does not. (Reisel 2014).

(d) Strategies:

(1) Meetings with victims or representatives of victims where offenders listen to the victim's story of what happened and the offender hears the impact it had on the victim and their community. The offender also works to repair the harm that was done. (Goodmark 2018 at 88).

(2) Dialogue with not only survivors and offenders but also community members to develop plans for redressing harm. (Goodmark 2018).

(3) Victim-offender mediation. (Goodmark 2018).

(e) Examples:

(1) Domestic Violence Safe Dialogue – Portland, OR

i. Allows survivors to speak to domestic violence offenders about their experience with domestic violence and the impact it had on their lives. (Sottile 2015).
ii. "Survivor Impact Panels" (SIP) – survivors speak to offenders who are in court-ordered therapy. (Sottile 2015).
iii. SIP also hosted by universities and corporations to promote education and understanding of the issue. (Sottile 2015).
iv. One-on-one dialogues between abused women and a man who is a perpetrator of domestic violence. (Sottile 2015).

(2) Domestic Violence Restorative Circles – Duluth, MN

i. Demonstrative of the fact that restorative justice is not a "one-size fits all model"; In designing and implementing a restorative justice program, it is important to account for the fact the dynamics of domestic violence and how this crime looks very different than an acute, one-time incident does. (Sottile 2015).
ii. Focuses on men who are "'repeat, serious offenders'" of domestic violence. (Sottile 2015).

3. Reapproaching the Criminalization of Domestic Violence

There is a lack of evidence demonstrating that criminalization deters the commission of interpersonal violence. (Goodmark 2018 at 142) Additionally, criminalization is expensive, disparately impacts marginalized communities, and creates barriers upon reentry such as in employment and housing, which in turn affects the offender's loved ones. Heavy focus on arrest and prosecution often exacerbates issues that are connected to and worsen situations of intimate partner violence. Many of these issues are correlated to poverty, with low-income women having an increased likelihood of being victimized and under-employed or unemployed men being more likely to be abusers. (Goodmark 2019).

Moreover, history of trauma and childhood trauma like abuse, neglect, violence in the home, or witnessing violence increase likelihood that someone will act violently in the future. (Goodmark 2019). Being incarcerated is also traumatic, as people are likely to witness or experience violence while incarcerated. Experiencing this trauma increases likelihood that a person will act violently upon their release. (Goodmark 2019) (Reisel 2014).

Some adjustments to the current criminal legal system and approach to intimate partner violence could help address some of these issues.

Strategies:

(3) Reconsider Mandatory Policies:

i. Mandatory arrest policies often lead to arrest of victims, with states such as California having seen a drastic increase in arrests of women after mandatory arrest policies were adopted. (Goodmark 2019).
ii. Reconsider policies such as mandatory arrest laws and no-drop prosecution policies to better empower survivors to choose the best method of addressing the violence in their lives. (Goodmark 2018).

(4) Rethink Punishment Strategies:
i. Consider having steps that involve interventions such as restorative tactics that are used before the ultimate or last-resort response – incarceration. One example involves a pyramid specific to IPV created by Braithwaite and Daly. It involves several restorative tactics that are used. If these are unsuccessful, then law enforcement is called, and warrants may be issued. Advocates become involved at this step. Next, community conferencing with higher intervention is utilized. The final step, if the prior methods do not work, is to involve the criminal legal system involving probation and, ultimately, incarceration. (Goodmark 2018 at 145).

(5) Focus on Habitual Offenders
i. Direct criminal legal response and resources to where it is most needed. Studies have shown that repeat offenders are responsible for much of the interpersonal violence seen in communities. (Goodmark 2018 at 145; *see also* Sottile 2015).

(6) Use Probation and Community Monitoring
i. These alternatives are often effective but reduce some of the trauma and collateral consequences of incarceration. (Goodmark 2018).

(7) Rethink Intimate Partner Intimate Partner Violence Intervention Programs
i. Consider shifting the oversight of these programs to public health officials as opposed to probation or criminal justice enforcement programs. The Centers for Disease Control and the World Health Organization have noted that domestic violence is a public health issue. Having these programs supervised by public health experts would allow for them to come from a lens educated on trauma, mental illness/mental health, substance abuse/addiction, and social determinants of health. (Philpart, Grant, Guzmán).

(8) Consider Creation of Centralized Government Offices/Agencies to Focus on Interpersonal Violence

i. Consider creating a statewide (or citywide/countywide) office that would centralize violence prevention and response efforts including intervention programs for offenders, oversight of relevant funding, and broader response strategy development. (Philpart, Grant, Guzmán).

Appendix T. STRANGULATION

Introduction

In the past, strangulation has been one of the most overlooked forms of domestic violence. It was often minimized, and there was no effective way to prosecute it. However, recently the impacts of strangulation have been realized and it has been given more attention in the domestic violence community. In 2014, Georgia became the 38th state to pass specific legislation criminalizing strangulation as a felony (Georgia Code § 16.5.21).

What is strangulation?

Strangulation is a form of asphyxiation resulting in a loss of oxygen and cell death in vital organs (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 63). It can be performed by hanging, manually (with the abuser's hands), or with a ligature, which could be a cord, wire, or other object that is wrapped around the neck so that pressure applied creates compression and constriction of the neck (CDAA and Training Institute 65). From the outside of the throat in, strangulation can first affect the jugular vein, followed by the carotid artery, and then the trachea (windpipe). Constricting the jugular vein requires the least amount of pressure, while the trachea requires the most. It only takes four pounds of pressure to cut off the jugular veins (less pressure than is required to open an interior door), which prevents blood from leaving the brain. Ten seconds of this can lead to brain damage and two minutes results in full unconsciousness. Four minutes of jugular pressure will result in death. Pressure on the carotid artery prevents oxygenated blood from reaching the brain with similar effects. Eleven pounds of pressure will cut off both the jugular veins and the carotid arteries, which exponentially speeds up the time frame for damage caused to the victim. Death by pressure to the carotid arteries can occur in as little as 15-20 seconds (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 67).

When being strangled, victims tend to experience three distinct stages: disbelief, primal, and resignation. Disbelief is the shortest in duration, and occurs when the victim simply cannot fathom that she or he is being strangled. During the primal stage, the victim fights with whatever means possible to stop the strangling. This may cause injury to both the victim and the

perpetrator. The final stage is resignation, in which the victim gives up and goes limp, feeling that nothing can be done and death is inevitable (McClane, Hawley, and Strack).

What are signs and symptoms of strangulation?

External injuries may or may not present themselves after jugular or carotid compression (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 67). Only 50% of strangulation victims present with visible injury, and only 15% have injuries sufficient to photograph (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 7). However, between 45 and 80 percent of victims will experience a change in or complete loss of voice following the strangulation incident. Victims might have injuries caused by the assailant, but also might exhibit injuries caused in self-defense (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 71). Other symptoms that the victim may present with after strangulation include: difficulty swallowing, raspy or difficult breathing, pain or tenderness in touch or movement, mental status changes, redness of the neck, scratch marks, finger-tip or other bruises, petechiae (tiny red spots caused by ruptured capillaries found anywhere above the area of constriction), red eyes, neck swelling, or internal bleeding. If present, any of these symptoms should be documented photographically to present as evidence in court if necessary.

During strangulation, the victim may involuntarily urinate or defecate, experience coughing or vomiting, have vision changes, of suffer from a loss of consciousness. If a victim references loss of memory, has an unexplained bump on the head, remembers waking up on the floor, or experiences bowel or bladder incontinence, it may be a sign that she lost consciousness during strangulation (McClane, Hawley, and Strack). Because many of these symptoms may not be obvious indicators of strangulation, it is important to hold community trainings to help better identify these signs.

Symptoms	**Signs**	**Indicators of Loss of Consciousness**
Voice Changes	Redness of the Neck	Loss of Memory
Loss of Voice	Scratch Marks	Waking on the Floor after Standing Previously
Difficulty Swallowing	Bruises	Unexplained Bump on the Head
Difficulty Breathing	Fingertip Bruises	Urination/Defecation
Raspy Breathing	Petechiae (tiny red spots)	

Pain or Tenderness	Blood Red Eyes (capillary rupture)	
Mental Status Changes (restlessness, combativeness, amnesia)	Swelling of the Neck	
Involuntary Urination/Defecation		
Coughing/Vomiting		
Vision Changes		

How common is strangulation?

Almost half of all domestic violence homicide victims have experiences at least one episode of strangulation prior to a lethal or near-lethal incident (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 7). A survey conducted by the Georgia Coalition Against Domestic Violence in 2014 revealed that 44% of the 115 women surveyed had been strangled by an abusive partner (GCADV). of those that had indicated that they had been strangled, 80% indicated that it had occurred on more than one occasion. Sixty-five percent of strangulation victims also expressed that they were more afraid, intimidated, or changed their behavior due to a fear of another strangulation incident.

In addition, recent studies have shown that 34 percent of abused pregnant women report being "choked" (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 7). Finally, strangulation accounts for ten percent of all violent deaths that occur each year (Paluch 11).

Why focus on strangulation?

Strangulation is unique among abusive tactics—most easily compared with sexual assault as a demonstration of power and control. Literally, the victim's life is in the abuser's hands, which sends a much different message than simple assault or battery. Not only can it cause brain damage within seconds, but it can also have severe and lasting effects on the survivor's mental status, leading to restlessness, combativeness, psychosis, or amnesia. Many strangulation survivors have also reported suffering from PTSD after the strangulation incident. Yet despite the potential for serious injury or death, strangulation has been often overlooked or minimized, and victims may not be aware of all the potential risks. and in fact, those risks are not limited to the perpetrator's intimate partner. A California study found that 40% of people who have killed a police officer have a history of strangling their intimate partner (Mariposa County Study with Law Enforcement Death).

Is strangulation a lethality factor?

