

# **Hope For Children Foundation**

**Presents:**

## **Violence Against Women Act Federal Domestic Violence Laws**

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## **OUTLINE OF PRESENTATION ON FEDERAL DOMESTIC VIOLENCE LAWS**

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### **I. WHEN IS FEDERAL PROSECUTION APPROPRIATE IN A DOMESTIC VIOLENCE CASE?**

- A. Where state penalties don't adequately fit the crime and federal prosecution can result in significantly more time.**
  - 1. In federal system there is no parole, limited "good time", and a mandatory period of supervised release from prison where Court can craft "protective" terms and conditions.**
  - 2. Firearm count will add consecutive five years to punishment imposed for crime of violence. 18 U.S.C. 924(c)**
- B. Where release on bond is an issue. Federal pre-trial detention statute can be used to detain defendant without bond.**
  - 1. Defendant is detained if after a hearing judicial officer finds no condition or combination of conditions will reasonably assure the safety of another person. 18 U.S.C. 3142(e)**
  - 2. A judicial officer conducting a detention hearing in a domestic violence case must give the victim an opportunity to be heard concerning the defendant's dangerousness. 18 U.S.C. 2263**
  - 3. Where there is probable cause that the defendant used a firearm in connection with a domestic violence crime a rebuttable presumption arises that no conditions of release can reasonably assure safety of others.**
- C. Where crime is interstate in nature and it may be difficult for local law enforcement to gather evidence.**
- D. Where there is no appropriate state charge. )firearm disability 18 U.S.C. 922(g)(8)**

### **II. EVALUATION OF A CASE BY THE U.S. ATTORNEY'S OFFICE**

### **III. THE FEDERAL DOMESTIC VIOLENCE STATUTES**

#### **A. Interstate Domestic Violence. 18 U.S.C. 2261**

- 1. Elements**
- 2. Potential Defenses**
- 3. Examples**

#### **B. Interstate Stalking. 18 U.S.C. 2261A**

- 1. Elements**
- 2. Potential Defenses**
- 3. Examples**

#### **C. Interstate Violation of Protection Order. 18 U.S.C. 2262**

- 1. Elements**
- 2. Potential Defenses**
- 3. Examples**

#### **D. Possession of a Firearm While Subject to a Protection Order. 18 U.S.C. 922(g)(8)**

- 1. Elements**
- 2. Potential Defenses**
- 3. Examples**

## FEDERAL DOMESTIC VIOLENCE LAWS

### 1. INTERSTATE DOMESTIC VIOLENCE: CROSSING A STATE LINE

The statute:

18 U.S.C. 2261(a) 910 Interstate Domestic Violence

Crossing a State Line - A person who travels across a state line or enters Or leaves Indian Country with the intent to injure, harass, or intimidate that person's spouse or intimate partner, and who, in the course of or as a result such Travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner, shall be punished as provided in subsection (b).

Elements of the Offense:

- (1) The victim must be a spouse or intimate partner of the defendant:
- (2) The defendant must have crossed state lines or entered or left Indian Country with the intent to injure, harass, or intimidate the spouse or intimate partner.
- (3) In the course of or as a result of the travel across state lines, the defendant must have intentionally committed a crime of violence; and
- (4) The defendant thereby caused bodily injury to the victim spouse or intimate partner.

Possible Defenses:

Lack of Intent. The defendant can be expected to argue that he lacked the specific intent to injure or harass the victim when he crossed state lines.

Example of How the Statute Has Been Used

U.S. v. William Lankford (N.D. Tex.) The defendant in this case, a karate instructor, abducted his estranged wife at gunpoint in Texas and then drove her to Oklahoma where he sexually assaulted her. This abduction and assault followed several earlier domestic violence incidents under investigation by the state. The initial trial resulted in a hung jury. The defendant was convicted at the second trial and sentenced to 16 years.

2. INTERSTATE DOMESTIC VIOLENCE: CAUSING THE CROSSING OF THE STATE LINE.

The Statute:

18 U.S.C. 2261(a)(2) Interstate Domestic Violence

Causing the Crossing of the State Line – A person who causes a spouse or intimate partner to cross a State line or to enter or leave Indian country by force, coercion, duress, or fraud, and, in the course of or as a result of that conduct, intentionally commits a crime of violence and thereby causes bodily injury to the person’s spouse or intimate partner, shall be punished as provided in subsection (b).

Elements of the Offense:

- (1) The victim is a spouse or intimate partner of the defendant;
- (2) The defendant caused the victim spouse or intimate partner to cross a State line or to enter or leave Indian country by force, coercion, duress or frauds;
- (3) In the course of or as a result of that conduct, the defendant intentionally committed a crime of violence; and
- (4) The defendant thereby caused bodily injury to the victim spouse or intimate partner.

Possible Defenses:

Consent defense. Common to many domestic violence cases, defendants can be expected to argue that the victim was not forced or coerced across state or Indian Territory lines, but consented to travel with the defendant.

