

TABLE OF CONTENTS

ACKNOWLEDGEMENTS.....	vii
PREFACE.....	x
INTRODUCTION.....	xi
1 CHAPTER 1 – CIVIL PROTECTIVE ORDERS	1:1
1.1 Overview.....	1:1
1.2 Family Violence Protective Orders (O.C.G.A. § 19-13-1 et seq.).....	1:2
1.3 Stalking Protective Orders (O.C.G.A. § 16-5-94)	1:9
1.4 Employer Protective Orders (O.C.G.A. § 34-1-7).....	1:12
1.5 Constitutional Considerations.....	1:14
1.6 Divorce Action Restraining Orders	1:15
2 CHAPTER 2 – JURISDICTION AND PROCEDURE.....	2:1
2.1 Jurisdiction & Venue	2:1
2.2 Procedure Generally.....	2:2
2.3 Petitions.....	2:3
2.4 Ex Parte Orders.....	2:4
Family Violence Order Denying Ex Parte Relief/Status of Hearing.....	2:7
Stalking Order Denying Ex Parte Relief/Status of Hearing	2:9
2.5 Pre-Hearing Process.....	2:11
2.6 Hearings	2:14
2.7 Employer Protective Order Process	2:16
3 CHAPTER 3 – REMEDIES, SETTLEMENTS AND ORDERS.....	3:1
3.1 Overview.....	3:1
3.2 Remedies.....	3:1
3.3 Settlements And Waiver Of Remedies	3:27
3.4 Mediation	3:30

3.5	Orders.....	3:31
4	CHAPTER 4 – CRIMINAL LAW	4:1
4.1	Family Violence Act.....	4:1
4.2	Domestic Violence Crimes	4:2
4.3	Domestic Violence Sentences.....	4:13
4.4	Domestic Violence Arrests	4:18
4.5	Domestic Violence Bonds.....	4:21
5	CHAPTER 5 – EVIDENCE	5:1
5.1	Sufficiency of Evidence.....	5:1
5.2	Hearsay and Confrontation Issues	5:4
5.3	Similar Transactions / Prior Difficulties.....	5:21
5.4	Defenses and Related Issues	5:26
5.5	Privileges.....	5:32
5.6	Experts	5:39
5.7	Miscellaneous Issues.....	5:43
A.	APPENDIX A - DYNAMICS OF DOMESTIC VIOLENCE.....	A:1
	Table Of Contents.....	A:1
A.	The Blind Men And The Elephant.....	A:2
B.	What Is Domestic Violence?	A:2
C.	Who Perpetrates Domestic Violence?	A:2
D.	Are There Different Kinds Of Perpetrators?.....	A:3
E.	What Causes Domestic Violence?	A:4
F.	Are There Different Kinds Of Domestic Violence?	A:5
G.	What’s The Difference Between Episodic Or Situational Couple Violence And Intimate Terrorism?.....	A:5
H.	In An IT Or Battering Relationship, What Are The Different Forms Or Tactics Of Abuse?	A:5
I.	Most Other Forms Of Abuse Aren’t Criminal Acts. As A Judge, Why Should I Be Concerned?	A:9
J.	So How Can I Discern Whether Violence Is Occurring Within A Context Of Control?.....	A:9
K.	What About When Victims Take The Perpetrator’s Side, Ask The Court To Dismiss A TPO Or Remove Conditions Of Bond?	A:10

L.	What Steps Can I Take To Increase The Safety Of The Victim And His Or Her Family?.....	A:11
B.	APPENDIX B - ASSESSING FOR LETHALITY.....	B:1
	Table Of Contents.....	B:1
	Introduction.....	B:2
A.	Lethality Factor List.....	B:3
B.	Lethality Factors	B:3
C.	Practical Application of Lethality Factors	B:6
C.	APPENDIX C - SCREENING FOR DOMESTIC VIOLENCE	C:1
A.	Determining if Domestic Violence is an Issue.	C:1
B.	Screening for Common Domestic Violence Patterns.	C:1
D.	APPENDIX D - CHECKLIST FOR EX PARTE APPLICANTS.....	D:1
E.	APPENDIX E - FIREARMS.....	E:1
	Table Of Contents.....	E:1
A.	Firearms And Temporary Protective Orders.....	E:3
B.	Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions.....	E:9
F.	APPENDIX F - PROTECTION ORDER INFORMATION SHEET	F:1
A.	Information For Petitioners.....	F:1
G.	APPENDIX G - FAMILY VIOLENCE INTERVENTION PROGRAMS (FVIP)	G:1
	Table Of Contents.....	G:1
A.	Differences Between Anger Management And Family Violence Intervention Programs (FVIPs)	G:2
B.	General Information on Monitoring And Enforcing TPO Conditions	G:3
C.	Monitoring by the Court -	G:5
D.	GCFV Contact Information	G:5
	State Certified Family Violence Intervention Programs.....	G:6
H.	APPENDIX H - IMMIGRANTS AND REFUGEES.....	H:1
	Table Of Contents.....	H:1
A.	Introduction.....	H:3
B.	Basic immigration terminology & documentation	H:3

