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Domestic Violence Victims' Rights

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Research Guides

Domestic Violence Victims' Rights

Guide Information

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Overview

"Family violence" is the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:

(1) Any felony; or

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

O.C.G.A. § 19-13-1.

Domestic violence affects as many as 10 million families in the United States each year.
" . . . Violence in Georgia homes among family members accounts for many serious injuries, deaths, and extensive physical and emotional damage to children and adults. Family violence knows no economic or social barriers. . ." O.C.G.A. § 19-13-30.

A greater awareness of the widespread problem has resulted in increased legislation protecting victims of abuse. In 1992, Georgia created the State Commission on Family Violence and enacted protective measures for victims of domestic abuse. Although states are the primary enforcers of victims' rights, the federal Violence Against Women Act was enacted in 1994 under the Commerce Clause. This site will address Georgia statutes, some federal legislation, and other sources of information detailing the current law in protecting victims from domestic violence.

About the Author

Leslie Morris Donaho will graduate from Georgia State University, College of Law in May of 2006 and will pursue a career in Family Law.

Scope

This site was designed to assist new attorneys and students in their research of domestic violence. The research contained in this site focuses on victims' rights. This is not a comprehensive collection but a starting reference point compromised of applicable statutes, case law, and other helpful sources. While this site addresses mostly Georgia law, the "Interest Groups and Resource Section" may not be specific to any jurisdiction. This sight also outlines key federal legislation regarding domestic violence. sed to locate many of the sources contained in the guide.

Disclaimer

Bibliographies on this Web site were prepared for educational purposes by law students as part of Nancy P. Johnson's Advanced Legal Research course. The Law Library does not guarantee the accuracy, completeness, or usefulness of any information provided. Thorough legal research requires a researcher to update materials from date of publication; please note the semester and year the bibliography was prepared.

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Primary Sources

U.S. Code

The following statutory details are provided by the author. Text of the statute can be found by following the links.

1. Federal Statutes:

a. Violence Against Women Act.

The criminal penalties provided in these sections are largely dependant on the extent of injury to the victim.

18 U.S.C. § 2261. Interstate Domestic Violence.
Outlines the criminal offense and penalty for those who commit or intend to commit a violent crime against a spouse or intimate partner while traveling in interstate commerce or causing the victim to travel in interstate commerce.

18 U.S.C. § 2261A. Interstate Stalking.
Outlines the criminal offense and penalty for those who travel in interstate commerce or use the mail or other facility of interstate commerce with the intent to kill, injure, harass, or intimidate another person, and while doing so places that person in reasonable fear for death or injury to himself, family member, spouse or intimate partner.

18 U.S.C. § 2262. Interstate Violation of Protection Order.
Outlines the criminal offense and penalty for those who travel in interstate commerce with the intent to engage in conduct that violates a protective order. Provides criminal penalty to those who engage in conduct that violates a protection order which causes a victim to travel in interstate commerce.

18 U.S.C. § 2265. Full Faith and Credit given to Protection Orders.

18 U.S.C. § 2264. Restitution to victims.

b. Gun Control Act.

18 USCS § 922.
Provides that it is a federal crime for a person to possess a firearm or ammunition where that person is subject to a restraining order which restrains him/her from harassing, stalking, or threatening an intimate partner or child. Under this act, it is also a crime to knowingly sell a firearm to a person subject to a restraining order.

c. Family Violence Prevention and Services Act.

42 U.S.C.A §§ 10401-10420.
Provides for training of professionals and establishment of treatment programs, resource centers, and support for victims of family violence. Discusses possible funding for various programs and requirements of those seeking the grants to initiate these programs. Includes grants for state coalition programs against family violence; grants to non-profit organizations for public information campaigns; grants for community initiatives regarding domestic violence; funding for a domestic violence hotline; funding for transitional housing for those who cannot get emergency housing and are fleeing from domestic violence; funding for programs offering supervised visitation services for domestic abusers and their children. ["Next" at bottom right of the link will take you to the next statute in the sequence]

d. Indian Child Protection and Family Violence Prevention Act.

25 U.S.C.A. §§ 3201-3210. Provides for training of professionals and establishment of treatment programs for abused Native American children and adults. Establishes federal support program and provides grants for tribally run support centers, establishes reporting procedures and possible registry for offenders. ["Next" at bottom right of the link will take you to the next statute in the sequence

that one found to have committed inequitable conduct may have to pay the attorney fees for the prevailing parties.