Surviors of strangulation are seven times more likely to be killed by their abuser (Glass, et al. 330). Over 19% of cases reviewed by the Georgia DV Fatality Review between 2004 and 2012 had prior strangulation incidences (GCADV). Although little research has been conducted about strangulation in the context of intimate partner violence, California experts have suggested that strangulation is the cause of 20% of all domestic violence homicides ("Background Information for a California Strangulation Statute" 2).

How is strangulation minimized?

Strangulation is minimized by survivors, abusers, and professionals. Victims minimize strangulation because they may not understand it as an escalation in violence given the lack of visible injuries. One way in which this is done is by using incorrect terminology. Strangulation is not choking or suffocation. Choking is when the trachea is obstructed, resulting in impeded breathing. Suffocation is when the flow of breathing is manually obstructed by sealing off the nose and mouth or by placing pressure on the chest. In addition, there is no such thing as "attempted strangulation" (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 13); victims can be non-fatally strangled. Because of the common public minimization of strangulation, expert witnesses can be used to dispel myths about strangulation. Finally, a lack of information on strangulation symptoms can lead to minimization by first responders who may not recognize the less obvious signs of strangulation such as victim dizziness, urination, or petechaie. However, community trainings on strangulation by task forces can help police officers, EMTs, and advocates recognize these symptoms so that they can follow-up appropriately.

How can strangulation be prosecuted?

Strangulation can be challenging to prosecute because in more than 50% of the cases there are no physical signs of injury (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 7). However, in 2014 the state of Georgia became the 38th state to pass a bill to specifically criminalize strangulation (OCGA § 16.5.21). Other states that have passed similar legislation have seen increased victim safety, increased offender accountability, more attention given to the potential lethality of strangulation, more resources delegated to strangulation prevention and awareness, and increased public education on domestic violence (Laughlin).

In order to successfully prosecute, it is imperative that the case is more dependent on the evidence than upon the testimony of the victim and to develop as much corroborating evidence as possible (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 39). Therefore, it's very important to record the victim's injuries through photos, video and voice recordings, as well as follow-up documentation to use for comparison. Medical examinations can also be beneficial in prosecuting strangulation cases, but many times it may not be financially feasible for a victim to seek out medical evidence of the strangulation, which typically involves costly tests. In addition, like in many domestic violence cases, it is likely that the victim will change or even recant testimony later. However, a solid

investigation will allow the prosecution to proceed without victim cooperation (The Investigation and Prosecution of Strangulation Cases, Training Institute on Strangulation Prevention & CDAA 42).

What else can communities do?

Domestic Violence task forces are an effective way to ensure that communities are educated on strangulation. By incorporating it into domestic violence-related police and EMT trainings, first responders can be prepared to recognize the symptoms of strangulation. In addition, expert witnesses should be trained for use in court proceedings. Finally, advocates should support the passage of new legislation in order to criminalize strangulation in the remaining state

Appendix U. GEORGIA CRIME VICTIMS BILL OF RIGHTS

Introduction

The Georgia Crime Victims Bill of Rights, O.C.G.A. 17-17-1, etc seq., was enacted in 1995, and gives individuals who are the victims of certain crimes, such as assault, battery, stalking, or sexual offenses, specific rights under the law. It facilitates access to information about prosecutions or about the offender to both the victim or family members of the victim. This access can be particularly critical in cases involving domestic violence, sexual violence, or stalking behavior.

In a domestic violence or stalking situation, a victim's attempts to leave or separate his or herself from the perpetrator can cause an escalation in violence. (Georgia Domestic Violence Fatality Review, 2007-2014). Given that, a victim's willingness to report a perpetrator, or participate in his or her prosecution, increases the potential for violent behavior. Notification of arrest, release, court proceedings, or parole, can provide a victim with information that allows him or her to safety plan, and prepare for the possible return of the perpetrator into his or her life.

There are various structures in place to notify victims of changes in offender status. First, the statute designates particular law enforcement or criminal justice agencies to provide notifications to victims in the event of arrest, proceedings in which release is considered, and release. Second, several counties in Georgia have an online victim notification system, VINELink. Victims are able to search for the offender, and register for e-mail or phone notifications of changes in custody status.

Statute

O.C.G.A. 17-17-1 delineates a list of basic rights accorded to victims of specific crimes. The rights include, but are not limited to, the following rights:

The right to reasonable, accurate, and timely notice of any scheduled court proceedings or any changes to such proceedings;
The right to reasonable, accurate, and timely notice of arrest, release, or escape of the accused;
The right not to be excluded from any scheduled court proceedings, except as provided in this chapter or as otherwise required by law;
The right to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused;
The right to file a written objection in any parole proceedings involving the accused;

The right to confer with the prosecuting attorney in any criminal prosecution related to the victim;
The right to restitution as provided by law;
The right to proceedings free from unreasonable delay; and
The right to be treated fairly and with dignity by all criminal justice agencies involved in the case.

VINE System

Victims can access information through the National Victim Notification Network, known as VINE (Victim Information and Notification Everyday). This system allows crime victims to obtain updates about an offender's status in a timely and reliable way.

There is an online version available of VINE, known as VINELink, which can be accessed at https://www.vinelink.com/vinelink/tiles2-multiple-sites-home.do Georgia has limited use of VINELink services – the service is online available in Clarke, Dekalb, Fulton, Cherokee, Gwinnett, Forsyth, and Cobb.. Victims and their family members can access the website for the county in which the offender is arrested, held, and tried, search by the offender's name, and then register for either phone or e-mail notifications to receive updates on the custody status of the offender.

Notification for Victims

The statute designates that various "Criminal justice agencies" are responsible for notifying the victim of an offender's status dependent upon stages in the proceeding. "Criminal justice agency" is defined in O.C.G.A. 17-17-3 as "an arresting law enforcement agency, custodial authority, investigating law enforcement agency, prosecuting attorney, or the State Board of Pardons and Paroles."

According to O.C.G.A. 17-17-7, the requirements are as follows:

The investigating law enforcement agency will notify of the arrest of an accused.
The prosecuting attorney will notify of any proceeding in which the release of the accused will be considered.
The custodial authority will notify of the release of the accused.

Appendix V. HOUSING PROTECTIONS FOR SURVIVORS: THE VIOLENCE AGAINST WOMEN REAUTHORITZATION ACT OF 2013 (VAWA 2013) AND GEORGIA STATE LAW

Overview

The Violence Against Women Act is a federal law providing protections for survivors and victims of domestic violence, dating violence, sexual assault, and stalking who are participants in federally assisted (or subsidized) housing programs. Nearly all federal housing programs are covered under VAWA, including those most commonly seen in Georgia: the Section 8 Housing Choice Voucher Program, public housing, Project-based Section 8, and the Low-Income Housing Tax Credit Program. [1]

VAWA prohibits eviction, subsidy termination, or denials of admission from one of these housing programs based on an individual's status as a victim of abuse. In addition, VAWA protects "affiliated individuals," such as children, spouses, parents, and lawful occupants in the victim's home.[2] All public housing authorities, owners of units that receive federal assistance, and managers of assisted programs must comply with the law.[3]

Admissions

A subsidized housing provider cannot deny admission or assistance because a person is a victim of domestic violence, dating violence, sexual assault, or stalking.[4]

Evictions/Subsidy Terminations

Actual or threatened criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking does not constitute grounds for terminating a victim's assistance or evicting a victim.[5] Also, an abuser's acts of violence do not constitute a "serious or

[1] 42 U.S.C.A. § 14043e-11(a)(3) (listing covered housing programs).
[2] *See generally* 42 U.S.C.A. § 14043e-11.
[3] *See generally* 42 U.S.C.A. § 14043e-11.
[4] 42 U.S.C.A. § 14043e-11(b)(1).
[5] 42 U.S.C.A. § 14043e-11(b)(3)(A).

repeated lease violation" or "good cause" for evicting or terminating a victim's assistance.[6] The only exception is that a housing provider may be able to evict a victim if it can show that an abuser poses an "actual and imminent threat," to other residents or the program staff. However, this standard is high and providers can use it only as a last resort.[7]

Lease Bifurcation

If an abuser is a lawful resident of the home along with the victim and children, the housing provider can bifurcate (split) the lease to evict the abuser and allow the victim and children to stay.[8] If the assistance is in the abuser's name (i.e. the abuser is the holder of the Section 8 voucher) and the victim and children are lawful household members, the provider should terminate the abuser's assistance and transfer the assistance to the victim's name.[9]

Emergency Transfers

If a victim needs to break a lease or move to another area to escape abuse, a housing authority should quickly process her transfer request.[10] If the victim has a Section 8 voucher, the housing authority should notify the landlord that it is terminating the lease, but cannot reveal the individual's status as a victim.

Proof of Abuse, Confidentiality, and Notice

Housing providers can, but need not, ask for proof if an individual is claiming status as a victim.[11] A victim may provide any one of following items as proof: police report, court or administrative record, letter from a mental health or medical provider, letter from a victim service provider, letter from an attorney, medical record, or HUD Form-91066, where a victim self-certifies to the abuse.[12] The housing provider must keep any information provided regarding an individual's status as a victim confidential.

Housing authorities must provide notice of VAWA rights upon 1) admission; 2) denial of admission; and 3) eviction or subsidy termination.[13] The notice must be accompanied by the HUD certification form and must be available in other languages for non-English speakers.[14]

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[6] 42 U.S.C.A. § 14043e-11(b)(2)(A)-(B).
[7] 42 U.S.C.A. § 14043e-11(b)(3)(C)(iii); 24 C.F.R. § 5.2005(d)(3).
[8] 42 U.S.C.A § 14043e-11(b)(3)(B)(i).
[9] 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii).
[10] *See* 42 U.S.C.A. § 1437f(r)(5).
[11] 42 U.S.C.A. §§ 14043e-11(c)(5), (c)(1).
[12] *See* 42 U.S.C.A. § 14043e-11(c)(3).
[13] 42 U.S.C.A. § 14043e-11(d)(2)(A)-(C).
[14] 42 U.S.C.A. § 14043e-11(d)(2)(D).