C.	Work authorization eligibility.....	H:7
D.	Grounds of deportability.....	H:7
E.	Sentencing considerations.....	H:9
F.	Immigration relief for battered women.....	H:9
G.	Illegal Immigration Reform and Enforcement Act.....	H:13
H.	Hague Convention: international kidnapping.....	H:14
I.	Language access to interpreters in domestic violence cases.....	H:16
J.	Additional safeguards for protective orders & bond orders.....	H:16
K.	Georgia Security & Immigration Compliance Act.....	H:18
L.	VAWA confidentiality.....	H:18
M.	Resources for battered refugee & immigrant women.....	H:20
I.	APPENDIX I - MENTAL ILLNESS AND THE COURT.....	I:1
	Table Of Contents.....	I:1
A.	Introduction.....	I:3
B.	Diagnoses - DSM-IV Lite*.....	I:4
C.	Medications Used In Psychiatry*.....	I:25
D.	Mental Health Professionals*.....	I:30
J.	APPENDIX J - GUARDIANS AD LITEM IN FAMILY VIOLENCE CASES.....	J:1
	Table Of Contents.....	J:1
A.	Value of Guardians Ad Litem in Family Violence Cases.....	J:2
B.	Uniform Superior Court Rule 24.9 -- Appointment, Qualification and Role of a Guardian ad Litem.....	J:3
C.	Distinguishing the Roles of Guardian ad Litem and Child's Attorney.....	J:7
K.	APPENDIX K - MEDIATION.....	K:1
	Table Of Contents.....	K:1
A.	Introduction.....	K:2
B.	Georgia Commission on Dispute Resolution.....	K:6
L.	APPENDIX L - UNIFORM FORMS.....	L:1
A.	Introduction.....	L:1

	B.	Family Violence Forms.....	L:1
M.		APPENDIX M – GEORGIA PROTECTIVE ORDER REGISTRY	M:1
		Table Of Contents.....	M:1
	A.	The Creation of the Georgia Protective Order Registry	M:2
	B.	Specific Benefits of GPOR to the Court.....	M:2
	C.	Other Search Features of the Registry	M:3
	D.	File Retention and Standardized Forms.....	M:3
	E.	Agencies with GPOR Access.....	M:3
	F.	Gaining Access to GPOR Website	M:3
	G.	For More Information	M:4
N.		APPENDIX N – VISITATION, CUSTODY, PROTECTION AND SUPPORT OF CHILDREN.....	N:1
		Table Of Contents.....	N:1
		Introduction.....	N:2
	A.	Issues for Judicial Consideration in Cases Involving Domestic Violence	N:2
	B.	Suggestions for Consideration in Cases Involving Domestic Violence	N:2
	C.	Safety Focused Parenting Plan.....	N:7
O.		APPENDIX O – CHILDREN AND DOMESTIC VIOLENCE	O:1
		Table Of Contents.....	O:1
		Introduction.....	O:2
	A.	Effects of Domestic Violence on Children	O:3
	B.	Termination of Parental Rights.....	O:6
	C.	Best Practices	O:6
P.		APPENDIX P – CYBERSTALKING	P:1
		Table Of Contents.....	P:1
		Introduction.....	P:2
	A.	Georgia Stalking Law	P:3
	B.	Use of Technology to Stalk.....	P:3
	C.	Application of Stalking Laws in Cyberstalking cases	P:4
	D.	Venue in Cyberstalking.....	P:5
	E.	Internet Resources.....	P:5
Q.		APPENDIX Q – CONFIDENTIALITY OF DOMESTIC VIOLENCE ORGANIZATIONAL RECORDS.....	Q:1

Table Of Contents.....	Q:1
Introduction.....	Q:2
A. Overview Chart.....	Q:3
B. Confidentiality	Q:5
C. Privilege	Q:6
D. Right to Privacy	Q:9
R. APPENDIX R – RESTITUTION AND VICTIM’S COMPENSATION	R:1
Table Of Contents.....	R:1
A. Introduction.....	R:2
B. Restitution.....	R:2
C. Victim’s Compensation.....	R:5
D. Alternative Options.....	R:5
S. APPENDIX S- JUDICIAL COMPLIANCE HEARLINGS.....	S:1
Table Of Contents.....	1
A. Introduction.....	2
B. Offender Accountability.....	2
C. Domestic Violence Courts	3
D. Judicial Review Hearings.....	4
E. Georgia Model Practices	5
RESOURCES	1
A. Local Resources	1
B. State and National Resources.....	3
C. State Resources in the LGBTQQI community:	9
BIBLIOGRAPHY	1
CASE CITATION INDEX.....	1
GLOSSARY	1
INDEX	1

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Julia Perilla*
Tina Petrig*
Joan Prittie*
Kimbly Puckett*
Honorable Wayne M. Purdom
James Purvis
Jill Radwin
Kirsten Rambo
Rathi Rao*
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Richard D. Reaves
Heidi Rine
Meg Rogers*
Linda E. Saltzman
Honorable Clarence F. Seeliger
Shelley Senterfitt
Samuel E. Skelton
Dustin Smith
Elizabeth Ann Snead
Honorable Charles G. Spalding
Martin Spratlin
Honorable Lawton E. Stephens
Meredith Stepp
Leanna Stromberg
Honorable Ben Studdard, III

Honorable David R. Sweat
Nancee E. Tomlinson
Taylor Thompson*
Vanessa Elizabeth Volz
Honorable Daphne Walker
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The Honorable Rowland W. Barnes, Superior Court Judge in the Atlanta Circuit, who lost his life in 2005 at the hands of a defendant he was trying for acts of intimate partner violence.