Violence not in the course of causing the spouse or intimate partner to cross the state line. In some of the cases brought to date under this provision, the defendant first severely beat his victim before placing her in a car and transporting her across state lines. These defendants have argued that the initial beating was not violence “in the course of” causing the spouse or intimate partner to cross the state line.

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<sup>1</sup>This statute does not require the specific intent of cause a spouse or intimate partner to cross state or Indian Territory lines. Rather, there must be proof of force, coercion, duress or fraud.

## Examples of How the Statute Has Been Used:

This statute has been used effectively in a couple of situations:

U.S. v. Derek Page (S.D. Ohio). In this case, the defendant severely beat his intimate partner in Ohio. Then, rather than taking her to a local hospital, he drove her to a Pennsylvanian hospital over a 100 miles away to avoid Ohio's domestic violence arrest policy. The fact that the victim was terribly injured before being placed in the car precluded any real argument that the initial beating was in the course of causing the victim to cross state lines was consensual. The government also argued successfully that the initial beating was in the course of causing the victim to cross state lines and that the victim continued to suffer bodily injury by being driven around in her injured condition.

U.S. v. Christopher Bailey (S.D.W.V.) Christopher Bailey beat his wife to unconsciousness in West Virginia and then drove her around for several days, part of the time in his trunk, before taking her to a hospital in Kentucky. There was no real issue in this case either about whether force was used to cause the victim to cross state lines. And, as above, the government was successful in its argument that the initial beating as well as continued injury to his victim by keeping her away from a hospital were crimes of violence that occurred in the course of forcing the victim to cross state lines. The defendant was sentenced to 20 years for this offence and life for kidnapping.

### 3. INTERSTATE STALKING

The Statute:

18 U.S.C. 2261(A) Interstate Stalking

Whoever travels across a State line or within the special maritime and territorial

Jurisdiction of the United States with the intent to injure or harass another person, and in the course of, or as a result of, such travel places that person in a reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's immediate family shall be punished as provided in Section 2261.

Elements:

- (1) The defendant travels across a state line, or within the special maritime or territorial jurisdiction of the United States:
- (2) with the intent to injure or harass another person; and
- (3) in the course of, or as a result of, such travel the defendant places that person in reasonable fear of the death or serious bodily injury to either,
  - (a) that person or,
  - (b) a member of that person's immediate family.

Possible Defenses:

Lack of Intent. As with interstate domestic violence 18 U.S.C. 2261(a)(1), the defendant can be expected to argue that he lacked the specific intent to injure or harass the victim when he crossed state lines.

Examples of How the Statute Has Been Used:

Effective September, 1996. There are no examples to date.

4. INTERSTATE VIOLATION OF A PROTECTION ORDER: CROSSING A STATE LINE

The Statute:

18 U.S.C. 2262(a)(1) Interstate Violation of a Protection Order

(1) Crossing a State Line – A person who travels across a State line or enters or leaves Indian country with the intent to engage in conduct that –

(A)(i) violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons to whom the protection order was issued; or

(ii) would violate subparagraph (A) if the conduct occurred in the jurisdiction in which the order was issued; and

(B) subsequently engages in such conduct,

shall be punished as provided in subsection (b).

Elements:

- (1) The victim has a court-issued protection order for the purpose of preventing credible threats of violence, repeated harassment or bodily injury by the defendant;
- (2) The defendant traveled across state lines with the intent to engage in conduct that would violate this protection order, or would violate the order if the conduct occurred in the jurisdiction in which the order was issued; and
- (3) The defendant subsequently did engage in such conduct.

Defenses:

Lack of Intent. As with 2261(a)(1), this is a specific intent crime and the defendant will likely argue that he did not have the intent to engage in conduct that would violate the protection order when he crossed the state line.

Lack of notice/Order not valid. The statute is unclear about the extent of notice the defendant must have had for a protection order to be considered valid. The Northern District of New York determined that actual notice was sufficient to satisfy federal due process standards.



Examples of How the Statute Has Been Used:

U.S. v. Michael Casciano (N.D.N.Y.). In this case, the victim obtained a restraining order in Massachusetts against the defendant to stop him from stalking and harassing her. The victim then moved to New York for a job. However, the defendant followed her there and continued to stalk her and harass her on the telephone. While the defendant attempted to argue that he did not intend to harass the victim when he traveled from Massachusetts to New York, evidence that he had no other reason for moving to Syracuse, that he lied about looking for a position at the University, and that he stalked the victim in Massachusetts and in New York, convinced the jury that he did have the requisite intent to violate the protection order when he crossed state lines. While it was not proven that the defendant had in hand notice of the protection order, the court found that it was sufficient that he had actual notice of the order based on the conversation between the victim and defendant.

5. INTERSTATE VIOLATION OF A PROTECTION ORDER: CAUSING THE CROSSING OF A STATE LINE.

The Statute:

18 U.S.C. 2262(a)(2) Interstate Violation of a Protection Order

- (1) Causing the Crossing of a State Line – A person who causes a spouse or intimate partner to cross a State line or to enter or leave Indian country by force, coercion, duress, or fraud, and, in the course of or as a result of that conduct, intentionally commits an act that injures the person’s spouse or intimate partner in violation of a valid protection order issued by a State shall be punished as provided in subsection (b).