Georgia State Law

OCGA § 44-7-23, effective July 1, 2018, allows for termination of a residential lease due to domestic violence when a civil or criminal family violence order has been issued.[15] The tenant must provide 30 days written notice to the landlord and provide a copy of the order.

Acceptable orders include family violence temporary protective orders, ex parte orders so long as there is also a report made to law enforcement (which also must be included with the notice to the landlord), bond/pre-trial release orders, and probation orders following conviction or plea.[16]

In 2021, the Georgia legislature passed SB 75, which revised this statute to include civil and criminal stalking orders.[17]

[15] OCGA § 44-7-23 (b)
[16] OCGA § 44-7-23 (a) 1-2
[17] OCGA § 44-7-23 (a) 2-4

The Violence Against Women Act: An Overview for Housing Providers

January 2015

This Q&A format addresses protections provided to tenants living in federally subsidized housing under the Violence Against Women Act (VAWA). Please note that this overview is not legal advice and is provided for informational purposes only. If you have questions about a particular situation involving a tenant experiencing abuse, please consult with an attorney.

A. Overview

What is the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), and how is it different from the Violence Against Women Act of 2005 (VAWA 2005)?

VAWA 2013 is a law that provides protections for victims of domestic violence, dating violence, sexual assault, and stalking who are seeking to access or maintain federally-assisted housing. VAWA 2013 continues VAWA 2005's housing safeguards and significantly expands housing protections for victims.

Key changes include covering more federal housing programs; covering sexual assault victims and LGBT victims; requiring emergency transfer policies; providing victims time to establish program eligibility after an abuser has been removed from a lease; and notification of VAWA housing rights to applicants and tenants upon admission, upon denial of admission/assistance, and upon termination/eviction.[1]

When did VAWA 2013 become effective?

VAWA 2013 was signed into law on March 7, 2013.

However, there are a few aspects of the law that require federal agency action before implementation can occur, such as the development of certain forms (*e.g.*, a notice of VAWA rights). The basic protections of VAWA 2013, however, are in effect. Basic protections include the prohibition against the denial of admission/assistance, eviction, or subsidy termination of an individual based on his or her status as a victim of abuse.[2] HUD regulations implementing VAWA 2005 continue to be in effect until further notice.[3] Furthermore, HUD has also made certain steps like issuing an updated VAWA certification form HUD-50066 to reflect changes made by VAWA 2013, such as including sexual assault, and only requiring the abuser be named if the name is known by the victim and safe to provide.

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[1] See generally 42 U.S.C.A. § 14043e-11.

[2] 42 U.S.C.A. § 14043e-11(b)(1).

[3] See generally 78 Fed. Reg. 47,717 (Aug. 6, 2013); 75 Fed. Reg. 66,246 (Oct. 27, 2010).

Who is required to comply with the law?

Public housing authorities and owners and managers of housing programs covered by VAWA must comply with the law.[4]

B. Coverage

Who does VAWA protect?

VAWA protects anyone who is: (a) a victim of actual or threatened domestic violence, dating violence, sexual assault, or stalking, or an "affiliated individual" of the victim; AND (b) living in, or seeking admission to, a federally assisted housing unit covered by VAWA.[5]

How does VAWA 2013 define "domestic violence," "dating violence," "sexual assault," and "stalking"?

- "Domestic violence" includes felony or misdemeanor crimes of violence committed by:
    - A current or former spouse or intimate partner of the victim;
    - A person with whom the victim shares a child;
    - A person who is cohabitating with or has cohabitated with the victim as a
    - spouse or intimate partner;
    - A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or
    - Any other person who committed a crime against an adult or youth victim who is protected under the domestic or family violence laws of the jurisdiction.[6]
- "Dating violence" is violence committed by a person:
    - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
    - The existence of such a relationship is determined based on the following factors:
        - Length of the relationship
        - Type of relationship
        - Frequency of interaction between the persons involved in the relationship.[7]

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[4] See generally 42 U.S.C.A. § 14043e-11.
[5] See generally 42 U.S.C.A. § 14043e-11.
[6] 42 U.S.C.A. § 13925(a)(8).
[7] 42 U.S.C.A. § 13925(a)(10).

- "Sexual assault" means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.[8]

- "Stalking" is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

    - Fear for his or her safety or others; or
    - Suffer substantial emotional distress.[9]

Who is an "affiliated individual" for the purposes of VAWA 2013?

An "affiliated individual" can be: a victim's spouse, parent, sibling, or child; an individual to whom that victim "stands in loco parentis"; or an "individual, tenant, or lawful occupant" living in the victim's household.[10]

Under VAWA 2013, "affiliated individuals" do not necessarily have to be related to the victim by blood or marriage.

What types of housing does VAWA 2013 cover?

The law only provides protections for federally-subsidized housing units, and does not apply to private housing without federal subsidies. VAWA 2013 expanded the list of federal housing programs covered by the statute.[11] The following is a list of housing programs covered by VAWA 2013:

- U.S. Department of Housing and Urban Development
    - public housing
    - Section 8 Housing Choice Voucher program
    - project-based Section 8 housing
    - Section 202 supportive housing for the elderly
    - Section 811 supportive housing for persons with disabilities
    - Section 236 multifamily rental housing
    - Section 221(d)(3) Below Market Interest Rate housing (BMIR)
    - HOME
    - Housing Opportunities for Persons with AIDS (HOPWA)
    - McKinney-Vento Act programs for the homeless
- U.S. Department of Agriculture
    - Rural Development (RD) multifamily housing programs
        - Section 515 rural rental housing (42 U.S.C. § 1485)
        - Section 514 and 516 Farm Labor housing (42 U.S.C. §§ 1484, 1486)
        - Section 533 Housing Preservation Grant Program (42 U.S.C. § 1490p)
        - Section 8 multifamily rental housing (42 U.S.C. § 1490p-2)

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[8] 42 U.S.C.A. § 13925(a)(29).
[9] 42 U.S.C.A. § 13925(a)(30).
[10] 42 U.S.C.A. § 14043e-11(a)(1)(A)-(B).
[11] 42 U.S.C.A. § 14043e-11(a)(3) (listing covered housing programs).

- U.S. Department of the Treasury
    - Low-Income Housing Tax Credit program (LIHTC)

Note that VAWA coverage was not extended to the RD Voucher program, authorized by Section 542 (42 U.S.C. § 1490r). Additionally, VAWA coverage does not include Indian housing programs.

C. Admissions and Evictions/Terminations

How does VAWA affect admissions and terminations?

Under VAWA, a housing provider cannot deny admission or assistance, evict, or terminate housing assistance because a person is a victim of domestic violence, dating violence, sexual assault, or stalking.[12]

Additionally, under VAWA 2013, actual or threatened criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking does not constitute grounds for terminating assistance, tenancy, or occupancy rights of the victim or an affiliated individual of the victim.[13] Furthermore, an abuser's acts of domestic violence, dating violence, sexual assault, or stalking can not be considered a "serious or repeated" lease violation, or "good cause" for evicting or terminating assistance to the victim or an affiliated individual.[14]

What if the abuser is a threat to my staff or other residents?

Despite VAWA's protections, a housing provider may still be able to evict the victim if the housing provider demonstrates the existence of an "actual and imminent threat" to other tenants or employees of the property if the tenant is not evicted or assistance is not terminated.[15] However, as the next question discusses, such evictions or subsidy terminations should be used as a last resort.

What does "actual or imminent threat" mean?

Neither VAWA 2005 nor VAWA 2013 defines "actual and imminent threat." HUD regulations implementing VAWA 2005 define "actual and imminent threat" as "a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm."[16] The regulation notes that "words, gestures, actions, or other indicators" constitute such a threat *if they also meet this definition*.[17] The regulation calls for a balancing of factors—such as duration of risk, the seriousness of potential harm, likelihood of the harm occurring, and the time before a harm would occur—to determine if an actual and imminent threat exists.[18]

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[12] 42 U.S.C.A. § 14043e-11(b)(1).
[13] 42 U.S.C.A. § 14043e-11(b)(3)(A).
[14] 42 U.S.C.A. § 14043e-11(b)(2)(A)-(B).
[15] 42 U.S.C.A. § 14043e-11(b)(3)(C)(iii).
[16] 24 C.F.R. § 5.2005(e).
[17] 24 C.F.R. § 5.2005(d)(2).
[18] 24 C.F.R. § 5.2005(e).

Additionally, the same HUD regulations remind housing providers that eviction or termination on these grounds should be a last resort taken when "no other actions" could be taken to alleviate the threat.[19] Other actions may include banning the abuser from the property, providing the victim with a transfer, increasing police presence on the property, or pursuing legal remedies to stop the abuser from acting on threats.[20]

What about criminal activity unrelated to abuse?

VAWA does not protect tenants if the criminal incident for which they are being evicted or denied admission is unrelated to domestic violence, dating violence, sexual assault, or stalking. In determining whether to evict, a housing provider may not hold a victim to a higher standard than other tenants.[21]

Am I able to evict the abuser while allowing the victim to remain in the unit?

Yes. A housing provider may bifurcate a lease to evict or terminate assistance to a tenant or occupant who commits acts of violence against family members or others.[22] This action may be taken without evicting or terminating assistance to the victim who is also a tenant or lawful occupant. Bifurcation is applicable to all leases in the covered housing programs. The eviction or termination of the abuser must comply with federal, state, and local law.