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PREFACE

When Rich Reaves, Executive Director of the Institute of Continuing Judicial Education, first approached me about the 6th Edition of the benchbook, we discussed how funding and time restraints would necessitate a disciplined, limited approach to updates. But just as Nancy Hunter discovered nine years ago (when the idea of a domestic violence chapter in the existing Superior Courts Benchbook morphed into a stand-alone book), the topic is so rich and the need so compelling that updates in one section led to additions in another and my discipline began to disappear.

My experience with the 7th Edition has been similar, and similarly rewarding. In addition to updating statutory and case law, the 7th Edition features added material on ex parte temporary protective orders, child support, immigrants and refugees, as well as new appendices on restitution, victims compensation and judicial compliance hearings.

While working on this edition, I often reflected on my early efforts in domestic violence nearly twenty years ago as a law clerk and later staff attorney at the Prisoner Legal Counseling Project. Identifying 78 women in prison for killing their abusive partners and preparing clemency petitions for many of them was painstaking and often heartbreaking, but it was a matchless introduction to the scope and complexity of this issue. My work back then led me to—and continues to inform—my work now, and I owe a debt to mentors from those days like Maureen Cahill and Marti Loring, as well as to the many women in prison who trusted us with their lives.

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As Executive Director of Project Safe, I have consulted the benchbook frequently over the years. It is a resource, not just for judges, but for all of us engaged in the struggle to end domestic violence, and one that I hope will continue to grow and change in the years to come.

Joan Prittie, J.D.

Editor and Principal Author

INTRODUCTION

Domestic Violence is not an easy subject to discuss. You can anticipate intense disagreement depending upon the background and areas of interest of any participant in the conversation. Unfortunately, this leaves retreat from the forum as a very viable and maybe even a wise course of action. That option was considered by the Benchbook Committee when we were asked to develop a domestic violence bench book. I am glad we did not cut and run.

Perhaps discussion of the subject will become easier if we reflect on three important thoughts as we enter the forum.

Domestic violence is a monumental problem of our time. The phenomenon cuts across social, economic, cultural, and ethnic grounds. It is a common problem in Fulton, Rabun, Jackson, and Thomas Counties. Response to the problem is costly to law enforcement, health care, social services, education, families and to our judicial system. The personal harm to the physical and emotional well being of the victim is overwhelming.

Domestic violence stimulates a passionate response from many who have experienced it or worked in areas where the impact is most intensely felt or who have felt futility in trying to bring reform to our law enforcement, social services, and the judicial system in order to address the problem. Cynicism abounds on all sides and constructive criticism is often heard as negativism.

The legal system put in place to address the problem is less than perfect. That system ignores the adversarial system long adhered to in our courts, encourages pro se representation often to the peril of the victim, stretches fundamental ideas of notice and due process and imposes upon the judiciary a proactive social services role foreign to the traditional role of neutrality. The system apparently anticipates staff and resources, which do not exist and leaves cases with mandatory orders which cannot be enforced. The shortcomings in our present system coupled with our negative response to it have resulted in victims who are not served, cases, which have fallen through the cracks, respondents who are harmed by abuse of the process and judges who are more prone to “fight the problem” rather than to seek ways to improve the system.

The impact of domestic violence on our communities and our courts will continue to grow. We have no choice but to improve our methods and mechanisms to deal with domestic violence cases. Open debate is essential.

It is the hope of the Benchbook Committee and the dedicated professionals, who contributed to this effort, that this Domestic Violence Benchbook will serve as a cornerstone to help us understand, address and, in time, discover more complete solutions to this profound problem.

Robert W. Adamson
Benchbook Committee Chair (2005)
Council of Superior Court Judges

1 CHAPTER 1 – CIVIL PROTECTIVE ORDERS

1 CIVIL PROTECTIVE ORDERS

1.1 Overview

- 1.1.1 This chapter of the Domestic Violence Benchbook covers civil protective orders. It reviews the types of protective orders, with the required statutory findings. It describes the civil protective order process from beginning to end: jurisdiction, and venue; the issuance of ex parte orders; pre-hearing activity; and the hearing itself. The chapter discusses the remedies available in domestic violence actions; consent decrees; and mediation of cases involving issues of domestic violence. The chapter concludes with discussions of the enforcement, duration, modification, and extension of civil orders.
- 1.1.2 Several studies now show that civil protective orders provide safety for families in ways that no other remedy can. The National Center for State Courts (NCSC) determined that in the vast majority of cases, civil protection orders are effective. (Keilitz et al, 1997). That effectiveness depends on the specificity and comprehensiveness of the relief that is granted ([See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements](#)) and on how well the orders are enforced. Effectiveness was measured in two areas 1) improvement in petitioners well-being (quality of life, enhanced feelings of safety and self esteem) and 2) improvement in the problems stated in the petition (physical and psychological abuse, stalking, calling at home and work, coming to the home, etc.). One major study from Seattle reported an 80% reduction in police-reported physical violence for women who obtained a 12-month protective order after an incident of domestic violence. (Holt et al, 2002) In this study, shorter (2 week), temporary orders were found to be less effective than no order at all. Another study showed that protective orders do work for many victims. (T.K. Logan, 2009) This study showed that half (50%) of victims experienced no violations of the DVO during the 6 month follow-up period, For those victims who did experience violations, every single type of violence and abuse was significantly reduced during the 6 month follow up period compared to the 6 months before the protective order was issued. Further, many victims appreciated the orders and the help they received from the justice system. Accordingly, victims' fear of future harm was significantly reduced during the 6 months after the order was issued. The vast majority of victims thought the protective order was fairly or extremely effective (77%-95%) 6 months after the order was issued. Only 4% of victims requested to

drop the protective order during the 6 months after the protective order was issued. Id.