Georgia Statutes

a. Family Violence/Protective Orders:

O.C.G.A. § 19-13-1. Family Violence Act.
"Family violence" is the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household:
(1) Any felony; or (2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.
Family violence does not include reasonable punishment by a parent to a child.

The following crimes constitute “family violence” if committed in a domestic setting pursuant to O.C.G.A. § 19-13-1. This list is not exhaustive.
O.C.G.A. § 16-5-20; 16-5-21. Assault
O.C.G.A. §§ 16-5-23; 16-5-23.1; 16-5-24; 16-6-22.2. Battery
O.C.G.A. §§ 16-5-90; 16-5-91. Stalking
O.C.G.A. §§ 16-5-40; 16-5-41. Kidnapping. False Imprisonment.
O.C.G.A. § 16-5-1. Murder
O.C.G.A. § 16-6-1. Rape. Marital relationship is not a defense to rape.
O.C.G.A. §§ 16-7-22; 16-7-23 Criminal Damage to Property
O.C.G.A. § 16-7-21. Criminal Trespass.

Crimes against children and the elderly:
O.C.G.A. § 16-5-73. Manufacture of methamphetamine in presence of a child.
O.C.G.A. § 16-5-70. Cruelty to Children.
O.C.G.A. § 16-6-4. Child Molestation.
O.C.G.A. § 16-5-80. Feticide.
O.C.G.A. § 16-5-100. Cruelty to a person 65 years of age or older.

O.C.G.A. § 19-13-3. Protective Orders.
A victim of domestic abuse may file a petition for protective relief; and relief will be granted upon showing probable cause that family violence has occurred in the past and may occur in the future. A protective order may be granted ex parte for temporary relief if the court finds immediate relief necessary, with a hearing within 30 days where further need for protection must be proven by a preponderance of the evidence. Family violence counselors or clerk of court may instruct the victim in the procedure in obtaining a protective order without incurring liability for the unauthorized practice of law.

O.C.G.A. § 19-13-4. Scope of Protective Orders.
Protective orders may direct the abuser to cease abuse and/or attend counseling, grant temporary support to the victim, temporary use of the family home, temporary custody of children. Orders can be enforced in every state. Temporary orders are ineffective after 1 year unless a rehearing upon petition and notice to the respondent provides for 3 year or permanent protective order.

O.C.G.A. § 19-1-1.
A restraining order may be issued upon the filing of any domestic relations order.

O.C.G.A. § 19-13-2. Jurisdiction.
Proceedings under the Family Violence Act are in the Superior Court in the county where the respondent lives. For non-residents, jurisdiction is in the county where the petitioner lives or where the violence took place if the acts of violence comply with the requirements of Georgia's Long-Arm Statute, O.C.G.A. § 9-10-91.

b. Violations of protective orders:

O.C.G.A. § 19-13-6. Violation of a protective order may be punished by contempt or the criminal penalty of the underlying crime.

O.C.G.A. § 16-5-95. A person commits a misdemeanor when he/she knowingly violates a restraining order. Violation of the restraining order does not preclude prosecution for an underlying crime giving rise to the order violation.

O.C.G.A. § 17-4-20.1 Guidelines for officers to base arrest.

c. Fees/Court Costs:

O.C.G.A. § 15-6-77. Clerk of Superior Court fees/costs
No fee or cost shall be assessed for any service rendered by a clerk of superior court through issuance of judgment, filing, issuance, registration, or service of a protection order or petition for a prosecution order to protect a victim of domestic abuse.

O.C.G.A. 15-10-82. Magistrate fees/costs.
No fee or cost shall be assessed against the victim of any domestic violence offense for costs associated with the filing of criminal charges against the stalking offender, sexual offender, or domestic violence offender for issuance or service of a warrant, protective order, or witness subpoena arising from the incident of stalking, sexual assault, or domestic violence.

O.C.G.A. § 15-16-21. Sheriff fees/costs
No fee for sheriff services shall be assessed against the victim of domestic violence for costs associated with the filing of criminal charges against the offender or for issuance of a warrant, protective order, or witness subpoena arising from that incident.

d. Preventative measures/state organizations:

O.C.G.A. 19-13-30. State Commission on Family Violence.
State Commission and local task forces created to combat family violence to remain in force until January 1, 2010.

O.C.G.A. § 19-15-2.
Investigatory protocol and professional training for child abuse cases.

O.C.G.A. § 19-7-5.
Circumstances, who is required to report child abuse.