Importantly, under HUD's regulations implementing VAWA 2005, in situations where a family has a Section 8 tenant-based voucher and family break-up occurs due to domestic violence, dating violence, or stalking, the public housing authority *must* ensure that the victim retains the Section 8 voucher assistance.[23]

What happens when the abuser is evicted or terminated and the victim remains in the unit?

If the abuser was the only household member receiving housing assistance, VAWA 2013 states that the victim must be afforded the opportunity to demonstrate eligibility for the housing program.[24] If the victim cannot establish eligibility for that program, then the housing provider must allow the victim reasonable time to show that he or she qualifies for another covered housing program, or to relocate to other housing.[25] The agency administering the housing program at issue (HUD, USDA, or Treasury) will determine what constitutes a reasonable amount of time.

What if the victim needs to leave a unit for safety reasons?

PHAs may permit Section 8 voucher holders to move to another jurisdiction, even during a lease term, to protect the health and safety of someone who has been a victim of domestic

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[19] 24 C.F.R. § 5.2005(d)(3).
[20] 24 C.F.R. § 5.2005(d)(3).
[21] 42 U.S.C.A. § 14043e-11(b)(3)(C)(ii).
[22] 42 U.S.C.A § 14043e-11(b)(3)(B)(i).
[23] 24 C.F.R. § 982.315(a)(2).
[24] 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii).
[25] 42 U.S.C.A. § 14043e-11(b)(3)(B)(ii).

violence, dating violence, or stalking.[26] Preserving portability for victims was part of VAWA 2005, and was unchanged by VAWA 2013. Thus, sexual assault victims are not explicitly included in this pre-VAWA 2013 protection. However, this should be viewed as an oversight by the authors of VAWA 2013.

VAWA 2013 requires federal agencies administering programs covered by the statute to adopt model emergency transfer policies.[27] Once adopted, these policies will be used by housing providers to allow victims of domestic violence, dating violence, sexual assault, and stalking to find safe, alternative housing through one of the covered housing programs. Under these policies, housing providers must allow a victim to transfer if: the tenant requests the transfer, and the tenant either (a) reasonably believes he or she is threatened by imminent harm by more violence, or (b) is victim of sexual assault on the property up to 90 days before the request.[28]

Under VAWA 2013, HUD must establish policies and procedures enabling victims who request an emergency transfer to receive a tenant protection voucher. However, the law is not clear if the victim would be entitled to a tenant protection voucher if no transfer policies are established.[29] Additionally, note that USDA Rural Development (RD) has circulated a model emergency transfer plan in a January 2015 administrative notice. A copy of the 2015 notice is included in this packet.

D. Proof of Abuse

Can I ask for proof of the abuse?

Housing providers may, *but are not required* to, ask an individual for documentation that he or she is a victim in order to assert VAWA's protections.[30] At their discretion, housing providers may apply VAWA to an individual based solely on the individual's statement.[31] However, if the housing provider would like documentation, this request must be made in writing.[32]

How long does the victim have to produce documentation once it's requested?

The victim has fourteen business days to respond.[33] If the individual fails to respond in that timeframe, a housing provider may take an adverse action against the individual. The housing provider is free to extend this timeframe if it is needed by the individual.[34]

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[26] *See* 42 U.S.C.A. § 1437f(r)(5).
[27] 42 U.S.C.A. § 14043e-11(e).
[28] 42 U.S.C.A. § 14043e-11(e)(1)(A)-(B).
[29] *See* 42 U.S.C.A. § 14043e-11(f).
[30] 42 U.S.C.A. §§ 14043e-11(c)(5), (c)(1).
[31] 42 U.S.C.A. § 14043e-11(c)(3)(D).
[32] 42 U.S.C.A. § 14043e-11(c)(1).
[33] 42 U.S.C.A. § 14043e-11(c)(2)(A).
[34] 42 U.S.C.A. § 14043e-11(c)(2)(B).

What types of documentation can a victim provide to demonstrate abuse?

If a housing provider requests documentation, the victim may provide:

- a certification form that is approved by the agency administering the program (HUD, USDA, or Treasury), which must state: that the tenant or applicant is a victim of domestic violence, dating violence, sexual assault, or stalking; that the abuse cited is covered by the statute; and the name of the abuser, if the name is known and safe to provide. Form HUD-50066 (public housing, Housing Choice Voucher program) has been updated by HUD post-VAWA 2013, and is included with these materials. Form HUD-91066 (HUD multifamily housing programs) was developed by HUD under VAWA 2005, but has not yet been updated. It is also included with these materials. Additionally, USDA Rural Development (RD) has developed suggested language for its certification form in a January 2015 notice, included with these materials. The 2015 RD notice also notes that RD expects to obtain permission from HUD to use the revised version of existing Form HUD-91066 when that form becomes available.
- documentation signed by the victim and a victim service provider, an attorney, a medical professional, or a mental health professional in which the professional declares under penalty of perjury the professional's belief that the victim has experienced a form of abuse covered by the statute ("third-party documentation"); OR
- a federal, state, tribal, territorial, or local police, court, or administrative record.[35]

Can I specifically request third-party documentation?

Generally, a housing provider must accept any of the above-listed forms of certification that the victim chooses to provide. However, an exception applies if there are conflicting certifications (e.g., two people claim to be the victim while accusing the other person of being the perpetrator). In these limited circumstances, the housing provider can require the victim to provide third-party documentation.[36]

What steps must I take to protect the victim's privacy?

Any information provided regarding an individual's status as a victim must be kept confidential. Housing providers may not enter the information into any shared database or provide it to any other entity or person.[37] The only exceptions are: (1) the victim requests or consents to disclosure in writing; (2) the information is "required for use in an eviction proceeding"; or (3) disclosure is otherwise required by law.[38] HUD regulations

[35] See 42 U.S.C.A. § 14043e-11(c)(3).
[36] 42 U.S.C.A. § 14043e-11(c)(7).
[37] 42 U.S.C.A. § 14043e-11(c)(4).
[38] 42 U.S.C.A. § 14043e-11(c)(4)(A)-(C).

implementing VAWA 2005 restrict access to victim information to authorized employees who need such information to perform job duties.[39]

E. Housing Provider Obligations

Do I have additional VAWA obligations?

VAWA 2013 requires HUD to develop a written notice of an applicant or tenant's rights under the statute.[40] Once the notice is developed, VAWA 2013 requires covered housing providers to distribute the notice at three points: (1) upon denial of admission; (2) upon admission; or (3) with a notice of eviction or subsidy termination.[41] The notice must be

accompanied by the federal agency-approved certification form, and must be available in non-English languages for persons with limited English proficiency.[42] However, this notice has not yet been developed by HUD.

Under HUD's regulations implementing VAWA 2005, public housing authorities must provide notice to public housing and Section 8 tenants of their rights under VAWA, including the right to confidentiality, as well as provide notice to owners and managers of covered housing of their rights and obligations under VAWA. In addition, owners and managers of project-based Section 8 units must provide notice to Section 8 tenants of their rights and obligations under VAWA.[43]

F. Guidance and Resources

What guidance is available concerning VAWA 2013?

- The VAWA 2013 housing protections are codified at 42 U.S.C.A. § 14043e-11.
- 75 Fed. Reg. 66,246 (Oct. 27, 2010) (VAWA 2005 regulations): HUD's regulations implementing VAWA 2005 are still in effect until the agency indicates otherwise.
- 78 Fed. Reg. 47,717 (Aug. 6, 2013): This notice provides an overview of key aspects of VAWA 2013.
- USDA, RD AN No. 4778 (1944-N) (Jan. 5, 2015): Rural Development Administrative Notice (AN) addressed to RD multifamily housing program directors concerning implementation of VAWA 2013; includes a model emergency transfer plan and suggested format of certification form, available at: http://www.rd.usda.gov/files/an4778.pdf
- HUD office of Community and Planning Development (CPD), HOMEfires Newsletter (Dec. 2013): outlining VAWA 2013 housing protections while telling housing providers not to wait for HUD rulemaking to extend basic VAWA protections, available at:

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[39] 24 C.F.R. § 5.2007(b)(4)(ii).
[40] 42 U.S.C.A. § 14043e-11(d)(1).
[41] 42 U.S.C.A. § 14043e-11(d)(1).
[42] U.S.C.A. § 14043e-11(d)(2)(D).
[43] 24 C.F.R. § 5.2005(a)(1)-(3).

https://www.onecpd.info/resources/documents/HOMEfires-Vol11-No1-Violence-Against-Women-Reauthorization-Act-2013.pdf

- Letter from HUD PIH to PHAs regarding VAWA 2013 (Sept. 2013): Describes VAWA 2013 housing protections and reminds PHAs to update planning documents to reflect new housing protections, available at: http://nhlp.org/files/Sept%202013%20VAWA%20letter%20to%20PHAs.pdf

What about other resources?

- NHLP has a summary of the key provisions of VAWA 2013, which formed the basis of this Q&A. To see the full article, please visit: http://nhlp.org/files/VAWA%202013%20Bulletin%20Article%20(Jan%202014).pdf

For additional questions, please contact Karlo Ng, Staff Attorney, National Housing Law Project, kng@nhlp.org .

Appendix W. TEEN DATING VIOLENCE

What is Teen Dating Violence?

Intimate partner violence (IPV—a term often used interchangeably with domestic violence) is any form of physical, sexual, emotional, and/or psychological abuse within a current or former intimate relationship. Teen Dating Violence (TDV) is a specific form of intimate partner violence occurring within dating relationships among teenagers between the ages of 13 and 19 (Murray 2016). TDV is physical (pinched, hit, shoved, or kicked), emotional (threats, harm, name calling, shaming, bullying), or sexual violence between two people (Hertzog 2015).

How is Teen Dating Violence different from adult domestic violence or IPV?