- 1.1.3 Significantly for the court, the NCSC study confirms that abused women are especially vulnerable to physical violence after they initiate court proceedings; they assume considerable risk when they claim their rights under the law. However, a recent study (Bridges, Tatum and Kunselman, 2008) revealed that limiting firearm availability once a protective order has been served may help to reduce family homicide rates. Across 47 States, the authors found an inverse correlation between family homicide rates and States mandating firearm restrictions during a protective order.
- 1.1.4 Georgia law offers three types of protective orders: family violence protective orders, Section 1.2; stalking protective orders, Section 1.3; and employer protective orders, Section 1.4.

1.2 Family Violence Protective Orders (O.C.G.A. § 19-13-1 et seq.)

- 1.2.1 To issue a family violence order, a court must find that:
 - A. The petitioner has or had a particular *relationship* (See Section 1.2.2) to the respondent; and
 - B. The respondent has engaged in one or more particular types of *violence* (See Section 1.2.3); and
 - C. The petitioner *needs protection* (See [Section 1.2.4](#)) against future violence by the respondent.

1.2.2 Relationships:

- A. O.C.G.A. § 19-13-1 requires that the petitioner prove that one of the following relationships exist between petitioner and respondent O.C.G.A. § 19-13-1 (first paragraph):
 - 1. past spouses.
 - 2. present spouses.
 - 3. parents of the same child (unmarried parents).
 - 4. parent and child.
 - 5. stepparent and stepchild.
 - 6. foster parent and foster child.
 - 7. persons now living in the same household.
 - 8. persons formerly living in the same household.
- B. **When Cohabitation is Not Required:** Proof of a spousal, parental, stepparental or foster parental relationship permits the court to issue an order without proof of cohabitation.
- C. **When Cohabitation Is Required:** Proof that petitioner and respondent are “living or formerly living in the same household” can extend the act’s protection to relationships other than those specified by the statute. For example, proof of cohabitation can allow a court to permit petitions between siblings; extended family members; roommates; unmarried intimate partners; and same-sex couples. Questions a court may have to resolve include what the

term “living together” means, and what constitutes a “household”; no Georgia cases interpret these terms.

- D. **Excluded Relationships:** Only relationships specified in the statute qualify under the relationship requirement. Many relationships do not meet that requirement: for example, a dating relationship between petitioner and respondent (where cohabitation does not and has not occurred) does not satisfy the relationship test. However, the same petitioner might be able to obtain a stalking order, (See [Section 1.3](#)) or benefit from an employer order (See [Section 1.4](#))
- E. **Petitions on Behalf of Minors:** The statute does not permit minors to sue directly. The statute does permit “a person who is not a minor [to] seek relief on behalf of a minor.” O.C.G.A. § 19-13-3(a).
- F. **Incidence of Abuse in Different Relationships:** The most rapid growth in domestic relations caseloads is occurring in domestic violence filings. Between 1989 and 1998, domestic violence filings in state courts increased 178 percent. (Levey et al, 2000) Abusers are found in every type of domestic relationship causing adults, children, and the elderly to suffer physical and emotional harm. Intimate partner violence is primarily a crime against women -- in 1998, females were the victims in 72% of intimate murders and the victims of about 85% of non-lethal intimate violence. (U.S. Department of Justice, 2005). On average, more than three women are murdered by their husbands or boyfriends in this country every day. (Bureau of Justice Statistics Crime Data Brief, 2003). Approximately one in five female high school students reports being physically and/or sexually abused by a dating partner. (Silverman et al., 2001). Studies suggest that between 3.3 to 10 million children witness some form of domestic violence annually. (Carlson, 1984) (Straus, 1992); 50% of men who chronically abuse their partners also abuse their children. (Straus and Gelles, 1990).
- G. **Incidence of Abuse in Underserved Populations:** For underserved populations, the situation is even more dire. Increasing evidence indicates that there are large numbers of immigrant women trapped in violent relationships. These women may not be able to leave an abusive relationship because of immigration laws, language barriers, social isolation, and lack of financial resources. (Orloff and Little, 1999). Violence against women with disabilities is alarmingly high. Wilson and Brewer reported that women with developmental disabilities were 10.7

times as likely to be sexually assaulted as other women (Wilson and Brewer, 1992). Relatives or intimates committed more than 1 in 4 of the murders against persons age 65 or older" (Crimes Against Persons Ages 65 and Older, 1992-1997).

