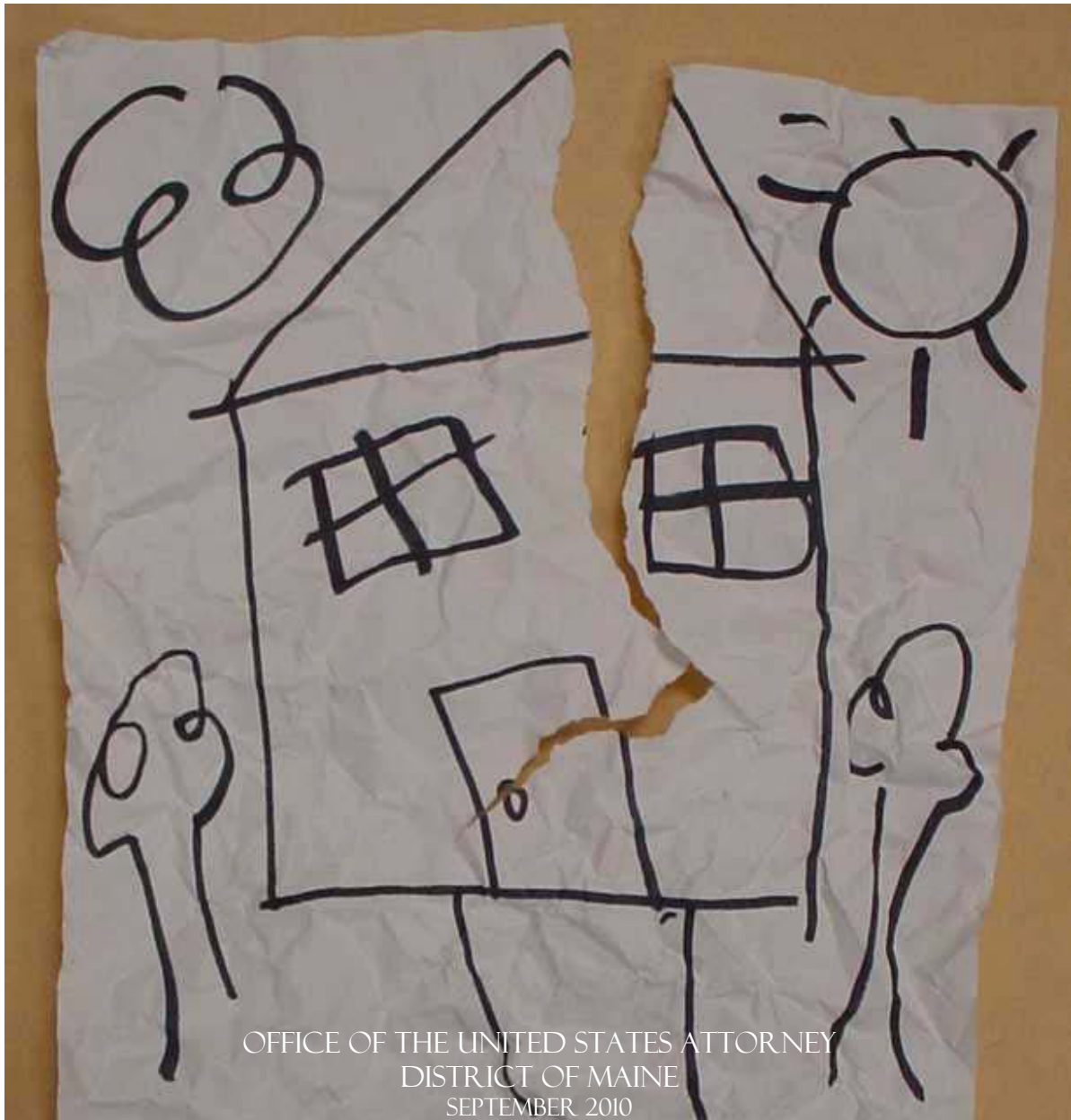


FEDERAL  
DOMESTIC VIOLENCE STATUTES  
AND  
ELEMENTS FOR FEDERAL PROSECUTION



OFFICE OF THE UNITED STATES ATTORNEY  
DISTRICT OF MAINE  
SEPTEMBER 2010



INDEX

<b>Introduction .....</b>	<b>4</b>
<b>The Violence Against Women Act .....</b>	<b>5</b>
<b>Firearm Offenses .....</b>	<b>7</b>
<b>Other Relevant Statutes .....</b>	<b>8</b>
<b>Conclusion .....</b>	<b>10</b>
<b>List of Federal Domestic Violence Statutes/Offenses .....</b>	<b>11</b>

## INTRODUCTION

Domestic violence is a significant problem in our nation and our state. In 2008 alone, over 40% of the 31 homicides in Maine were the result of domestic violence. It is not surprising that Maine law enforcement has designated domestic violence as its number one crime problem. The causes of domestic violence are numerous and varied. Solutions lie at many levels of our society 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 crimes in September 1996, October 2000, and January 2006.

