

FEDERAL DOMESTIC VIOLENCE STATUTES
AND ELEMENTS FOR PROSECUTION



**DOMESTIC
VIOLENCE
INITIATIVE**

OFFICE OF THE UNITED STATES ATTORNEY
DISTRICT OF VERMONT

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Introduction

Domestic violence is a significant problem in our Nation and the State of Vermont. Nearly half of the women murdered during the past decade were killed by a current or former intimate partner. Roughly half of Vermont's homicides arise in the domestic violence context, with women most often the victim and the perpetrator frequently uses a gun. It is not surprising that Vermont law enforcement focuses on this crime. The causes of domestic violence are numerous and varied and require a concerted national and local effort if we are to succeed at reducing this problem.

Historically, the federal government lacked jurisdiction over domestic violence 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. Congress reaffirmed its commitment to this issue by enacting additional domestic violence related statutes in 1996, 2000, 2006, and 2013.

This document is designed to be a concise summary of the federal offenses/statutes now available to prosecute domestic violence offenders. We encourage referrals of cases to this office that can be prosecuted under any of these statutes. Through such referrals, we hope to continue and strengthen our partnership with our state prosecutors and law enforcement partners in the effort to combat domestic violence in Vermont. Please do not hesitate to contact my office if you have any questions about the applicability of any of these statutes to specific situations.



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Federal Offenses/Statutes Used to Prosecute Domestic Violence Offenders

FIREARM OFFENSES

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

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

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

It is a federal crime to transfer a firearm or ammunition to any person knowing or having reasonable cause to believe that such person is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person, or child of such intimate partner or person. A violation of Section 922(d)(8) must be “knowing.” Proof concerning knowledge on the part of the transferor of such firearm or ammunition may be difficult to establish.

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 a Firearm by a Person Convicted of a Felony – 18 U.S.C. 922(g)(1)

It is a federal crime for a person to possess a firearm who has been previously convicted of a crime punishable by imprisonment for more than one year.

In order to prove the defendant has violated the law, the government must show that the defendant both knew he possessed a gun and knew he had been convicted of a crime punishable by imprisonment for more than one year.

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

It is a federal crime to possess a firearm after conviction of a misdemeanor crime of domestic violence. A qualifying misdemeanor domestic-violence crime has a specific federal definition and requires the statute of conviction to have as an element the use or attempted use of physical force or the threatened use of a deadly weapon. An example of a qualifying crime is an assault conviction under Vermont Statutes Annotated, Title 13 § 1042, Domestic Assault, for “willfully or recklessly caus[ing] bodily injury to a family or household member.” The domestic violence crime must have been committed against a person with whom the defendant shares a child, a person with whom the defendant has cohabitated or is cohabitating as a domestic partner, a person to whom the defendant was or is married, or a person who is the child or ward of the defendant. The statute of conviction does not have to be specifically targeted at domestic violence as long as these other requirements are met.

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

It is also a federal crime to transfer a firearm to a person knowing or having reasonable cause to believe that such a person has been convicted of a misdemeanor crime of domestic violence. A violation of Section 922(d)(9) must be “knowing.” Proof concerning knowledge on the part of the transferor may be difficult to establish.

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 our Office.

Penalties—18 U.S.C. § 924(a)(2)

The maximum term of imprisonment for a violation of Sections 922(d)(8), 922(g)(8), 922(d)(9), or 922(g)(9), is 10 years.

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 to travel between states with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and in the course of, or as a result of, such travel, commit or attempt to commit a crime of violence against that spouse, intimate partner, or dating partner. The law requires specific intent to kill, injure, harass, or intimidate at the time of the interstate travel.

The term “spouse or intimate partner” includes (1) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabitated as a spouse with the abuser; (2) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser; and (3) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State jurisdiction in which the injury occurred or where the victim resides.

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 a spouse, intimate partner, or dating partner to cross state lines by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel, commit or attempt to commit a crime of violence against that spouse, intimate partner, or dating partner. 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 with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel, place that 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, (1) that person, (2) an immediate family member of that person, or (3) a spouse or intimate partner of that person. The law requires specific intent to violate this subsection at the time of the 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.

Cyber Stalking—18 U.S.C. § 2261A(2)

It is a federal crime, when acting with intent to kill, injure, harass, intimidate, or place under surveillance with the intent to kill, injure, harass, or intimidate, another person, to use the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate commerce (including the Internet) to engage in a course of conduct that either: (1) places that person in reasonable fear of the death of, or serious bodily injury to, that person, an immediate family member of that person, or a spouse or intimate partner of that person; or (2) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to that person, an immediate family member of that person, or a spouse or intimate partner 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 with intent to engage in conduct that violates 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, and subsequently engage in such conduct. 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 the 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 by force, coercion, duress, or fraud, and in the course of, or as a result of, or to facilitate such conduct or travel, engage in conduct that violates the portion of the protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another 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 such 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.

Penalties

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

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 shall be accorded full faith and credit by the court of another state, and is to be enforced as if it were the order of the court of the second state. 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 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 Form 4473 incorporates all the disqualifiers in the Gun Control Act. A purchaser of a firearm from a licensed firearm dealer must complete this 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) and/or 924(a)(1)(A), the laws punishing “lying-and-buying.”

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 and 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 or rehabilitation, 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

As we have noted throughout, any questions regarding the applicability of any of these statutes to specific situations should be referred to the U.S. Attorney's Office. By distributing this information, we hope to inform and educate on what federal statutes may be applicable. Through the imposition of significant federal sentences, we can assist our state prosecutors and law enforcement partners in their efforts to combat domestic violence within our state.



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