Case Law

1. Federal Cases:

United States v. Boyd, 52 F.Supp.2d 1233 (D. Kan. 1999). Defendant's motion to dismiss two charges under the Gun Control Act for possessing a firearm while under a protective order was not granted, as the court found sufficient nexus in the crime committed and interstate commerce.

United States v. Frank, 8 F. Supp. 2d 253 (S.D. N.Y. 1998). The Defendant's motion to dismiss his federal indictment for kidnapping and murder under the Violence Against Women Act was denied. The court found the VAWA, 18 U.S.C.A. §§ 2261-2266, a valid exercise of Congress's Commerce Power. [Green arrow at the top and bottom of the link will direct you to the next statute in the sequence]

United States v. Morrison, 529 U.S. 598 (2000). The civil remedy provisions contained in 42 USCA § 13981 of the Violence Agasint Women Act were held unconstitutional as beyond the power of Congress to enact under the Commerce Clause.

2. Georgia Cases:

Anderson v. Deas, 271 Ga.App. 770 (2005). Affirming the trial courts dismissal of a petition for relief from family violence. The trial court could not exercise jurisdiction over a non-resident father because he did not fall into the requirements of the long-arm statute and there was no true emergency to render emergency jurisdiction necessary for the protection of the child.

Baca v. Baca, 256 Ga.App. 514 (2002). Affirming the lower court's determination that child support guidelines do not apply in temporary protective orders granting temporary child support. In protective orders granting temporary custody the best interests of the child standard applies but the court is not required to include findings of fact or conclusions of law as the order is not a final adjudication. Provided that when temporary protective orders expire, issues on appeal pertaining to that order are moot, unless the issue affects an existing class of sufferers.[KeyWord: Baca, year 2002]

Buchheit v. Stinson, 260 Ga.App. 450 (2003). Reversing the judgment of the Superior Court, because a mother slapping her child was not a simple battery, and could not sustain granting a temporary protective order against the mother. The slap did not exceed reasonable discipline by a parent.

Carroll v. State, 224 Ga.App. 543 (1997). The Family Violence Act is not governed by the Civil Practice Act; namely, TPOs do not expire in 30 days as a matter of law.

Davis-Redding v. Redding, 246 Ga.App. 792 (2000). Reversing the Superior Court's dismissal of a Wife's petition for a temporary protective order due to improper venue. The court found that the petition was properly brought in the county her husband was located despite no evidence that he planned to remain in that county. Jurisdiction and venue are more flexible in cases involving domestic violence.

Duggan v. Duggan-Schlitz, 246 Ga.App. 127 (2000). Finding that the trial court had discretion to extend the effective date of a temporary protective order despite not hearing evidence on the merits of the protective order. The court could properly extend the effective date so that a hearing on the matter which had been started could be completed.

Ganny v. Ganny, 238 Ga.App. 123 (1999). In a legitimation suit involving issues of custody, visitation, and child support; the Superior Court can properly order a protective order without a petition having been filed where the facts in the case show that a party needs relief.

Johnson v. State, 231 Ga.App. 823 (1998). The Defendant's criminal conviction of child molestation was reversed where the trial court allowed the wife's final protective order against the Defendant to be read to the jury. Under Georgia law, the judgment in a civil action is not admissible in a criminal action to prove facts determined in the civil action. Admission of the evidence was harmful error.

Schmidt v. Schmidt, 270 Ga. 461 (1999). Appeals under Georgia's Family Violence Act are discretionary and jurisdiction is in Court of Appeals.

Wright v. State, 276 Ga. 454 (2003). Where an officer has probable cause that an act of family violence has occurred, an arrest warrant is not needed to procure a valid arrest of the suspect.

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Secondary Sources

Georgia Specific Secondary Sources

Barry B. McGough & Gregory R. Miller, *Domestic Relations, The Work of the Georgia Appellate Courts from June 1, 2000 to May 31, 2001*, 53 Mercer L. Rev. 265 (Fall 2001).

Barry B. McGough & Gregory R. Miller, *Domestic Relations: The Work of the Georgia Appellate Courts from June 1, 2002 to May 31, 2003*, 53 Mercer L. Rev. 223 (Fall 2003).

Dan E. McConaughey, *Georgia Divorce, Alimony and Child Custody* (West 2004). GSU COL Library Reference, call number KFG 100.725 2004.

Edward E. Bates, *Georgia Domestic Relations Forms: Practice* (Lexis Nov. 2004). Petition for relief, form 1.2.2; Protective Order 1.2.3. GSU COL Library Reference, call number KFG 94.A65 B38 1988.

