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**SENTENCING
DOMESTIC VIOLENCE**



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DOUGLAS COUNTY SOLICITOR-GENERAL

National Domestic Violence Statistics

- Since 1976, each year about **30%** of all female murder victims are **killed by their intimate partner**.
- Nearly **one in three American women** report being physically or sexually abused by a husband or boyfriend at some point in their lives.
- A national survey reported that **50%** of the men who frequently assaulted their wives also frequently **abused their children**.

GA DOMESTIC VIOLENCE DEATHS

YEAR	2008	2007	2006	2005	2004	2003
DV FATALITIES	111	118	106	127	110	137

GA DOMESTIC VIOLENCE STATS

- Georgia was recently ranked **15th** in the nation for its rate of **men killing women**.
- GA has been in the top 20 for all 10 years of the study.
- GA law enforcement officers responded to 64,464 incidents of domestic violence.

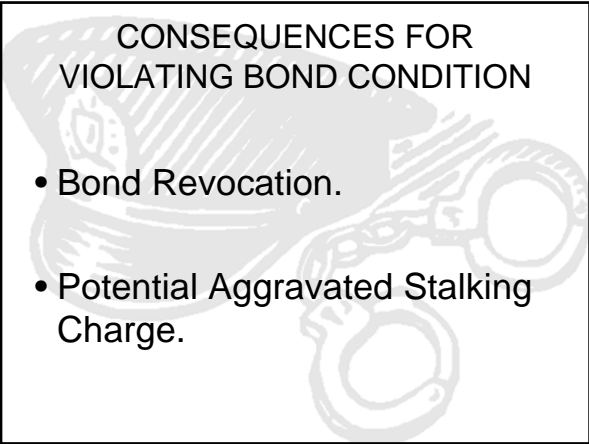
THE PROBLEM IS HERE!!!!!!

INITIAL APPEARANCE / BOND HEARING

- First opportunity to control the defendant and protect the victim.
- Try to get the victim there.
 - Urge law enforcement to inform victims about bond hearings / times / locations.
 - Make sure advocate groups are aware of bond hearing procedures.

BOND CONDITIONS

- No alcohol.
- No firearms.
- Anger management.
- Family violence intervention.
- Stay away from victim's residence, workplace, etc.
- No contact with victim.



CONSEQUENCES FOR VIOLATING BOND CONDITION

- Bond Revocation.
- Potential Aggravated Stalking Charge.



RESTRAINING / PROTECTIVE ORDERS TWO TYPES

- Stalking Restraining Order
OCGA § 16-5-94
- Family Violence Protective Order
OCGA § 19-13-3



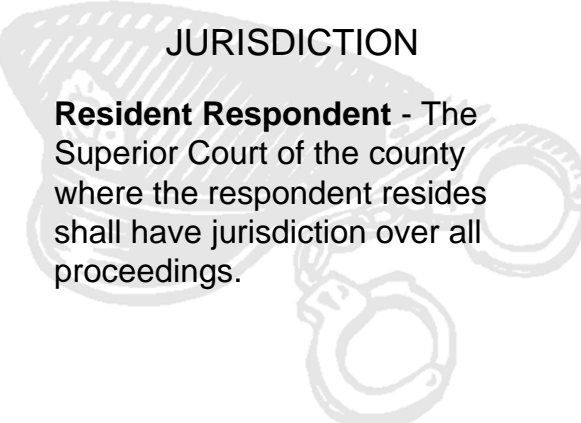
STALKING RESTRAINING ORDER

16-5-94. Restraining orders; protective orders.

A person who is not a minor who alleges stalking by another person may seek a restraining order by filing a petition alleging conduct constituting stalking as defined in Code Section 16-5-90. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.

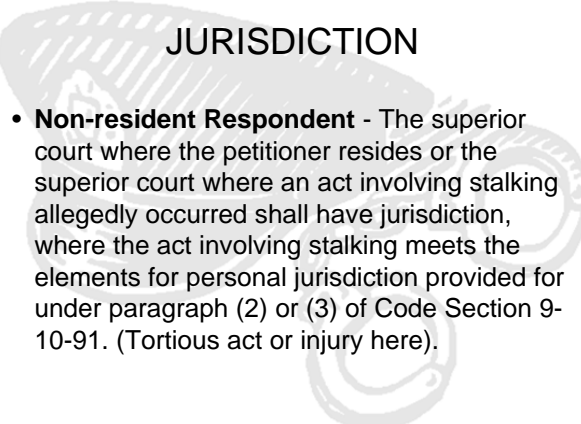
JURISDICTION

Resident Respondent - The Superior Court of the county where the respondent resides shall have jurisdiction over all proceedings.



