



U.S. Attorney's Office, District of Maine

OCTOBER 2023

FEDERAL DOMESTIC VIOLENCE & STALKING STATUTES

Elements for Federal Prosecution

INTRODUCTION

Domestic violence and stalking is a significant problem in our nation and our state. Domestic violence has accounted for approximately half of the homicides in Maine over the last 10 years. With the advancement of technology, more intimate partners are using it to commit crimes that torment loved ones. Maine's entire law enforcement community must focus on these serious traumatizing crimes in order to have a meaningful impact.

Historically, the federal government lacked jurisdiction over domestic violence and stalking crimes. The increasing burden of addressing this problem fell upon state and local law enforcement officers and prosecutors. In 1994, Congress broadened federal criminal jurisdiction by enacting the Violence Against Women Act ("VAWA"). This legislation enables the federal government to assist states in the fight against domestic violence and stalking. Congress reaffirmed its commitment to this issue by enacting additional VAWA statutes in 1996, 2000, 2006, 2013, and 2022.

This document is designed to be a concise summary of the federal statutes now available to prosecute domestic violence and stalking offenses. We encourage referrals of cases to this Office which can be prosecuted under any of these statutes. Through such referrals, we hope to join state prosecutors and law enforcement in the effort to combat domestic violence and stalking in Maine. Prosecution of these crimes is a top priority of my administration. Please do not hesitate to contact my office if you have any questions about the applicability of any of these statutes to specific situations.



Darcie N. McElwee
United States Attorney

FEDERAL OFFENSES/STATUTES USED TO PROSECUTE DOMESTIC VIOLENCE OFFENDERS

The Violence Against Women Act (VAWA)

Interstate Travel to Commit Domestic Violence—18 U.S.C. §2261

18 U.S.C. §2261(a)(1)

It is a federal crime for a person to travel between states, or within the special maritime or territorial jurisdiction of the United States (SMTJ), or to enter or leave Indian country, with the intent to kill, injure, harass or intimidate that person's intimate partner or dating partner when in the course of or as a result of such travel the defendant commits or attempts to commit a violent crime against that intimate partner or dating partner. The law requires specific intent to kill, injure, harass or intimidate at the time of interstate travel. The term "intimate partner" includes a spouse, a former spouse, a past or present cohabitant (as long as the parties cohabitated as spouses), and parents of a child in common. The term "dating partner" refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

18 U.S.C. §2261(a)(2)

It is also a federal crime to cause an intimate partner or dating partner to cross state lines (or leave or enter Indian country) by force, coercion, duress or fraud, and during, or as a result of, or to facilitate such conduct or travel, to attempt or commit a crime of violence. This subsection does not require a showing of specific intent to cause the intimate partner or dating partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress or fraud.

Interstate Stalking

18 U.S.C. §2261A(1)

It is a federal crime to travel between states, or within the SMTJ, or enter or leave Indian country with the intent to kill, injure, harass, or place under surveillance with the intent to kill, injure, harass, or intimidate another person, if in the course of, or as a result of such travel, the defendant places such person in reasonable fear of the death of, or serious bodily injury to, or causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to that person, a member of that person's immediate family, or the pet, service animal, emotional support animal, or horse of that person. The law requires specific intent to violate this subsection at the time of interstate travel. "Immediate family" includes a spouse, parent, sibling, child or any other person living in the same household and related by blood or marriage.

Cyberstalking

18 U.S.C. §2261A(2)

It is a federal crime with intent to kill, injure, harass, or place under surveillance with the intent to kill, injure, harass or intimidate, to use the mail, any interactive computer service or electronic

communication service, or any facility of interstate commerce (including the Internet) to engage in a course of conduct that causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress or places such person in reasonable fear of the death of, or serious bodily injury to, that person, a member of that person's immediate family, that person's intimate partner, or the pet, service animal, emotional support animal, or horse of that person. A single communication is not sufficient. The statute defines a "course of conduct" as a "pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose."

Interstate Travel to Violate an Order of Protection—18 U.S.C. §2262

18 U.S.C. §2262(a)(1)

It is a federal crime to travel between states, or to enter or leave Indian country, or within the SMTJ with intent to violate the portion of a valid protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to another person, or the pet, service animal, emotional support animal, or horse of that person. To establish a violation of this statute, the Government must demonstrate that a person had the specific intent to engage in conduct that violates the qualifying portion of the protection order at the time of interstate travel and that a violation actually occurred. This statute does not require an intimate partner relationship - although this relationship may be required by the state or other governmental body issuing the order - nor does it require bodily injury.

18 U.S.C. §2262(a)(2)

It is also a federal crime to cause a person to cross state lines or enter or leave Indian country by force, coercion, duress or fraud, and during, or as a result of, or to facilitate such conduct or travel, to engage in conduct that violates the portion of the order of protection that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to another person, or the pet, service animal, emotional support animal, or horse of that person. This subsection does not require a showing of specific intent to cause another person to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress or fraud. The Government must also prove that a person violated the relevant portion of the protection order during the course of, or as a result of, or to facilitate the forced or coercive conduct or travel.