Elements:

- (1) The victim is a spouse or intimate partner of the defendant;
- (2) The victim has a valid protection order against the defendant;
- (3) The defendant caused the spouse or intimate partner to cross a State line or enter or leave Indian country by force, coercion, duress, or fraud; and
- (4) In the course of or as a result of that conduct, the defendant intentionally committed an act that injures the victim or intimate partner in violation of a valid protection order.

Defenses:

Lack of notice/Order not valid. Again, the statute is unclear about the extent of notice the defendant must have had for a protection order to be considered valid.

Example of How the Statute Has Been Used:

There are no examples to date.

## SOME DEFINITIONS

A “spouse or intimate partner” includes (A) a spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits or who has cohabited with the abuser as a spouse: and (B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides. 18 U.S.C. 2266. There may be a gap in the application of these criminal provisions to two people who live together but do not intend to get married and who do not fall under state domestic or family violence laws.

“Bodily injury” means any act, except one done in self-defense, that results in physical injury or sexual abuse. 18 U.S.C. 2266.

A “protection order” includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection. 18 U.S.C. 2266.

## PENALTIES AND RESTITUTION

### The Penalties.

The penalties for Interstate Domestic Violence, 18 U.S.C. 2261, Interstate Stalking, 18 U.S.C. 2261, and Interstate Violation of a Protection Order, 18 U.S.C. 2262, are the same. The penalties are as follows based on injury to the victim:

<u>Injury to the Victim</u>	<u>Term of Imprisonment</u>
Death	Life or any term of years
Permanent disfigurement or Life threatening injury	Not more than 20 years
Serious bodily injury	Not more than 10 years
If Offender uses a dangerous weapon during the offense	Not more than 10 years
In any other case	Not more than 5 years

The statute also provides that the penalties for Chapter 109A pertaining to Sexual Abuse shall apply to that conduct would constitute an offense under Chapter 109A without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a federal prison. 18 U.S.C. 2261(b)(4).

### Restitution.

In addition to these penalties, VAWA makes restitution mandatory for both offenses.

The court shall direct the defendant to pay the full amount of the victim's losses, including: medical expenses; physical therapy; necessary transportation, temporary housing and child care expenses; lost income; attorney's fee, including costs incurred in obtaining a restraining order, and any other losses. 18 U.S.C. 2264(b)(3).

Compliance with the court's restitution order shall be a condition of probation or supervised release. 18 U.S.C. 2264(b)(10).

The court may not decline to order restitution based on the defendant's economic circumstances or because the victim has or is entitled to insurance benefits for his or her injuries. However, the court may consider the defendant's economic circumstances in setting a pay schedule. 18 U.S.C. 2264(b)(4).

The United States Attorney shall enforce the restitution order by all available and reasonable means. In addition, the victim may civilly enforce the restitution order. 18 U.S.C. 2264(b)(1)(B), (b)(2).

## FIREARMS OFFENSES

The Statute:

18 U.S.C. 922(g) [Firearms Disability Provision]

It shall be unlawful for any person –

(8) who is subject to a court order that –

- (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
- (B) restrains such person 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;
- (C) (I) 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,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Elements of the Offense:

- (1) the court order must have been issued following an evidentiary hearing of which the defendant had notice and an opportunity to appear;
- (2) The order must restrain the defendant from harassing, stalking, or threatening an intimate partner or child of the intimate partner or defendant, or engaging in any conduct that would place an intimate partner or child in reasonable fear of bodily injury; and

- (3) The order must either include a specific finding that the defendant represents a credible threat to the physical safety of the intimate partner or child; or by its terms explicitly prohibit the use, attempted use, or threatened use of physical force that would reasonable be expected to cause bodily injury.

Possible Defenses:

Unconstitutional. The constitutionality of the firearms prohibition against a newly created class may be challenged, particularly when no criminal charges or convictions underlie the protective order (as in a divorce proceeding).

Examples of How the Statute Has Been Used:

U.S. v. Goben (D.S.D.) On October 18, 1994, Robert M. Goben, resident of South Dakota, became subject to a court order restraining him from harassing or threatening his estranged wife. Approximately five months later, while still subject to the restraining order, local police discovered that Mr. Goben possessed a loaded .22-caliber magnum revolver. Mr. Goben was arrested and September 11, 1995, pled guilty to illegally possessing a firearm in violation of 922(g)(8). The defendant was sentenced to 12 months in prison.

Penalty:

Ten years in prison, a \$250,000.00 fine, or both. Sec. 18 U.S.C. 924(a)(2).

Definitions:

- (1) The term “intimate partner” includes a spouse or former spouse, but does not include a girlfriend or boyfriend with whom the defendant has not resided. Sec. 18 U.S.C. 921(a)(32).