1.2.3 Violence:

- A. A petitioner must prove violence using the definitions of various specified criminal offenses, O.C.G.A. § 19-3-1(1) (felonies), (2) (other crimes):
1. **“any felony”**: The statute does not list these felonies by name, and does not distinguish between violent and non-violent felonies.
 2. **“simple battery”**: “A person commits the offense of simple battery when he or she either: (1) Intentionally makes physical contact of an insulting or provoking nature with the person of another; or (2) Intentionally causes physical harm to another.” O.C.G.A. § 16-5-23(a).
 3. **“battery”**: “A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another.” O.C.G.A. § 16-5-23.1(a). “Visible bodily harm” is defined as “harm capable of being perceived by a person other than the victim, [which] may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, or substantial bruises to body parts.” *Id.*, (b).
 4. **“simple assault”**: “A person commits the offense of simple assault when he or she either: (1) Attempts to commit a violent injury to the person of another; or (2) Commits an act which places another in reasonable apprehension of immediately receiving a violent injury.” O.C.G.A. § 16-5-20(a).
 5. **“aggravated assault”**: “A person commits the offense of aggravated assault when he or she assaults: (1) With the intent to murder, to rape, or to rob; (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; or (3) A person or persons without legal justification by discharging a firearm from within a motor vehicle toward a person or persons.” O.C.G.A. § 16-5-21(a).
 6. **“stalking”**: O.C.G.A. §§ 16-5-90.

- (a) “A person engages in the offense of stalking when he or she 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.” O.C.G.A. § 16-5-90(a) The statute further defines the following terms:
 - (1) “computer” and “computer network.”
 - (2) “contact”
 - (3) “place or places”
 - (4) “harassing and intimidating”
- (b) Stalking also occurs when a person violates an existing stalking order by broadcasting or publishing “the picture, name, address, or phone number” of the person protected by the order. O.C.G.A. § 16-5-90(a)(1) and (2).
- (c) The Family Violence Act does not list aggravated stalking specifically. However, as a felony offense, aggravated stalking falls within the definition of “any felony”. *See* O.C.G.A. § 16-5-91; O.C.G.A. § 19-13-1 (1) & (2).
- (d) Conduct, which meets the statutory definition of stalking might justify both a family violence order and a stalking order. ([See Section 3.2.7 - Stalking Order Remedies](#)).
- (e) Stalking cannot occur in the defendant’s home. O.C.G.A. § 16-5-90(a)(1).

7. **“criminal damage to property”**

- (a) First degree: “A person commits the offense of criminal damage to property in the first degree when he: (1) Knowingly and without authority interferes with any property in a manner so as to endanger human life; or (2) Knowingly and without authority and by force or violence interferes with the operation of any system of public communication, public transportation, sewerage, drainage, water supply, gas, power, or other public utility service or with any constituent property thereof.” O.C.G.A. §16-7-22(a).

- (b) Second degree: “A person commits the offense of criminal damage to property in the second degree when he: (1) Intentionally damages any property of another person without his consent and the damage thereto exceeds \$500.00; (2) Recklessly or intentionally, by means of fire or explosive, damages property of another person; or (3) With intent to damage, starts a fire on the land of another without his consent.” O.C.G.A. §16-7-23(a).
8. **“unlawful restraint”:**
- (a) Kidnapping: “A person commits the offense of kidnapping when he abducts or steals away any person without lawful authority or warrant and holds such person against his will.” O.C.G.A. 16-5-40(a). Requires asportation.
 - (b) False imprisonment: “A person commits the offense of false imprisonment when, in violation of the personal liberty of another, he arrests, confines, or detains such person without legal authority.” O.C.G.A. § 16-5-41. This does not require asportation.
9. **“criminal trespass”:**
- (a) Damage to property: “A person commits the offense of criminal trespass when he or she intentionally damages any property of another without consent of that other person and the damage thereto is \$500.00 or less or knowingly and maliciously interferes with the possession or use of the property of another person without consent of that person.” O.C.G.A. §16-7-21(a). **Damage to property that another person has an interest in is criminal trespass. *Ginn v. State*, 251 Ga. App. 159 (2001) *Newsome v. State*, 289 Ga. App. 590 (2008).**
 - (b) Entry and remaining without permission: “A person also commits criminal trespass “when he or she knowingly and without authority: (1) Enters upon the land or premises of another person or into any part of any vehicle, railroad car, aircraft, or watercraft of another person for an unlawful purpose; (2) Enters upon the land or

premises of another person or into any part of any vehicle, railroad car, aircraft, or watercraft of another person after receiving, prior to such entry, notice from the owner, rightful occupant, or, upon proper identification, an authorized representative of the owner or rightful occupant that such entry is forbidden; or (3) Remains upon the land or premises of another person or within the vehicle, railroad car, aircraft, or watercraft of another person after receiving notice from the owner, rightful occupant, or, upon proper identification, an authorized representative of the owner or rightful occupant to depart.” O.C.G.A. § 16-7-21(b).