Teens' limited relationship experience is an important and frequently-cited difference. Lack of experience may make it difficult for teens to see early warning signs of abuse (Murray et al. 2016) or may cause poor communication or coping strategies when dealing with conflict (O'Keefe 2011). The influence of peers is another profound difference between teen and adult relationship violence. Not only do the behavior and attitudes of friends influence youth, but friends are more frequently present in their lives—in fact over half of TDV is witnessed (O'Keefe citing Molidor 1998).

The integration of technology into the lives of teenagers has given rise to digital forms of abuse. Murray points out that the prevalence of cyber dating abuse is relatively high, and such abuse is associated with greater risk of other forms of TDV as well. According to the Partner Electronic Aggression Questionnaire, a questionnaire developed at the University of Tennessee and used among college-aged students, "findings suggest that electronic aggression is concurrently associated with similar psychosocial adjustment problems compared to traditional aggression and IPV" (Preddy, 2015). These findings suggest that the relationship between drug and alcohol abuse and IPV may be mirrored by drug and alcohol abuse and teen electronic dating violence (Preddy). Electronic dating violence among teens is especially problematic given the viral nature of the internet. Sharing sensitive content, or even the threat of sharing sensitive content, is a powerful tool for abusers with the internet as a large and captive audience, and this tool can be used to manipulate and extort victims (Hinduja & Patchin, 2011).

Are there specific risk factors for Teen Dating Violence?

Teenagers from all different economic, social, or educational backgrounds may be perpetrators or victims of TDV. Researchers have explored a number of risk factors, although findings are varied and factors may not necessarily be causes of TDV.

Youth who experience child abuse and witness intimate partner violence (inter-parental violence) may be at greater risk for experiencing TDV than youth who've been exposed to only one form of violence, though more research is needed to "disentangle the unique and combined effects" of exposure to violence (Moylan et al.2010). However not all children who are exposed to violence become perpetrators or victims of TDV.

Given the importance of friendships in adolescence, it's not surprising that acceptance of violence by peers is a significant risk factor. A number of recent studies indicate that having violent friends or even friends who've been exposed to violence is related to increased use, or approval, of TDV. (Black et al.2015). The influence of friends has been found to be more important in TDV than witnessing inter-parental violence. Having violent friends predicts perpetrating dating violence for both males and females, and predicts future victimization for females (Arriaga & Foshee 2004).

Community violence has also been connected to both the perpetration and victimization of TDV. In particular, studies have shown that exposure to weapons and violent injury is a strong predictor. In a recent study of African-American youth, experiences with community violence predicted "accepting attitudes" about TDV (Black 2015).

There are links between bullying and TDV, and in fact much overlap may be found in definitions of the two behaviors apart from the relationship between victim and perpetrator (Hertzog). Hertzog further notes a small body of research indicating that bullying (particularly sexual bullying) may be a risk factor for TDV, and Black's literature review also connects bullying behavior with TDV (2015). Youth who bully and are bullied ("bully-victims") are more likely to have perpetrated or been victims of dating violence. (Yahner et al.2015). Yahner's study also found an especially strong relationship between cyber bullying and dating violence.

Are there gender differences?

As with domestic/intimate partner violence, the gender of perpetrators and victims TDV is often influenced by how the behavior is defined. Much research reveals that TDV is mutual or reciprocal between male and female dating partners, particularly in terms of frequency of physical abuse. However, when sexual abuse is included it is clear females experience far greater violence than their male partners (O'Keefe 2011).

Furthermore, there are key differences in the motivation for violent behavior. Both male and female youth express that anger is the main motivation for their violence. However females often report they've used physical violence in self-defense, whereas males report the desire to exert control as a key motivating factor (Mulford 2008).

What are the consequences of TDV?

Teenagers who have been victimized may demonstrate depression, anxiety, risky sexual behavior, other unhealthy behaviors (such as tobacco, drug or alcohol use) and poor educational outcomes. Those that experience TDV are also at an increased risk for experiencing relationship violence later in life (Parker & Bradshaw 2015). Associations are found between dating violence and higher rates of eating disorders, suicidal thoughts, and decreased mental and physical health and life satisfaction (Banyard & Cross 2008).

Just as in the association with IPV and substance abuse, teens with a history of TDV victimization are more likely to use substances compared with teens with no history of TDV (Parker & Bradshaw 2015). Substance use is a method of coping with unhealthy relationship and relationship dissolution (Baker, Helm, et al.2015).

TDV is a risk factor for teens to self-harm and is also associated with suicide attempts and death by suicide. When teens do attempt to leave a relationship the threat of self-harm is a ending their relationship (Baker, Helm, et al. 2015).

What can be done?

Much can and should be done at the state, community and individual level to address TDV. At the state level, stronger policies (especially regarding temporary protective orders) are associated with a lower prevalence of TDV (Hoefer, Black & Ricard 2015). Using state report cards developed by Break the Cycle in conjunction with the University of Minnesota to analyze how well laws meet the unique needs of teen victims, researchers Hoefer et al. identified the following as components of strong policy for states to consider:

- Recognizing dating relationship violence for both opposite-sex and same-sex youth as separate and unique from stranger or family violence.
- Allowing minors to obtain protective orders and for orders to last longer than one year
- Broadening definitions of abuse to include cyberstalking, harassing phone calls, and texting

(Note: Georgia previously received an automatic failing grade from Break the Cycle since the statutory definition of family violence excludes dating couples. However in 2021, a new statute was created to provide for dating violence protective orders) .

At the community and individual level, research-informed recommendations for counselors (Murray, King, & Crowe 2016) are useful for people in a variety of settings who may come in contact with youth experiencing TDV:

- Educate yourself on the dynamics of abusive teen dating relationship and do not minimize the abuse simply because it occurs among teenagers
- Explore the intergenerational and family systemic influences on teenagers abusive dating relationships
- Address the unique safety risks that may arise within abusive teen dating relationships
- Link victims and survivors of teen dating violence to community resources to promote their safety

- Support parents in talking about safe and healthy dating relationship with their teenaged child
- Work with families of teenagers who have been abused to develop strategies to protect them from abuse in future relationships
- Help survivors of TDV to develop a new story of empowerment and triumph over the past abuse they experienced

The National Advisory Committee on Violence Against Women 2007 Subcommittee on Teen Dating Violence recommends greater involvement of schools and the education system, especially as school staff interact with both victims and perpetrators (Executive Summary).

The National Center on Domestic and Sexual Violence's website has a comprehensive list of publications on TDV including links for many promising school-based programs. http://www.ncdsv.org/publications_dateteenviolence.html

In addition to prevention and education programs in the school, school districts should adopt policies to deal with TDV—when it occurs on school grounds, when it's reported to staff, and especially how to cope with safety, social and practical issues that arise when both members of the dating couple attend the same school and perhaps the same classes.

Selected Resources and Programs

Program Name	Program Description
Mom and Teens for Safe Dates	This program targets teens who witnessed domestic violence in their childhood. Mothers, now removed from their abusive partner, are sent 6 pamphlets which encourage dialogue about healthy relationships and expectations with their teens.
Dating Matters	This is a CDC-funded prevention program with the following key elements: 1. Youth Programs 2. Parent Programs 3. Training for Educators 4. Communications Program 5. Capacity Assessment and Planning Tool 6. Guide to Using Indicator Data 7. Interactive Guide to Informing Policy
Fourth R: Strategies for Healthy Youth Relationships	This program, rated "promising" on crimesolutions.gov, includes a curriculum aimed at improving attitudes on topics such as TDV, sexual harassment, gender stereotypes, and sexual activity.
Start Strong	This program attempts to target students in and out of school with the

	following key elements: 1. Educate youth in in-school and out-of-school settings 2. Engage those who influence young teens 3. Leverage social marketing, both online and on-the-ground 4. Change school policy and environment.
Shifting Boundaries	This program worked within schools to improve school campus safety and reduce incidence of TDV. The program explored the option of punitive actions for teen abusers and temporary, school-based restraining orders.
Teen Dating Abuse: 2018 Resource Guide	This is a comprehensive guide which links to resources in the following categories: national organizations, intervention programs, fact sheets and toolkits, policy and legislation, special populations, and research.

Appendix X. ANIMAL CRUELTY AND DOMESTIC VIOLENCE

Introduction:

In the past, domestic abuse and animal cruelty have been viewed as separate from each other. However, research has shown a link between the two; often, pet abuse can be a "red flag" indicating that other family members are subject to violence as well.

As with domestic violence, it can be difficult to find one concrete definition of animal abuse. The definition can shift and alter with location, time, and situation. Here in the US, where hunting is popular, the question of what constitutes animal abuse can be especially tricky.

The definition can also change depending on the word used: animal abuse, animal neglect, or animal cruelty, for instance (Arkow).

The American Veterinary Medical Association defines the three:

- Animal cruelty is "any deliberate act that, by intention or neglect, causes an animal unnecessary pain or suffering, including inflicting pain on an animal for the abuser's enjoyment or amusement" (Bourazak, Creevy, Cornell)
- Animal abuse is "the maltreatment of an animal regardless of the perpetrator's intent, motivation, or mental condition. The perpetrator's deliberate intent distinguishes cruelty from abuse" (Bourazak, Creevy, Cornell)
- Animal neglect is "the failure to provide an animal sufficient water, food, shelter, and/or veterinary care; lack of grooming; and lack of sanitation. These failures may be the result of ignorance, poverty, or other extenuating circumstances. This is the most commonly investigated situation" (Bourazak, Creevy, Cornell)

What are some signs and symptoms of animal abuse?