The Department of Justice recognizes that under both §§ 2262(a)(1) and (a)(2), law enforcement may be unable to verify the validity of a protection order at the time of arrest. Maine now participates in the NCIC Protection Order File, from which law enforcement and prosecutors can verify instantaneously the validity of protection orders. Not all states participate in this voluntary registry and not every Maine order may be entered. Please consult with an Assistant U.S. Attorney for guidance in these cases.

Penalties

Penalties for violations of Sections 2261, 2261A and 2262 hinge on the extent of the bodily injury to the victim. Maximum terms of imprisonment range from five years for no injury to life if the crime of violence results in the victim's death.

Firearm Offenses

Possession of Firearm While Subject to Order of Protection—18 U.S.C. §922(g)(8)

It is illegal for a person to possess a firearm while subject to a court order restraining such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child. The protection order must have been issued following a hearing as to which the defendant had actual notice and an opportunity to participate. The protection order must also include a specific finding that the defendant represents a credible threat to the physical safety of the victim, or must include an explicit prohibition against the use of force that would reasonably be expected to cause injury.

In Maine, the Protection-From-Abuse Order contains a discretionary firearm ban and the state district court may decide not to preclude firearm possession. A warning now appears on Maine's PFA orders notifying defendants that even if the state judge allows firearms possession, this possession may violate federal law. Again, please refer any questions about the applicability of this statute to any particular protection order to an Assistant U.S. Attorney.

Transfer of Firearm to Person Subject to Order of Protection, 18 U.S.C. §922(d)(8)

It is also illegal to transfer a firearm to a person knowing or having reasonable cause to believe that such person is subject to a court order that restrains him/her from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. A violation of Section 922(d)(8) must be knowing. Proof concerning knowledge on the part of the supplier may be difficult to establish unless the purchaser acknowledges in the firearm application that he/she is a prohibited person.

Official Use Exemption, 18 U.S.C. §925(a)(1)

The restrictions of Sections 922(d)(8) and (g)(8) do not apply to firearms issued by governmental agencies to a law enforcement officer or military personnel so long as the officer or military personnel is on duty.

Possession of Firearm After Conviction of Misdemeanor Crime of Domestic Violence, 18 U.S.C. §922(g)(9)

It is illegal to possess a firearm after conviction of a misdemeanor crime of domestic violence. A "misdemeanor crime of domestic violence" includes violations of local law. This prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the law's 1996 effective date. A qualifying misdemeanor domestic violence crime must have as an element the use or attempted use of physical force, or the threatened use of a deadly weapon. For example, a conviction for a misdemeanor violation of a protection order will not qualify, even if the violation was committed by a violent act, since the statute does not require the use or attempted use of physical force or the threatened use of a deadly weapon. The Supreme Court of the United States has found that a conviction under either prong of the Maine assault statute qualifies under federal law.

Recently, the First Circuit held that a conviction under § 922(g)(9) requires the government to prove that, at the time the defendant possessed the firearm, the defendant knew they had previously

been convicted of a qualifying “misdemeanor crime of domestic violence.” *United States v. Minor*, 31 F.4th 9 (1st Cir. 2022).

In addition, the statute contains due process requirements regarding the defendant's right to counsel and the defendant's right to a jury trial, if applicable. Absent compliance with these due process requirements, the misdemeanor conviction will not qualify as a domestic violence conviction for purposes of Section 922(g)(9). Moreover, a person may be able to possess a firearm if the conviction has been expunged or set aside.

Transfer of Firearm to Person Convicted of a Misdemeanor, Crime of Domestic Violence, 18 U.S.C. §922(d)(9)

It is also illegal to transfer a firearm to a person knowing or have reasonable cause to believe that such a person has been convicted of a misdemeanor crime of domestic violence. A “misdemeanor crime of domestic violence” includes violations of local law. A violation of Section 922(d)(9) must be knowing. Proof concerning knowledge on the part of the supplier may be difficult to establish unless the purchaser acknowledges in the firearm application that he/she is a prohibited person.

Official Use Exemption, 18 U.S.C. §925(a)(1)

The official use exemption does not apply to Sections 922(d)(9) and 922(g)(9). This means that law enforcement officers or military personnel who have been convicted of a qualifying domestic violence misdemeanor will not be able to possess or receive firearms for any purpose, including the performance of official duties. Additional questions about this statute should be referred to an Assistant U.S. Attorney.

Straw Purchase, 18 U.S.C. § 932

It is a violation of federal law for anyone knowingly purchase any firearm on behalf of, or at the request or demand of any other person, knowing or having reasonable cause to believe that such other person meets the criteria of 1 or more paragraphs of section 922(d), intends to use, carry, possess, or sell or otherwise dispose of the firearm in furtherance of a felony, a Federal crime of terrorism, or a drug trafficking crime, or intends to sell or otherwise dispose of the firearm to a person described in paragraph (1) or (2).