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 join state prosecutors and law enforcement personnel in the effort to combat domestic violence in Maine. Please do not hesitate to contact my office if you have any questions about the applicability of any of these statutes to specific situations.



Thomas E. Delahanty II  
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 to 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 substantial emotional distress to, that person or a member of that person's immediate family. 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.

#### **Cyber Stalking**

##### **18 U.S.C. §2261A(2)**

It is a federal crime with intent to (1) kill, injure, harass, or place under surveillance with the intent to kill, injure, harass or intimidate, or (2) cause substantial emotional distress, or place in reasonable fear of death or

serious bodily injury a person in another State or tribal jurisdiction, or within the SMTJ; to use the mail, any interactive computer service, including the Internet, or any facility of interstate commerce to engage in a course of conduct that causes substantial emotional distress or places such person in reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family or that person's intimate partner. 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. 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. 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 our Office 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 and/or ammunition 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 possession 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 still violate federal law. Again, please refer any questions about the applicability of this statute to any particular protection order to our Office.

### **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**

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. 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 First Circuit has found that a conviction under either prong of the Maine assault statute qualifies under federal law as a misdemeanor crime of domestic violence as long as the relationship between the parties satisfies the statute.

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 violation of Section 922(d)(9) must be knowing. Assistance in satisfying the knowledge requirement is provided by amendment of the ATF Form 4473 to require a purchaser of a firearm to state that he/she has not been convicted of a misdemeanor crime of domestic violence.

**Official Use Exemption, 18 U.S.C. §925**

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**

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.

## 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. Amendments in 2005 limit Internet publication of protection order information.

**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).

**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, a right that need not be exercised, 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, enacted October 30, 2004, all 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.

**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's 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 status. 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 husbands/parents.

## CONCLUSION

Our office telephone numbers and the names of supervisory attorneys are:

U.S. Attorney's Office:

Portland: (207) 780-3257

Bangor: (207) 945-0373

Thomas E. Delahanty II—United States Attorney

Richard W. Murphy—First Assistant U.S. Attorney

Jonathan R. Chapman—Chief, Criminal Division

F. Todd Lowell - Asst. U.S. Attorney, Bangor Branch Manager

Gail Fisk Malone—Asst. U.S. Attorney, Domestic Violence Point of Contact

Darcie N. McElwee—Assistant U.S. Attorney, PSN/Sentry/Anti-Gang Coordinator

Heather Putnam, Victim Witness/Law Enforcement Coordinator

Marilyn DiBonaventuro, Victim Witness Assistant

### Federal Agencies

ATF: (207) 780-3324

DEA: (207) 780-3331

FBI: (207) 774-9322 (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 U.S. Attorney 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 within our state.

## **LIST OF FEDERAL DOMESTIC VIOLENCE STATUTES/OFFENSES**

### **Violence Against Women Act Offenses**

- Interstate travel to commit domestic violence - 18 U.S.C. § 2261
- Interstate stalking - 18 U.S.C. § 2261A
- Interstate travel to violate a Protection Order - 18 U.S.C. § 2262

### **Firearms Offenses**

- Possession of a firearm while subject to a Protection Order - 18 U.S.C. § 922(g)(8)
- Transfer of a firearm to a person subject to a Protection Order - 18 U.S.C. § 922(d)(8)
- Possession of a firearm after conviction of a misdemeanor crime of domestic violence - 18 U.S.C. § 922(g)(9)
- Transfer of a firearm to a person convicted of a misdemeanor crime of domestic violence - 18 U.S.C. § 922(d)(9)
- Official use exemption from firearms offenses (except §§ 922(d)(9) and 922(g)(9)) - 18 U.S.C. § 925(a)(1)

### **Other Relevant Statutes**

- Full Faith and Credit - 18 U.S.C. § 2265
- Brady statement - 18 U.S.C. § 922(s)
- Right of victim to be heard at bail hearing - 18 U.S.C. § 2263
- Crime Victims' Rights Act - 18 U.S.C. § 3771
- Restitution - 18 U.S.C. § 2264
- Self-Petitioning for battered immigrant women and children - 8 U.S.C. § 1154.



Office Of The United States Attorney  
District of Maine  
100 Middle Street  
Portland, Maine 04101

Thomas E. Delahanty II  
United States Attorney

207-780-3257

*Cover artwork based on a design by the Michigan Judicial Institute.*