Animal abuse can manifest itself in a variety of behaviors, signs, and wounds. Often neighbors and veterinarians may be the first outside the home to notice signs of abuse or neglect. Some of the most common are:

- "Unexplained or repetitive injuries to an animal, which may show up on examination, ultrasound or X-ray
- History of unexplained or repetitive injuries to multiple animals
- Evidence of rib injuries, either current or from previous trauma

- Low weight or low body condition scores
- Unexplained poisoning, burns, bruising, and stab wounds
- Fractures …
- Gunshot wounds
- Ingrown collar
- Scars, wounds, and traumas consistent with animals used in dog- or cock-fighting competitions
- Obvious severe neglect …
- Signs of disease, pain, distress, or injuries needing treatment, such as blood from orifices, vocalization, vomiting, lameness, shivering, or diarrhea
- Sexual abuse
- The animal displays fear of its owner or of people in general
- The animal displays an unexplained change in behavior" (Arkow)

Animal abuse and Georgia law

OCGA § 16-12-4(b) provides that "A person commits the offense of cruelty to animals when he or she:

1) Causes physical pain, suffering, or death to an animal by any unjustifiable act or omission; or
2) Having intentionally exercised custody, control, possession, or ownership of an animal, fails to provide to such animal adequate food, water, sanitary conditions, or ventilation."

Cruelty to animals is a misdemeanor. Upon second or subsequent conviction (whether in Georgia or another jurisdiction), it becomes a high and aggravated misdemeanor.

OCGA § 16-12-4(d) states that "A person commits the offense of aggravated cruelty to animals when he or she:

1) Maliciously causes the death of an animal;

2) Maliciously causes physical harm to an animal by depriving it of a member of its body, by rendering a part of such animal's body useless, or by seriously disfiguring such animal's body or a member thereof;

3) Maliciously tortures an animal by the infliction of or subjection to severe or prolonged physical pain;

4) Maliciously administers poison to an animal, or exposes an animal to any poisonous substance, with the intent that the substance be taken or swallowed by the animal; or

5) Having intentionally exercised custody, control, possession, or ownership of an animal, maliciously fails to provide to such animal adequate food, water, sanitary conditions, or ventilation that is consistent with what a reasonable person of ordinary

knowledge would believe is the normal requirement and feeding habit for such animal's size, species, breed, age, and physical condition to the extent that the death of such animal results or a member of its body is rendered useless or is seriously disfigured."

Aggravated cruelty to animals is a felony punishable by up to 5 years imprisonment, unless a prior conviction exists in which case it is punishable by up to 10 years imprisonment.

How does animal abuse relate to domestic violence?

In many ways, animal cruelty and domestic violence intersect and predict each other. Most crucially, cruelty to animals is a risk factor, an act of abuse, and a lethality factor in domestic violence. Pets are an easy target for abusers. Animal abuse can be easily used as a means of control and intimidation.

RISK FACTOR

Animal Abuse is a risk factor for Domestic Violence in several key ways.

- Past animal abuse is one of the four most statistically significant indicators of future domestic violence (Arkow)
- One study showed that 41% of domestic abusers had committed an act of animal abuse (compared to 1.5% of the general community) (Arkow)
- One of the first indicators of increased physical abuse of family members is emotional abuse of pets (Arkow)
- Women are 7.6 times more likely to be victims of IPV if their partner has abused a pet (Febres et al)
- One study showed that partners of abused women were 11 times more likely to abuse pets than partners of women who had not experienced domestic abuse (Arkow 2015)
- At one shelter, 71% of the women who reported owning pets reported that their abuser had threatened to harm/kill or actually harmed/killed their pet (Bourazak, Creevy, Cornell)
- There are strong associations between aggression against animals and aggression against humans
- Animal abuse is a risk factor for antisocial disorders

Animal abuse does not cause domestic violence, but the presence of it in a household may contribute to dangerous situations for other family members.

There is also the concern of children who harm pets. Even if pets are abused by a child, this is still an indicator that Domestic Violence is occurring. Studies have shown that children who witness/experience domestic violence are more likely to abuse animals. In one study, 36.8% of boys and 29.4% of girls who were victims of physical and sexual abuse and domestic violence have been reported to abuse their family pet (Ascione). This alarming witnessing and mimicry of aggression by children is correlated to family violence. Signs of animal abuse by a child

perpetrator should be taken very seriously, as it could be indicative of other domestic abuse in the home.

ACT OF ABUSE

Animal cruelty can be used by an abuser as tactic to abuse and control the victim. This abuse can be used to control the victim in multiple ways, including:

1) To intimidate family members and ensure familial obedience (Arkow)

2) To punish the victim/gain revenge (Upahdya)

3) To force the victim to do things (including illegal actions) (Upahdya)

4) To prevent the victim from leaving or force her to return (Upahdya)

5) To remove a victim's support structure (Upahdya)

6) To isolate the victim (Upahdya)

7) To silence the victim and prevent them from reporting abuse (NDAA)

Animal abuse can also be used to psychologically, sexually, physically, and/or emotionally abuse the victim (Arkow).

Pets can be seen as members of the family. Because of this, their pain can cause pain to the abused partner (Ascione, Weber, Thompson, Heath, Maruyama, Hayashi). There is an especially strong bond in cases of mutual abuse, a type of empathy. Those experiencing domestic violence are often socially isolated, thus heavily relying on their pet for companionship (Uphadya). This effect is especially potent in cases where there are no children. (Ascione, Weber, Thompson, Heath, Maruyama, Hayashi). Abusers may act out of jealousy of the bond between pet and victim (NDAA).

Victims may be forced engage in criminal behaviors in order to spare their pets harm, which can result in emotional trauma from acting against their personal value systems and becoming a perpetrator themselves (Loring, Bolden-Hines).

To cause further trauma, the abuser may force the victim to participate in the pet abuse. This could manifest as the abused partner being forced to engage in bestiality (Ascione, Weber, Thompson, Heath, Maruyama, Hayashi). The shame and illegality of such acts may hinder victims from reporting their own abuse.

LETHALITY FACTOR

A lethality factor is an event or circumstance that indicates that a victim may be at higher risk for serious violence and/or death.

Animal cruelty doesn't necessarily predict IPV more accurately than other behaviors, but is associated with "severe psychological aggression and physical assault." (Febres et al).

One study reported that batterers who engage in animal abuse were more violent and used more means of physical abuse than batterers who did not engage in animal abuse (Arkow).

How does animal cruelty prevent domestic violence survivors from seeking help?

There are many obstacles that prevent pet-owning DV victims from obtaining help.

BARRIER TO SERVICE

When contemplating leaving a domestic violence situation, victims face a number of threats and challenges that may further complicate their situation. These include fear of retaliation, having no place to go, and leaving loved ones, including pets, behind. When considering the needs of domestic violence victims, many organizations forget the needs of victims' pets. Many shelters will not accept pets due to lack of resources, space, concerns about allergies or safety of other residents.

The lack of access to pet shelters and foster services is especially in rural areas, contributing to increased reluctance to leave abusive homes.

FEAR FOR ANIMALS' SAFETY/WELLBEING

If survivors are not able or do not know that they can bring their pet to a shelter, then the fear for a pet's safety and wellbeing can prevent women from seeking safety.

- Animal Abuse in the home delays women leaving for a median of 2 years (Arkow)
- One study showed that 22.8% of women experiencing domestic violence delayed seeking shelter because they worried about their pets' safety (Ascione, Weber, Thompson, Heath, Maruyama, Hayashi)
- If there have already been threats and abuse to the pets, that number jumps to 34.3% (Ascione, Weber, Thompson, Heath, Maruyama, Hayashi)

What can the community and courts do to help pet-owning victims of domestic violence?

COMMUNITY

Advocates and emergency workers should intentionally include questions about pets when talking to clients, from their initial contact. Survivors may be more likely to disclose instances of pet abuse first, and this can open up communication about other forms of abuse. If a victim feels like the concern of their pets may be ignored, they might feel invalidated and not move forward in the process of protecting themselves and their loved ones. If a child's answers about family pets raise concern, this may be a sign of having witnessed other abuse at home. Additionally, if a child perpetrates animal violence, there is a significant likelihood they learned such behavior from a family member.

Law enforcement, attorneys, and shelter advocates should be sure to include any notes about animal abuse in their documentation about human victims/clients.

Advocates helping with safety planning should be sure to include pets. Some domestic violence shelters are able to kennel or house victims' animals.

- Project Safe (http://www.project-safe.org/) in Athens has an on-site pet yard and

kennel, as well as a long-standing relationship with the University of Georgia College of Veterinary Medicine, for pet fostering.

- Project Renewal (http://www.projectrenewalgeorgia.com/) serving Rockdale, Newton, and Walton Counties.
- S.A.F.E. (http://www.safeservices.org/) in Towns and Union Counties,
- Circle of Hope (http://www.gacircleofhope.org/) in Habersham, Stephens and White Counties.
- Circle of Love (http://colinc.org/) serving Greene, Morgan, Putnam, Hancock and Baldwin Counties.
- Community Welcome House (http://www.communitywelcomehouse.org/) in Newnan County
- F.A.I.T.H. (http://www.faith-inc.org/) in Rabun County
- Safe Haven (http://safehavenstatesboro.org/) in Statesboro

are equipped to support pets in-house.

Additionally,

- Halcyon Home in Thomas, Grady, Decatur, Seminole and Mitchell Counties (http://www.halcyonhomeshelter.org/) partners with a local vet.
- Liberty House in Dougherty County (http://www.libertyhouseofalbany.com/) offers foster care.

On a state-wide level, Ahimsa House (http://ahimsahouse.org/aboutahimsahouse/) and Safe Place for Pets (http://safeplaceforpets.org/shelter-map?loc=georgia) provide resources and help to house the pets of victims of domestic violence.

Shelters can be mindful to advertise the availability of pet sheltering/fostering services, since this is a lesser known area of service. Additionally, shelters that do not currently offer such services can aim to establish a partnership with local veterinarians and other organizations to make fostering available.