- B. **Psychic or emotional harm:** The statute does not specify psychic or emotional harm (either of adults or children) as a basis for finding “family violence.” Only the offense of stalking includes a requirement to prove both “emotional distress” and “reasonable fear for their safety or the safety of their immediate family.” The statute does not exclude proof of psychic or emotional harm, which may be relevant to other issues, including remedy.
- C. Experts recognize that emotional abuse almost always accompanies physical violence (Carpiano, 1998); they also found that psychological domination far exceeds the physical and sexual assaults most often seen in the courts. As Herman (1992) relates, “Methods of psychological control are designed to instill terror and helplessness and to destroy the victim's sense of self in relation to others.” Psychological abuse is the glue that binds the physical types of abuse together (Hunter, 2000). Once the abuser has used physical or sexual violence it is not necessary to use it as often; threats and intimidation will keep the abused person in a constant state of fear allowing for their domination. (Herman, 1992).
- D. Considering that domestic violence is under-reported, and that physical violence accounts for most reports, it is clear that psychological abuse is extensive. Whereas, bones and bruises heal within a few months, psychological abuse can have a lasting impact. Stark and Flitcraft (1992) found battering was the single most important context yet identified for female suicide attempts. Almost 30 percent of the women in their study who attempted suicide were

battered. ([See Appendix A, Different Forms or Tactics of Abuse](#))

- E. **Threats:** The family violence statute permits issuing a protective order based on “threats” which satisfy the requirements for “assault” or “aggravated assault”. The statute only recognizes threats to the petitioner or to children.
- F. **“Reasonable Discipline”:** “Family violence shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.” O.C.G.A. § 19-13-1 (last sentence). A stinging slap to a disrespectful child, with no resulting bruises, has been held to not constitute “family violence”. *Buchheit v. Stinson* 260 Ga. App. 450, 455 - 456 (2003). Lack of visible harm does not prevent such a finding; and physical discipline might in some cases constitute “family violence”. *Id.*

1.2.4 **Need for Protection**

- A. **Likelihood of future violence:** The court must find that “family violence has occurred in the past and may occur in the future” to justify ordering relief that is “necessary to protect the petitioner or a minor of the household from violence.” O.C.G.A. § 19-13-3 (b). The occurrence of past abuse standing alone does not justify issuing an order; protection must be necessary to prevent violence that “may occur in the future.” At the same time, the occurrence of past violence might raise an inference about the behavior alleged by the petitioner. For example, on one list of 18 risk assessment factors for violence, past violence was the most important or heavily-weighted predictor of future violence by that same individual (Meloy, 2000). ([See Appendix B - Assessing for Lethality](#))
- B. **Timing:** The Georgia Court of Appeals has stated that although the recency of past violence may bear upon the likelihood of future violence, there is no requirement that the violence be recent. *Lewis v. Lewis*, 728 S.E.2d 741 (2012). In *Lewis*, the petitioner sought to obtain an ex parte temporary restraining order when there had not been any violence for a year. The Court held that the statute under which the petitioner sought a protective order did not absolutely require her to show a “relatively recent” act of family violence. The Court explained that the plain language of the statute requires “that the petitioner allege and prove by a preponderance of the evidence that the person against whom the protective order is sought has engaged in family violence at some specified time in the

past and that he may engage in such violence again at some unspecified time in the future”. *Id.*

- C. **Fear:** The statute does not require a finding that the petitioner fears the respondent, nor does it require that the court assess the “reasonableness” of any fear the petitioner does have for the respondent. However, a finding of fear does allow an inference that abuse will occur in the future: the petitioner’s fear tends to indicate the petitioner’s belief that past violence will recur in the future. At the same time, a court makes its own assessment of whether violence “may occur in the future.” The court is not required to accept the petitioner’s belief as conclusive and may assess the petitioner’s fears in light of all the available evidence.
- D. Evidence exists that victims deny the existence of fear as a way of coping with the danger and lack of control they experience (Herman, 1992) (DSM-IV-TR, 2000). A court might consider questioning the victim not only directly about their sense of fear, but also indirectly. For example, the court might inquire whether the petitioner believes that the respondent is capable of hurting the petitioner or the petitioner’s family (Hunter, 2002).
- E. **Stalking:** Although stalking is most reported after the victim has left the relationship it also occurs during the relationship. Logan, Shannon and Cole (2007) found women stalked by their partners experienced significantly higher rates of psychological abuse, physical abuse, sexual abuse and injury compared to women who were not stalked by their violent partner. Not surprisingly, these women suffered more Post Traumatic Stress Disorder and anxiety symptoms as well.

1.3 Stalking Protective Orders (O.C.G.A. § 16-5-94)

1.3.1 To issue a stalking protective order, a court must find that:

- A. The respondent has *stalked* the petitioner; and
- B. The petitioner *needs protection* against future stalking by the respondent.
- C. Stalking protective orders do not require proof of a specific relationship; any “person who is not a minor who alleges stalking by another person may seek a restraining order.” O.C.G.A. § 16-5-94(a). “A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.” *Id.* A court may issue a stalking order even where the parties had never been married to each other, did not reside in the same house, and did not have children together. *Giles v. State*, 257 Ga. App. 65, 68 (2002).