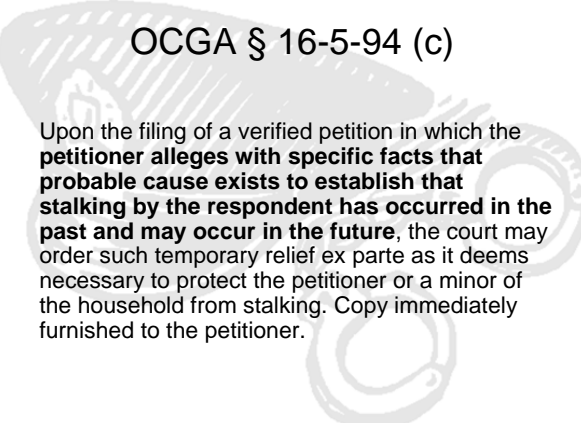
JURISDICTION

- **Non-resident Respondent** - The superior court where the petitioner resides or the superior court where an act involving stalking allegedly occurred shall have jurisdiction, where the act involving stalking meets the elements for personal jurisdiction provided for under paragraph (2) or (3) of Code Section 9-10-91. (Tortious act or injury here).



OCGA § 16-5-94 (c)

Upon the filing of a verified petition in which the **petitioner alleges with specific facts that probable cause exists to establish that stalking by the respondent has occurred in the past and may occur in the future**, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from stalking. Copy immediately furnished to the petitioner.



OCGA § 16-5-94(e)

Incorporating OCGA §19-13-3

Within ten days of the filing of the petition under this article or **as soon as practical thereafter, but in no case later than 30 days after the filing of the petition**, a hearing shall be held (in the county where filed or another county within the circuit) at which the petitioner must prove the allegations of the petition by a **preponderance of the evidence**.

If a hearing is not held within 30 days, the petition shall stand dismissed unless the parties otherwise agree.

OCGA § 16-5-94

(d) The court may grant a protective order or approve a consent agreement to bring about a cessation of conduct constituting stalking. Orders or agreements may:

- (1) Direct a party to refrain from such conduct;
- (2) Order a party to refrain from harassing or interfering with the other;
- (3) Award costs and attorney's fees to either party; and
- (4) Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent recurrence of stalking.

OCGA § 16-5-94(e)

Incorporating OCGA §19-13-3

- Social service agency or victim advocate group staff members designated by the Superior Court may assist unrepresented victims with forms, filings and pleadings.
- Superior court clerk may provide necessary forms but not required to help complete forms or present case.
- No cost to petitioner for assistance and assistance shall not constitute practice of law.

OCGA § 16-5-94(e)
Incorporating OCGA §19-13-4

OCGA §19-13-4

(b) A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect.

(c) Any order granted under this Code section shall remain in effect for up to one year; provided, however, that upon the motion of a petitioner and notice to the respondent and after a hearing, the court in its discretion may convert a temporary order granted under this Code section to an order effective for not more than **three years** or to a **permanent order**.

DUTY TO ENFORCE

OCGA §19-13-4

(d) A protective order issued pursuant to this Code section shall apply and shall be effective throughout this state. It shall be the duty of every superior court and of every sheriff, every deputy sheriff, and every state, county, or municipal law enforcement officer within this state to enforce and carry out the terms of any valid protective order issued by any court under the provisions of this Code section.

Violation of Stalking Protective Order

16-5-91. Aggravated stalking.

(a) A person commits the offense of aggravated stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-110, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, good behavior bond, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the behavior described in this subsection, follows, places under surveillance, or contacts another person at or about a place or places **without the consent of the other person for the purpose of harassing and intimidating the other person.**

Punishment: Up to 10 years in prison and up to \$10,000 fine.

FAMILY VIOLENCE PROTECTIVE ORDER

OCGA § 19-13-3

(a) A person who is not a minor may seek relief under this article by filing a petition with the superior court alleging one or more acts of family violence. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.

JURISDICTION

OCGA § 19-13-2 (a)

Resident Respondent - The Superior Court of the county where the respondent resides shall have jurisdiction over all proceedings.