COURTS

Understanding the connection between animal cruelty and domestic violence, judges in family law cases can be mindful of the potential ways pets may be hurt or used to hurt survivors of domestic violence. Georgia's Family Violence Act does not include animal cruelty, and Georgia courts have not recognized animal cruelty as an underlying act of violence to O.C.G.A. § 19-13-1. (HB 493 introduced in 20111 would have expanded the definition of family violence to include inflicting, attempting to inflict, or threatening to inflict unjustified physical injury against a family or household animal, but the bill failed to pass).

However, Georgia's Family Violence Ex Parte Protective Order and Family Violence 12 Month Protective Order forms contain provisions that can help protect animals. For example, judges may order the respondent to return property to the petitioner (#23 in both orders), which could include family pets. Both forms also include a broad section in which a judge may write further orders (#24 in the Ex Parte, #27 in the 12 Month Order), and this could also be utilized to make provisions for the safety of animals in the household. Similar provisions are available for the return of property in Georgia's Dating Violence Ex Parte and 12 Month Protective Orders.

(Georgia's 2011 HB 493 would have done so by expanding the definition of family violence to include inflicting, attempting to inflict, or threatening to inflict unjustified physical injury against a family or household animal, but the bill failed to pass).

Do other jurisdictions address animal cruelty in family violence statutes?

As of 2021, 35 states plus the District of Columbia and Puerto Rico have passed statutory law that includes some provision for pets in the context of domestic violence. Some of these statutes deal with possession or control of pets/companion animals, others provide for animals specifically in protective orders, while some include acts of animal cruelty in their definitions of criminal domestic violence.

An updated list of state family violence statutes relating to animal abuse can be found here: https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders

Appendix Y. TRAUMA-INFORMED PRACTICES

What does trauma mean?

Trauma can be defined as the psychological response to an adverse event. Trauma can be marked by:

1. An experience that is physically or emotionally harmful or threatening.

2. An experience that has lasting adverse effects on an individual's functioning and physical, social, emotional, or spiritual well-being. (Substance Abuse and Mental Health Services Administration, 2013).

Trauma is individualistic. Responses occur when an individual feels as though they cannot meet real or perceived demands. Trauma is pervasive, changing the way an individual perceives the world. Trauma may affect all aspects of an individual's life, including health, self-esteem, functioning, and behavior (SAMHSA's Gains Center, n.d.). Many trauma responses involve survival behaviors or coping mechanisms that are perceived as deviant.

What are trauma-informed practices?

Trauma-informed practice is a multidisciplinary approach to working with individuals who have experienced trauma. Practitioners recognize the prevalence of trauma and learn how trauma impacts an individual's emotional, psychological, and social well being. Trauma-informed practices are commonly applied in fields such as domestic violence advocacy and trauma-informed courtroom practices can benefit individuals experiencing domestic violence. Trauma-informed practices can be summarized by the following three concepts (Blue Knot Foundation, 2016):

1. Ground practices in an understanding of, and responsiveness to, the impact of trauma.

2. Emphasis physical, psychological, and emotional safety for both providers and survivors.

3. Create opportunities for survivors to rebuild a sense of control and empowerment.

How do trauma-informed practices apply to domestic violence?

Trauma responses are common in domestic violence survivors. Trauma can be caused by exposure to violence, physical and sexual abuse, neglect, natural disaster and accidents, and other events that induce powerlessness, fear, recurrent hopelessness, and a constate state of fear. Trauma can be caused by feelings of betrayal of a trusted person or institution. Survivors of domestic violence often feel betrayed by their partner so it is important survivors feel supported by the criminal justice system and other institutions with the ability to support them (Substance Abuse and Mental Health Services Administration, 2013).

People who experience domestic violence often fall into a cycle of criminal justice proceedings. Trauma-informed practices can help the legal system support survivors of domestic violence (Substance Abuse and Mental Health Services Administration, 2013). When individuals return to the criminal justice system they may be perceived as disruptive, requiring additional time, and resources, and at risk of reoffending (Substance Abuse and Mental Health Services Administration, 2013). Negative biases such as these lead to negative responses to individuals experiencing domestic violence. Rather than perceiving an individual as "resistant" or "difficult," courtroom officials can recognize the pervasiveness of the trauma experience and work towards a better relationship between the survivor and legal system so they may successfully get the help they are looking for. Negative responses from courtroom officials may be seen if it was assumed a victim's intention was to leave their partner. This may not always be the case. Individuals deserve the agency to make this choice and still receive the legal help they are looking for without bias or negative responses. Additionally, when an individual is returning to the criminal justice system and perceived as difficult it may lead to quick dismissals of their case.

What are some specific conditions or behaviors a survivor of domestic violence may exhibit, and how can legal professionals address these? (Cohen, Head Injuries and PTSD, ABA Webinar)

Survivors of domestic violence may have experienced head injuries or PTSD. This can result in difficulty focusing, remembering dates, and providing accurate statements in declarations or testimonies.

How can these behaviors be mediated?

Review dates with a calendar and provide a timeframe (e.g. how old was your child, was it hot outside). Do not force clients to be precise about dates, especially if they are unsure of their

accuracy. Broad timeframes may be used to mediate dates. For instance, X happened in early February rather than X happened on February 5th.

Feelings of Stress & Anxiety

Survivors of domestic violence may experience high levels of stress and anxiety, especially in a courtroom setting when they are being asked to revisit abuse. Clients experiencing high levels of stress and anxiety may be emotionally fragile, likely to cry, and may present their feelings with anger or outburst.

How can these behaviors be mediated?

Take a deep breath and encourage your client to do so with you. Providing tissues and/ or snacks is another strategy to help calm a client. Take time to sit with the client and allow them to calm down. If feasible, judges may play soft music in their courtroom, lower the lighting, and find ways to minimize interruptions.

Feelings of Embarrassment & Shame

Clients may have experienced stigmatization or judgement from others prior to a court date. Additionally, societal expectations may lead to victims to feel embarrassed or ashamed about their experiences. Clients experiencing embarrassment and shame may be unwilling and uncomfortable discussing their experience, especially in cases involving sexual violence.

How can these behaviors be mediated?

Ensuring privacy for the client may allow them to feel more comfortable discussing details. Allow clients to submit drafts written in an environment they feel safe (e.g. at home). Ensure the client understands the other party will see anything in court documents.

What are trauma-informed legal practices?

A trauma-informed approach to legal services and advocacy involves recognizing the impacts of trauma and making active attempts to create a sense of safety for a client who may have experienced trauma, whether or not they have a trauma-related diagnosis (Substance Abuse and Mental Health Services Administration, 2013). The goal is to fully engage individuals by minimizing perceived threats, avoiding re-traumatization, and supporting recovery. Trauma-informed practices help confirm the drivers of child behaviors and allow for identification of approaches to correcting delinquency-producing behaviors (Ezell et al., 2018).

Trauma-informed practices can be applied to legal interviews and acknowledging traumatic triggers, trauma, memory, and trust-building, emotional planning. Applying trauma informed practices requires (1) increasing one's understanding of trauma, (2) creating an awareness of the impact of trauma on behavior, and (3) developing trauma informed responses (SAMHSA’s Gains Center, n.d.).

How can trauma-informed practices be applied in a courtroom?

1. Create a physically and emotionally safe environment.

2. Build trust with individuals in the time you have and the service you are providing.

3. Allow room to empower the individual

4. Allow room for clients to have choice and control in their case

5. Collaborate and share power with the client when feasible

6. Build a positive relationship.

7. Understand the prevalence of trauma in domestic violence cases and how it may impact a clients behavior

8. Understand each clients coping mechanisms and culture and respect that each client's trauma experience and response will be different (Blue Knot Foundation, 2016).

Trauma informed responses allow the judicial process to avoid re-traumatization, increase safety, decrease recidivism, and promote and support recovery of justice (SAMHSA's Gains Center, n.d.). Judges and court professionals can apply the above steps by formally and critically reviewing policies and procedures to analyze any current practices that may lead to retraumatization or trauma responses. Judges and court professionals can also develop trauma screenings and assessments, treatment services, supportive services, positive agency practices, and staff policies through training about trauma (SAMHSA's Gains Center, n.d.). It is important to evaluate and change policies and procedures that could be implemented in trauma-informed ways. When formal change is not feasible or timely, judges may change the way they implement policies and procedures they have discretion over to avoid retraumatization, promote recovery, and decrease justice involvement (SAMHSA's Gains Center, n.d.).

What are benefits to trauma-informed legal and courtroom practices?

Trauma informed practices benefit the justice system. Retraumatization of survivors can be avoided in trauma-informed practices. Retraumatization in civil court can lead to survivors settling for less in the mediation or settlement negotiations (Katirai, 2020). It may also lead them to leave the legal system completely (Katirai, 2020). A Michigan study found survivors would avoid returning to family court, and in some cases would avoid telling others about abuse if the mediator's reactions were retraumatizing (Katirai, 2020). An example from the study comes from a mother who wanted to request a safer custody arrangement, but did not object to the order due to fear the mediator would give the father full custody (Katirai, 2020).

Divorce and custody hearings risk retraumatization for victims of domestic violence and their children; who may have also experienced forms of abuse. It is estimated that up to 60% of domestic violence assault cases overlap with child abuse cases and The Department of Justice estimates that children are 1500 times more likely to suffer abuse in families where spousal abuse occurs (Lewis, Jospitre, Griffing, Chu, Safe, Madry, Primm, 2006). Trauma-informed

courtrooms protect children of domestic violence cases and reduce intergenerational traumas and distrust in the legal system.