8 Ga. Jur. Family Law §§ 14:1-14:15 (2005). Details the reason for family violence legislation; arrest, reports requirements of domestic crimes in GA; requirements for protective orders, how to obtain protective orders and information about the State Commission on Family Violence.

Books

1. General:

Case Studies in Family Violence (Robert T. Ammerman & Michel Herson eds., Kluwer Academic/Plenum Publishers 2000). Addresses the need of legal, medical, and social systems working with the family, emphasizing assessment strategies and treatment approaches. GSU COL Library, call number HV 6626.3.C37 2000.

Domestic Violence Law (Nancy K.D. Lemon, ed., West Group 2001). Collection of articles, book excerpts, cases, and statutes focusing on the role of the legal system in regard to domestic violence in intimate partner relationships. GSU COL Library Reserves, call number KF 9320.D6320.D657 2001.

Handbook of Domestic Violence Intervention Strategies (Albert R. Roberts ed., Oxford Press 2002). Examines the most effective policies, programs, intervention strategies, and legal remedies for dealing with domestic violence. GSU COL Library, call number HV 6626.2.H36 2002.

Karel Kurst-Swanger & Jacqueline L. Petcosky, *Violence in the Home* (Oxford University Press 2003). Intervention and prevention of domestic abuse among intimate partners, abuse of children and the elderly. GSU COL Library, call number HV 6626.2.K83 2003.

Women and Domestic Violence (Lynette Feder ed., Haworth Press 1999). Focuses on the history, trends in legal relief, and practical effects of current remedies of domestic abuse. GSU COL Library, call number HV 6626.2.W64 1999.

2. Special Issues:

   Philip W. Cook, *Abused Men: The Hidden Side of Domestic Violence* (Praeger Publishers 1997). Focuses on issues men victims face. GSU COL Library, call number HV 6626.C65 1997.

   Childhood Abuse (Geraldine Van Bueren ed., Ashgate Pub. Co. 1998). Compilation of papers distributed to the International Symposium on Protecting Children against Torture, Cruel, Inhumane and Degrading Treatment and Punishment. The materials were written by health car workers, scholars, and activists from many countries. GSU COL Library, call number HV 6626.5.C55 1998.

   Do Arrests and Restraining Orders Work? (Eva S. Buzawa & Carl G. Buzawa eds., Sage Publications 1996). Practical application and effects of current legal remedies for domestic abuse victims. HV 6626.2.D6 1996.

   Mary Joy Quinn & Susan K. Tomita, *Elder Abuse and Neglect* (Springer Publishing Series 2nd ed. 1997). Details the development of elder abuse legislation. The primary focuses are on the causes and diagnosis of elder abuse. GSU COL Library, call number HV 6626.Q56 1997.

   Through Their Eyes: Domestic Violence and Its Impact on Children (YMCA publication). Follow the link for online version. One child's personal story of domestic violence in his home.

3. Personal Accounts:

   Captain Robert L. Snow, *Family Abuse* (Plenum Trade 1997). Issues in family abuse from the perspective of a police officer. Author notes that the purpose of the book is to train law enforcement, and to provide ideas to help officers, politicians, and citizens to organize communities to stop abuse. GSU COL Library, call number HV 6626.2.S56 1997.

   Barbara Cochran Berry, *Life After Johnny* (Basic Books 1995). A woman's personal account of the abuse she suffered at the hands of her ex husband Johnny Cochran, criminal defense attorney. GSU COL Library, call number HV 6626.22.L7.C.93 1995.

American Law Reports (A.L.R.)

Cynthia Lynn Barnes, *Admissibility of Expert Testimony Concerning Domestic Violence Syndromes To Assist Jury in Evaluating Victim's Testimony or Behavior*, 57 A.L.R. 5 th 315 (1998).

Elizabeth Trainor, *"Cohabitation" for Purposes of Domestic Violence Statutes*, 71 A.L.R. 285 (1999).

Jack M. Dalgleish, *Construction and Effect of Statutes Mandating Consideration of, or Creating Presumptions Regarding, Domestic Violence in Awarding Custody of Children*, 51 A.L.R. 241 (1997).

Amy Keane, Annotation, *Validity and Applicability of Violence Against Women Act (VAWA), 18 U.S.C.A. §§ 2261 to 2261*, 195 A.L.R. 319 (2004).

Law Review Articles

1. Developments in the law and the movement against domestic violence:

   Katherine E. Volovski, *Domestic Violence*, 5 Geo. J. Gender & L. 175 (2004)(discussing the changing views and increasingly proactive state and federal legislation regarding domestic violence).