1.3.2 Stalking

- A. A person engages in stalking under O.C.G.A. §§ 16-5-90(a), *cross-referenced by* O.C.G.A. § 16-5-94(a) “when:
1. he or she follows, places under surveillance, or contacts another person
 2. at or about a place or places
 3. without the consent of the other person
 4. for the purpose of harassing and intimidating the other person” or
 5. in violation of a protective order, bond, or condition of probation prohibiting harassment of another person, broadcasts or publishes the name, address, or phone number of the person for whose benefit, the bond, order, or condition was made and the person making the broadcast or publication had reason to believe it would cause such person to be harassed or intimidated by others. O.C.G.A. § 16-5-90(a)(2).
- B. “**Contact**”: The statute defines “contact” as “any communication”, including but not limited to: “in person, by telephone, by mail, by broadcast, by computer, by computer network, or any other electronic device.” The terms “computer” and “computer network” have the same definitions as in the Computer Systems Protection Act, O.C.G.A. § 16-9-92 (1) (“computer”) and (2) (“computer network”).
- C. “**Place or places**”: the statute protects against stalking behavior at “any public or private property occupied by the victim.” *Id.* The statute does not restrict the locations at which stalking can occur to the petitioner’s residence or workplace. Instead, a court may find stalking to have occurred in any location “occupied” by the petitioner, with one exception: stalking cannot occur at the defendant’s residence. *Id.* If the alleged stalking occurred through means other than in person contact, the term “place or places” refers to the location “where such communication is received.” *Id.*
- D. “**Harassing and intimidating**”: under O.C.G.A. § 16-5-90(a)(1), these terms mean:
1. “a knowing and willful course of conduct
 2. directed at a specific person
 3. which causes emotional distress
 4. by placing such person in reasonable fear for
 5. such person’s safety or the safety of a member of his or her immediate family,
 6. by establishing a pattern of harassing and intimidating behavior, and

7. which serves no legitimate purpose.”
- E. **“Course of conduct”**: A court may not issue a stalking order based solely on a single act. The petitioner must prove a “course of conduct”, which involves a “pattern of harassing and intimidating behavior”. O.C.G.A. § 16-5-90 (a)(1). This course of conduct must also “serve no legitimate purpose,” a term the statute leaves undefined.
- F. **Psychic or emotional harm**: stalking rests on a finding that the respondent’s conduct caused “emotional distress”; the statute does not require physical injury, or the threat of physical injury.
- G. **Threats**: a stalking order may be issued based on proof of threats to the petitioner’s “safety.”
 1. The term “safety” is different than the corresponding language required by the family violence order statute (“reasonable apprehension of immediately receiving a violent injury”, O.C.G.A. §§ 19-3-1(2) and 16-5-20(a)). Unlike the family violence statute, a stalking order can be issued for threats to the “immediate family” of the petitioner, not just to the petitioner alone.
 2. The statute requires petitioner to show a connection between the respondent’s actions and the safety of the petitioner or the petitioner’s family. For example, the Court of Appeals reversed a portion of a permanent stalking order which prohibited respondent from publishing or discussing the petitioner’s medical condition: “there was no evidence that publishing or discussing the petitioner’s medical condition with others would threaten her or her family’s safety.” *Collins v. Bazan*, 256 Ga. App. 164, 166, 568 S.E.2d 72, 74 (2002).

1.3.3 Need for protection:

- A. **Future stalking**: A court must find not only that stalking has occurred in the past, but also that stalking “may occur in the future.” O.C.G.A. § 16-5-94(c); a court may grant a stalking protective order to “bring about the cessation of conduct constituting stalking.” O.C.G.A. § 16-5-94(d). Issuance of a stalking order thus requires the court to form a conclusion about the likelihood of stalking in the future, not just the occurrence of stalking in the past.
- B. **Reasonable fear**: A finding of stalking requires a finding that the respondent has contacted, followed, or placed under surveillance without the consent of the other person for the purpose of harassing and intimidating the other

person, and that the petitioner’s fear for their safety or the safety of their family is “reasonable.” O.C.G.A. § 16-5-90(a). Even though the statute mandates proof of fear, evidence of the petitioner’s fear may also tend to prove the likelihood that stalking will recur. In *Pilcher v. Stribling*, 282 Ga. 166 (2007) the Georgia Supreme Court ruled that the petitioner must establish the elements of the stalking by a preponderance of the evidence. *Id.* at 167. The Stalking Protective Order had been granted for stalking at work. The victims alleged verbal abuse toward them by the fire chief and physical assaults directed toward the victims by the fire chief during basketball games that were conducted as part of their required physical training. The Supreme Court ruled that the defendant’s conduct did not fall within the statutory definition of stalking as they were not sufficient to create a reasonable fear for their safety. *Id.* at 168.

- C. It is important to note that victims may deny they are afraid as a way of coping with the danger and lack of control they experience. (Herman, 1992) A court might consider questioning the victim not only directly about their sense of fear, but also indirectly. For example, the court might inquire whether the petitioner believes that the respondent is capable of hurting the petitioner or the petitioner’s family. (Hunter, 2002)
- D. It is also important to note that fear can be present even when there has been no recent act of violence. *Lewis v. Lewis*, 728 S.E.2d 741 (2012). In *Lewis*, the petitioner explained that “just considering the fact that I know him and his history and I know the looks on his face or the—his demeanor.... And I know when I feel threatened. And I felt threatened at that time.” The Court held that there need not be any reasonably recent act of violence to establish a fear of future violence.

1.4 Employer Protective Orders (O.C.G.A. § 34-1-7)

- 1.4.1 Domestic violence greatly impacts the workplace. Ninety-six (96) percent of employed women who suffer abuse report that their work performance is hurt as a result of the family violence (Bureau of Labor Statistics, 1999). Homicide is the leading cause of death on-the-job for women and domestic violence accounts for 16% of female victims of job-related homicides (U.S. Dept. of Labor, 2004). The Centers for Disease Control and Prevention (2003) states the costs of intimate partner rape, physical assault and stalking exceeds \$5.8 billion each year, nearly \$4.1 billion of which is for direct medical and mental health care services. Moreover, of the 4 million workplace crime incidents committed

against females from 1993 through 1999, only 40 percent were reported to the police (Duhart, 2001). Employers may be the only help for abused parties who are too frightened to claim their own rights in court.