Appendix Z. Resources

Name of Organization	Website	Telephone number
Administrative office of the Courts' Georgia Commission on Interpreters	http://w2.georgiacourts.org/coi/	404-463-6478
Court Appointed Special Advocates, Inc. (CASA)	http://www.gacasa.org/	800-251-4012 404-874-2888
Criminal Justice Coordinating Council	http://cjcc.ga.gov/	404-657-1956
Family Violence Intervention Programs, State Certification	http://www.gcfv.org/index.php?option=com_content&view=article&id=81&Itemid=13	404-657-3412 404-463-3808
Georgia Association of Chiefs of Police	http://www.gachiefs.com/	770-495-9650
Georgia Bureau of Investigation Georgia's Protective Order Registry	gbi.georgia.gov/ See AppendixM	404-244-2600 404-270-8454
Georgia Coalition Against Domestic Violence	http://www.gcadv.org/	404-209-0280
Georgia Commission on Family Violence	http://www.gcfv.org/	404-657-3412
Georgia Council of Superior Court Judges	http://www.cscj.org/	404-656-4964
Georgia Council on Aging	http://www.gcoa.org/	404-657-5343
Georgia Crime Victims Compensation Program Victim Services	http://cjcc.georgia.gov/victims-compensation	404-657-1956 1-800-547-0060 404-657-2222 800-547-0060

Georgia Department of Corrections Pardons and parole Victim services	http://www.dcor.state.ga.us/	404-656-5651 800-593-9474
Georgia Domestic Violence Hotline – Safe Haven	Will provide local DV resources	1-800-HAVEN 1-800-334-2836
Georgia Public Defender Standards Council	http://www.gpdsc.com	800-676-4432
Georgia Legal Services	http://www.glsp.org/	404-206-5175
Georgia Network to End Sexual Assault	http://www.gnesa.org/	404-815-5261 866-354-3672
Georgia office of Dispute Resolution	http://www.godr.org/	404-463-3788
Institute of Continuing Judicial Education Domestic Violence Benchbook	http://www.uga.edu/icje/ http://icje.uga.edu/documents/2010DVBenchbook.doc	706-369-5842
Institute on Human Development and Disability, UGA	http://www.ihdd.uga.edu/	706-542-3457
International Women's House (Shelter for battered immigrant and refugee women and children) Language Line Services	http://www.internationalwomenshouse.org/ http://www.languageline.com/	770-413-5557 800-752-6096
Prevent Child Abuse Georgia	http://preventchildabusega.org/	404-870-6565 Help line 800-CHILDREN

Prosecuting Attorneys Council of Georgia -Atlanta (main) -Albany -Macon -Savannah	http://www.pacga.com/	404-969-4001 229-430-3818 478-751-6645 912-748-2843
Raksha Network for South Asians Helpline	http://www.raksha.org/	1-866-752-7423 404-842-0725
Tapestri Refugee and Immigrant Coalition -DV line Atlanta -DV outside Atlanta -Anti-Human Trafficking -Outside Atlanta	http://www.tapestri.org/	404-299-2185 866-562-2873 404-299-0895 866-317-3733
U.S. Attorney's offices – Violence Against Women Acts Contacts -Northern District -Middle District -Albany	http://www.usdoj.gov/usao/gan/ http://www.usdoj.gov/usao/gam/	404-581-6000 478-752-3511 229-430-7754

National

ABA Commission on Domestic Violence This is the home page for the ABA Commission on Domestic Violence. It provides information for attorneys, judges and other professionals who work with the judicial system on issues of domestic violence	http://www.abanet.org/domviol/home.html	202-662-1000
American Judges Association The American Judges Association and American Judges Foundation have published an introductory booklet for judges handling domestic violence cases including an overview of the literature and steps judges can take in appropriately handling cases.	http://aja.ncsc.dni.us/domviol/publications_domviobooklet.htm	

National Center for the Prosecution of Violence Against Women	http://www.ndaa.org/ncpvaw_home.html	703-519-1687
Communities Against Violence Network (CAVNET) Online database of information and a virtual international community of over 900 professionals. Free public access or more extensive access with membership fee.	http://cavnet.org/	305-896-3000
Futures Without Violence (formerly Family Violence Prevention Fund) -San Francisco office -Washington DC office -Boston office A comprehensive website for FV that provides judges with groundbreaking materials, online resources and guidelines.	https://www.futureswithoutviolence.org/	415-2678-5500 202-595-7382 617-702-2004
Legal Momentum -New York office -Washington DC office Works on a national policy level to eradicate discrimination against victims of violence	http://www.legalmomentum.org/	212-925-6635 202-326-0040
Minnesota Center Against Violence and Abuse (MINCAVA) Located at the University of Minnesota, this site is an electronic clearinghouse providing access to over 3000 resources.	http://www.mincava.umn.edu	612-624-0721
National Center for Missing and Exploited Children Can assist if there is a fear of child abduction and steps necessary to prevent kidnapping – interstate or outside United States. 24 hr. hotline:	http://www.missingkids.com/	1-800-THE-LOST 703-224-2122

office:		
National Center for State Courts -Williamsburg, VA -Denver, CO -Arlington, VA -Washington, D.C. This site includes the Family Violence Forum, which provides regular updates about approaches taken by various courts in combating family violence as well as many research articles and a detailed Resource Guide.	http://www.ncsconline.org	800-616-6164 800-466-3063 800-532-0204 703-841-0200
National Council of Juvenile and Family Court Judges – Family Violence Department Maintains a website providing information and links to state laws related to domestic violence for every state. Also provides judicial DV training & information about firearms, full faith and credit and other domestic violence issues.	http://www.ncjfcj.org/	775-784-6012
National Criminal Justice Reference Service – Spotlight on Family Violence Family violence facts, publications, programs training and technical assistance.	http://www.ncjrs.gov/spotlight/family_violence/Summary.html	
National Criminal Justice Reference Service Research abstract data base on a wide range of criminal justice research housing more than 185,000 publications. Can subscribe to a weekly electronic list of new additions	http://www.ncjrs.gov/abstractdb/search.asp	

National Domestic Violence Hotline Provides callers with crisis intervention, information about domestic violence and referral to local programs 24 hours a day, in both English and Spanish. The Hotline also has interpreters available to translate an additional 139 languages.	http://www.ndvh.org/	1-800-799-7233
National Immigration Project of the National Lawyers Guild Protects the rights of non-citizen survivors of domestic violence.	http://www.nationalimmigrationproject.org/	617-227-9727
National Organization for Victim Assistance Provides information and training to advocates working with crime victims.	http://www.trynova.org/	800-879-NOVA 703-535-NOVA
National Resource Center on Domestic Violence	http://www.nrcdv.org/	800-537-2238
Stalking Resource Center Information clearinghouse, practitioners network and training.	http://www.victimsofcrime.org/our-programs/stalking-resource-center	202-467-8700
United States Justice Department office on Violence Against Women This site provides information on model programs, federal grant programs and links to the most recent statistical information on violence against women, including physical and sexual assault.	http://www.usdoj.gov/ovw/	202-307-6026

Vera Institute of Justice -New York office -Washington DC -New Orleans This site includes information, updates and downloadable resource materials on judicial review hearings. Can send for free documentary “Judicial Review Hearings in Domestic Violence Cases” or call ICJE to borrow this short film.	http://www.vera.org	212-334-1300 202-465-8900 504-593-0936
Intimate Partner Sexual Abuse This is an excellent online course developed and written by the National Judicial Education Program of Legal Momentum. ICJE of Georgia will accredit this course for Superior and State Court Judges.	http://www.njep-ipsacourse.org	212-925-6635

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GLOSSARY

A

ABA	American Bar Association
ADA	Americans with Disabilities Act
ADR	Alternative Dispute Resolution
AIDS	Acquired Immune Deficiency Syndrome
AOC's	Administrative office of the Courts
AVLF	Atlanta Volunteer Lawyers Foundation

C

CASA	Court Appointed Special Advocates
CIMT	Crime Involving Moral Turpitude

D

DHS	Department of Homeland Security
DHR	Department of Human Resources
DSM-IV Lite	Diagnostical and Statistical Manual

E

EAD	Employment Authorization Document
ECT	Electroconvulsive Therapy

F

FOIA	Freedom of Information Act
FVB	Family Violence Battery
FVIP	Family Violence Intervention Programs
FVPSA	Family Violence Protection and Services Act

G

GAD	Generalized Anxiety Disorder
GAIN	Georgia Asylum and Immigration Network
GAL	Guardian Ad Litem
GCFV	Georgia Commission on Family Violence
GCIC	Georgia Crime Information Center
GDC	Georgia Department of Corrections
GDC's	Georgia Designated Courts
GPOR	Georgia Protective Order Registry

H

HUD	Housing and Urban Development

I

ICARA	International Child Abduction Remedies Act
ICE	Immigration and Customs Enforcement

IIRAIRA	Illegal Immigration Reform and Immigrant Responsibility Act
IPV	Intimate Partner Violence
IT	Intimate Terrorism

L

LEP	Limited English Proficiency
LGBTQQI	Lesbian Gay Bisexual Transexual Questioning Queer Intersex
LPR	Lawful Permanent Resident

M

MCDV	Misdemeanor Crimes of Domestic Violence
MVC	Mutual Violent Control

N

NCIC	National Crime Information Center Network
NCJFCJ	National Council of Juvenile and Family Court Judges
NCSC	National Center for State Courts
NICS	National Instant Criminal Background Check System

O

O.C.G.A.	official Code of Georgia Annotated

P

PAS	Parental Alienation Syndrome
POR	Protective Order Registry

S

SCV	Situational Couple Violence
SIJS	Special Immigration Juvenile Status
STOP Grant	Services Training officers Prosecutors Violence Against Women Formula Grant Program (STOP Program)

T

TPO	Temporary Protective Order
TPS	Temporary Protected Status
TVPRA	Trafficking Victims Protection Reauthorization Act of 2008

U

U.S.C.A.	United States Code Annotated
USCIS	United States Citizenship and Immigration Services

V

VAWA	Violence Against Women Act
VINE	Victim Information and Notification Everyday

VWAP	Victim Witness Assistance Program
VR	Violent Resistance

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