JURISDICTION

OCGA § 19-13-2 (b)

Non-resident Respondent - The superior court where the petitioner resides or the superior court where an act involving family violence allegedly occurred shall have jurisdiction, where the act involving family violence meets the elements for personal jurisdiction provided for under paragraph (2) or (3) of Code Section 9-10-91. (Tortious act or injury here).

TEMPORARY PROTECTIVE ORDER

OCGA § 19-13-3

(b) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that family violence has occurred in the past and may occur in the future, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from violence. If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner.

OCGA §19-13-3(c) (HEARING)

Within ten days of the filing of the petition under this article or **as soon as practical thereafter, but in no case later than 30 days after the filing of the petition**, a hearing shall be held (in the county where filed or another county within the circuit) at which the petitioner must prove the allegations of the petition by a **preponderance of the evidence**.

If a hearing is not held within 30 days, the petition shall stand dismissed unless the parties otherwise agree.

OCGA § 19-13-4(a)

Family Violence Orders may:

- (1) Direct the respondent to refrain from such acts;
- (2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;
- (3) Require a party to provide suitable alternate housing for a spouse, former spouse, or parent and the parties' child or children;
- (4) Award temporary custody of minor children and establish temporary visitation rights;
- (5) Order the eviction of a party from the residence or household and order assistance to the victim in returning to it, or order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered;
- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the support of a spouse as required by law;
- (8) Provide for possession of personal property of the parties;
- (9) Order the respondent to refrain from harassing or interfering with the victim;
- (10) Award costs and attorney's fees to either party; and
- (11) Order the respondent to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.

EFFECTIVE PERIOD

OCGA §19-13-4

(b) A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect.

(c) Any order granted under this Code section shall remain in effect for up to one year; provided, however, that upon the motion of a petitioner and notice to the respondent and after a hearing, the court in its discretion may convert a temporary order granted under this Code section to an order effective for not more than **three years** or to a **permanent order**.

ASSISTING VICTIMS

OCGA §19-13-3(d)

- Social service agency or victim advocate group staff members designated by the Superior Court may assist unrepresented victims with forms, filings and pleadings.
- Superior court clerk may provide necessary forms but not required to help complete forms or present case.
- No cost to petitioner for assistance and assistance shall not constitute practice of law.

ASSISTING VICTIMS

- Website: georgiaadvocates.org/gojc
– Georgia Online Justice Community

Advocate registered with the site must access the questionnaire.

Victim or advocate can fill out the form.

Victim or Advocate files the form.

**DUTY TO ENFORCE
FVA PROTECTIVE ORDERS**

OCGA §19-13-4

(d) A protective order issued pursuant to this Code section shall apply and shall be effective throughout this state. It shall be the duty of every superior court and of every sheriff, every deputy sheriff, and every state, county, or municipal law enforcement officer within this state to enforce and carry out the terms of any valid protective order issued by any court under the provisions of this Code section.

OCGA §16-5-95 VIOLATING FVA ORDER

(a) A person commits the offense of violating a family violence order when the person knowingly and in a nonviolent manner violates the terms of a family violence temporary restraining order, temporary protective order, permanent restraining order, or permanent protective order issued against that person pursuant to Article 1 of Chapter 13 of Title 19, which:

- (1) Excludes, evicts, or excludes and evicts the person from a residence or household;
- (2) Directs the person to stay away from a residence, workplace, or school;
- (3) Restrains the person from approaching within a specified distance of another person; or
- (4) Restricts the person from having any contact, direct or indirect, by telephone, pager, facsimile, e-mail, or any other means of communication with another person, except as specified in the order.

(b) Any person convicted of a violation of subsection (a) of this Code section shall be guilty of a misdemeanor.

PROSECUTING AS AGGRAVATED STALKING

(c) Nothing contained in this Code section shall prohibit a prosecution for the offense of stalking or aggravated stalking that arose out of the same course of conduct; provided, however, that, for purposes of sentencing, a violation of this Code section shall be merged with a violation of any provision of Code Section 16-5-90 or 16-5-91 that arose out of the same course of conduct.

SENTENCING FVA CRIMES

Georgia law provides for enhanced punishment for individuals committing crimes against certain individuals they share a domestic relationship with.

Family Violence

Family Violence is the commission of certain crimes 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.

FVA Crimes

- Any Felony
- Misdemeanors:
 - battery
 - simple battery
 - simple assault / assault
 - stalking
 - criminal damage to property
 - unlawful restraint
 - criminal trespass.