Penalties

The maximum term of imprisonment for a violation of Sections 922(d)(8), 922(g)(8), 922(d)(9), or 922(g)(9), is 15 years. The maximum term of imprisonment for a violation of 932 is 15 years; or, if the firearm was used in the commission of a felony, act of terrorism, or drug trafficking crime, the maximum term of imprisonment is 25 years.

Other Relevant Statutes

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

This civil law provides that a civil or criminal order issued by a court in one state or Indian tribe shall be accorded full faith and credit by the court of another state or tribe, and is to be enforced as if it were the order of the court of the second state or tribe. This law applies to permanent, temporary and ex parte protection orders that comply with the statute's requirements. To comply, the protection order must have provided the defendant with reasonable notice and an opportunity

to be heard, in a manner consistent with due process. This law does not apply to mutual protection orders if (a) the original respondent did not file a cross or counter petition seeking a protective order or (b) if such a cross or counter petition was filed, but the court did not make specific findings that each party was entitled to such an order. Registration of an order issued by another court or tribe is not required for enforcement. However, if an order is registered, no court shall notify a party against whom an order was entered that the order was registered unless requested to do so by the party protected under such order. Internet publication of protection order information is limited.

ATF Form 4473

ATF revised Form 4473 incorporates all the disqualifiers in the Gun Control Act. A purchaser of a firearm from a licensed firearm dealer must complete this amended ATF form certifying that he/she is not subject to a valid protection order and has not been convicted of a qualifying misdemeanor crime of domestic violence. Providing false information on this form may provide the basis for prosecution under 18 U.S.C. §922(a)(6), or §924(a)(1)(A).

Right of Victim to Speak at Bail Hearing , 18 U.S.C. §2263

The victim of a VAWA crime (Sections 2261, 2261A or 2262) has the right to be heard at a bail hearing with regard to the danger posed by the defendant. In addition, depending upon the circumstances of the case, our Office may move for pre-trial detention of the defendant.

Crime Victims' Rights Act, 18 U.S.C. § 3771

Under the Crime Victims' Rights Act (CVRA), federal crime victims, including a domestic violence victim, have the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
- (10) The right to be informed of the rights under the CVRA, the Victims' Rights Restitution Act, and provided contact information for the Department of Justice Office of Victims' Rights Ombudsman.

Restitution, 18 U.S.C. §2264

In a VAWA case, the Court must order restitution after conviction to reimburse the victim for the full amount of losses. These losses include costs for medical or psychological care, physical therapy, transportation, temporary housing, child care, lost income, attorney fees, costs incurred in obtaining a civil protection order, and any other losses suffered by the victim as a result of the offense. In a conviction under the Gun Control Act, the Court may order restitution.

Self-Petitioning for Battered Immigrant Women and Children, 8 U.S.C. §1154

VAWA specifically provides that battered and abused spouses and children of citizens and lawful permanent residents may self-petition for independent legal residency. This statute prevents citizens or residents from using the residency process as a means to exert control over an alien spouse or child. This statute may allow victims to remain in the United States independent of their abusive spouses/parents.

CONCLUSION

Our office telephone numbers and the names of supervisory attorneys and staff involved with violent crime are:

U.S. Attorney's Office

Portland: (207) 780-3257

Darcie McElwee, United States Attorney

Craig Wolff, First Assistant U.S. Attorney

Todd Lowell, Chief, Criminal Division

Counties: *Androscoggin, Cumberland, Knox, Lincoln, Oxford, Sagadahoc, York*

Johnathan Nathans, AUSA, Project Safe Neighborhoods Coordinator

Nicholas Heimbach, AUSA, VAWA Coordinator

Heather Putnam, Strategic Engagement & Law Enforcement Coordinator

Rachel Leonard, Victim Witness Specialist

Bangor: (207) 945-0373

Joel Casey, Supervisory AUSA

Counties: *Aroostook, Franklin, Hancock, Kennebec, Penobscot, Piscataquis,*

Somerset, Waldo, Washington

Karan Wotton, Victim Witness Specialist

Federal Agencies

ATF: (207) 780-3324

DEA: (207) 780-3331

FBI: (207) 541-0700 (Portland)

(207) 947-6670 (Bangor)

(207) 622-2902 (Augusta)

U.S. Marshal: (207) 780-3355

As we have noted throughout, any questions regarding the applicability of any of these statutes to specific situations should be referred to the Criminal Chief or an Assistant U.S. Attorney. By distributing this information, we hope to generate referrals to our office of appropriate cases and, through the imposition of significant federal sentences, assist state prosecutors and law enforcement personnel in their efforts to combat domestic violence and stalking within our state.



Project Safe Neighborhoods Task Force

Bangor

(207) 262-4694

Portland

(207) 771-3294

psnmaine@usdoj.gov

Darcie N. McElwee
United States Attorney

Portland

100 Middle Street,
East Tower—6th Floor
Portland, ME 04101
(207) 780-3257

Bangor

202 Harlow Street, Room 111
Bangor, ME 04401
(207) 945-0373