   Christine O'Connor, *Domestic Violence No-Contact Orders and the Autonomy Rights of Victims*, 40 B.C. L. Rev. 937 (1999)(discussing developments in the law affording more rights to victims of abuse).

   G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservation of the Battered Women's Movement*, 42 Hous. L. Rev. 237 (2005)(outlining the developments of the protections for women suffering from domestic abuse in New York).

2. Expert Testimony and Guardians Ad Litem:

   Laurie S. Kohn, *Barriers to Reliable Credibility Assessments: Domestic Violence Victim-Witnesses*, 11 Am. U.J. Gender Soc. Pol'y & L. 733 (2003)(discussing problems victims face during judicial testimony and how experts can play a role).

   Jennifer Adler Lifschitz, *Battered Woman Syndrome and Prosecution of Domestic Abuse and Rape Cases*, 5 Geo. J. Gender & L. 149 (2004)(discussing the use of expert opinion/testimony of battered woman syndrome not as a defense in crime but in prosecution of crime against defendants charged with domestic violence).

   Cynthia Grover Hastings, *Letting Down Their Guard: What Guardian Ad Litem should know about Domestic Violence in Child Custody Disputes*, 24 B.C. Third World L.J. 283 (2004) (addressing the need for appropriate training and court attention to the role of guardians ad litem in domestic violence cases, focusing on the effects of children when place in homes of the abusers).

3. Special Issues:

   Lee J. Teran, *Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act*, 17 B.U. Int'l L.J. 1 (1999)(discussing issues that undocumented immigrants face under the VAWA and demonstrating "extreme hardship" using INS standards).

   Philip Crosby, *Custody of Vaughn: Emphasizing the Importance of Domestic Violence in Child Custody Cases*, 77 B.U.L. Rev. 483 (1997).

   Tara R. Pfeifer, *Out of the Shadows: The Positive Impact of Lawrence v. Texas on Victims of Same-Sex Domestic Violence* , 109 Penn St. L. Rev. 1251 (2005).

   Leslie Espinoza Garvey, *The Race Card: Dealing with Domestic Violence in the Courts*, 11 Am. U.J. Gender Soc. Pol'y & L. 287 (2003).

Treatises

Carol H. Lefcourt, *Women and the Law* § 9E (David Frazee ed., 11th 1997). GSU COL Library, call number KF 478.W65 1984.

Computerized Research

Westlaw and LexisNexis are fee-based services that give the legal researcher access to a large number of data bases including federal and state statutes and cases, articles, journals and news.

Suggested LexisNexis Searches:
1. Legal > States Legal – U.S. > Georgia >
2. Select a Data Base, suggested sources: Official Code of Georgia Annotated, Georgia State cases combined, Forms, Georgia Law Reviews
3. Suggested Search terms: Domestic violence, protective order, family,
4. "Suggest terms for my search" link can help you find more issue specific search terms

Suggested Westlaw Searches:
1. My Westlaw > Family Law Practitioner
2. Choose Data Base. Suggested sources: Georgia Statutes Annotated, USCA Family Law Statutes, Georgia Cases, Georgia Family Law Cases, Georgia Divorce Family Custody and Alimony; Georgia Jurisprudence
3. Suggested Search terms: Domestic Violence, protective order

FindLaw a free website containing statutes, some case law, and forms as well as non-legal resources.

LexisOne is a limited version of LexisNexis with some free resources.

Georgia General Assembly website provides free access to Georgia code.

Thomas is a free website containing past and current federal legislation. This website is very useful to search legislative history.

United States House of Representatives website provides free access to the United States Code.

Google. Suggested search terms: Family violence, domestic violence, georgia

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Interest Groups and Associations

Interest Groups

AARP: Search term "abuse". Perspectives on Elder Abuse article.

An Abuse, Rape and Domestic Violence Aid and Resource Collection; Georgia resources arranged by county. Information on shelters, government agencies, state statistics, tips. Very good Georgia specific resource tool.

Action Alliance for Children - Fact sheet from Children's Advocate Magazine.

Georgia Network to End Sexual assault This site has information and tips specific to health care workers, lawyers, clergy, parents, etc.

National Center of Elder Abuse Link to the left of the home page – "laws and legislation" discusses the Older Americans Act which includes protections from abuse of the elderly

National Center for Violence Against Women

Stalking Resource Center Laws, resource centers, information for victims

National Coalition Against Domestic Violence - The public policy link at the top has information about the newest version of VAWA passed in October.

Office of Violence against Women

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