FELONY FVA ENHANCEMENTS

FVA AGGRAVATED ASSULT

If the offense of aggravated assault is committed 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 excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years.

FELONY FVA ENHANCEMENTS

FVA AGGRAVATED BATTERY

If the offense of aggravated battery is committed 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 excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years.

MISDEMEANOR FVA ENHANCEMENTS

Simple Assault & Simple Battery become High and Aggravated Misdemeanors when prosecuted as FVA crimes.

High and Aggravated Misdemeanors carry a fine of up to \$5000 and offenders can only earn four good days per month.

FVA Battery

16-5-23.1. Battery.

(a) A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another.

Visible Bodily Harm

Visible Bodily Harm - bodily harm capable of being perceived by a person other than the victim and may include, but is not limited to:

- substantially blackened eyes
- substantially swollen lips or other facial or body parts
- substantial bruises to body parts.

FVA Battery Punishment

- (1) Upon a first conviction of family violence battery, the defendant shall be guilty of and punished for a misdemeanor; and
- (2) Upon a second or subsequent conviction of family violence battery against the same or another victim, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years.

BE AGGRESSIVE

16-5-21. Aggravated assault.

(a) A person commits the offense of aggravated assault when he or she assaults:

(2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury.

THERE IS NO SUCH THING AS SIMPLE ASSAULT WITH A GUN OR KNIFE!!!!

BE AGGRESSIVE

- If there are bruises or marks charge FVA Battery instead of Simple Battery.
- If the beating is severe, consider the charge of Aggravated Battery.

Battery



Agg Battery?



Temporary Uselessness?



Serious Disfigurement?

PROBATION CONDITIONS

- No Alcohol
 - Random alcohol & drug testing.
 - SCRAM Bracelet (Secure Continuous Remote Alcohol Monitor).
 - Banishment from the local watering hole.

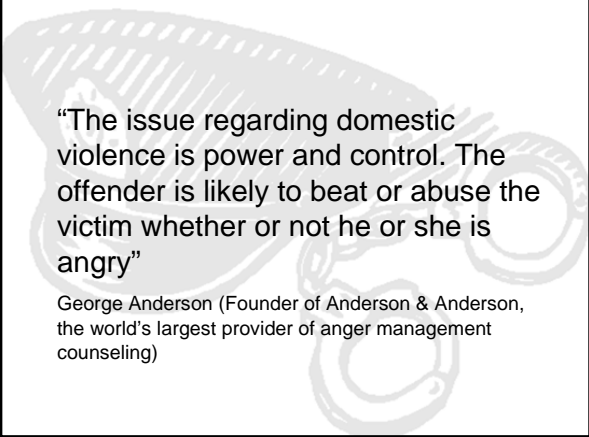
Some studies say 45% to over 80% of domestic violence cases are alcohol related.

PROBATION CONDITIONS

Anger Management Programs

v.

Domestic/ Family Violence Programs



“The issue regarding domestic violence is power and control. The offender is likely to beat or abuse the victim whether or not he or she is angry”

George Anderson (Founder of Anderson & Anderson, the world's largest provider of anger management counseling)

FAMILY VIOLENCE INTERVENTION PROGRAM

Any program that is certified by the Department of Corrections pursuant to Code Section 19-13-14 and designed to rehabilitate family violence offenders. The term includes, but is not limited to, batterer intervention programs, anger management programs, anger counseling, family problem resolution, and violence therapy.

FVIP

Designed to rehabilitate family violence offenders and charged with prioritizing victim safety and participant accountability.

24 Week Program.

Average cost of \$30 per class borne by the defendant (\$50 max).

Compliance and termination notifications sent to court and probation office.

OCGA § 19-13-16 MANDATORY PARTICIPATION IN FVIP

(a) A court, in addition to imposing any penalty provided by law, when sentencing a defendant or revoking a defendant's probation for an offense involving family violence, or when imposing a protective order against family violence, shall order the defendant to participate in a family violence intervention program, whether a certified program pursuant to this article or a program operated pursuant to Code Section 19-13-15, unless the court determines and states on the record why participation in such a program is not appropriate.

OTHER PROBATION CONDITIONS

- No contact with victim.
- Stay away from victim's residence, workplace, etc...
- Surrender firearms.
- Pay child support.
- Curfew.
- Community Service.