- 1.4.2 To issue an employer protective order, a court must find that:
- A. an **employer-employee relationship** exists between employer and the alleged victim (*See* Section 1.4.3); and
 - B. the respondent has committed **violence or the threat of violence** against the employee **at** the employee’s workplace (*See* Section 1.4.4)
 - C. Unlike family violence and stalking protective orders, the statute does not explicitly require a finding that violence or threats of violence may occur in the future. *See* O.C.G.A. § 34-1-7(e). Note also that the procedural and evidentiary requirements for employer protective orders are stricter in many details than those for family violence and stalking orders. (*See* [Section 2.6.1](#) below).
- 1.4.3 **Employer-employee relationship**
- A. Only employers may request an employer protective order, and only to protect an employee. O.C.G.A. § 34-1-7 (b).
 - B. The term “employer” applies to “any person or entity that employs one or more employees.” O.C.G.A. § 34-1-7 (a)(3).
 - C. The term includes the State of Georgia “and its political subdivisions and instrumentalities.”
- 1.4.4 **Violence or threats of violence:**
- A. Under O.C.G.A. § 34-1-7 (b), the employer must prove that the employee:
 - 1. “has suffered
 - 2. unlawful violence or
 - 3. a credible threat of violence
 - 4. from any individual,
 - 5. which can reasonably be construed to have been carried out at the employee’s workplace.”
 - B. “**unlawful violence**”: under O.C.G.A. § 34-1-7(a)(4), these terms include:
 - 1. assault, both simple and aggravated, O.C.G.A. §§ 16-5-20, -21;
 - 2. battery, including “simple battery”, “battery”, and “aggravated battery”, O.C.G.A. §§ 16-5-23, 23.1, 24; or
 - 3. stalking, including “aggravated stalking”, O.C.G.A. §§ 16-5-90, -91.
 - 4. “Unlawful violence” does not include “lawful acts of self-defense or defense of others.”

- C. “**credible threat of violence**”: under O.C.G.A. § 34-1-7(a)(2), these terms include either a “knowing and willful” statement or a “course of conduct”, which:
 - 1. “would cause a **reasonable person to believe** that he or she is under threat of death or serious bodily injury”; and
 - 2. the respondent **intends** to cause “a person to believe that he or she is under threat of death or serious bodily injury”; and
 - 3. “**actually causes**” the person to believe the threat; and
 - 4. “serves no legitimate purpose.”
- D. **Course of conduct**: The statute makes clear that “course of conduct” means more than one act; instead, it means “a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose . . .” O.C.G.A. § 34-1-7(a). Behaviors which might evidence a “continuity of purpose” include: following or stalking to or from the workplace, entering the workplace, following during work hours, telephone calls or correspondence, including both mail, fax, and e-mail. O.C.G.A. § 34-1-7(a)(1).

1.4.5 **Constitutionally protected conduct**: In ruling on an employer protective order, a court may not restrain “speech or other activities which are protected by the Constitution of this State or the United States.” O.C.G.A. § 34-1-7(b).

1.5 Constitutional Considerations

- 1.5.1 The Georgia Supreme Court has held that the definitions of stalking in the misdemeanor stalking statutes were not unconstitutionally vague or overbroad, in a case arising from a criminal conviction for stalking, *Johnson v. State*, 264 Ga. 590, 449 S.E.2d 94 (1994), *Fly v. State*, 229 Ga. App. 374 (1997), *Collins v. Bazan*, 256 Ga. App. 164 (2002).
- 1.5.2 No Georgia case has ruled on the constitutionality of the civil protection statutes, whether on vagueness or other grounds. Other state and federal courts have reviewed comparable civil statutes under federal constitutional standards, and have consistently upheld them. These courts have held that:
 - A. Civil domestic violence statutes are entitled to a **presumption of constitutionality**, *Johnson v. Cegielski*, 393 N.W.2d 547 (Wis. Ct. App. 1986) (per curiam).
 - B. The ex parte provisions of the civil statute do not violate federal **due process** standards, *Crowley v. Lilly*, 2003 WL 21040256 (Ky.App., 2003)(unpublished opinion), *Peters-Riemers v. Riemers*, 624 N.W.2d 83 (N.D. 2001), *Blazel v. Bradley*, 698 F. Supp. 756 (W.D. Wisconsin 1988),

Kampf v. Kampf, 603 N.W.2d 295, 299 (Mich. Ct. App. 1999), *State ex rel. Williams v. Marsh*, 626 S.W. 2d 223, 232 (Mo. 1982), *Marquette v. Marquette*, 686 P.2d 990, 996 (Okla. Ct. App. 1984), *Scramek v. Bohren*, 429 N.W.2d 501, 505-506 (Wis. Ct. App. 1988), *Sanders v. Shepard*, 541 N.E.2d 1150, 1155 (Ill. Ct. App. 1989), *Nollet v. Justices of the Trial Court*, 83 F. Supp. 2d 204 (D. Mass. 2000), *Willmon v. Daniel*, 2007 U.S. Dist. LEXIS 11538 (N.D. Tex. 2007), *Moore v. Moore*, 657 S.E.2d 743, 749 (S.C. 2008). The prevailing federal test for procedural due process claims appears in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

- C. The language of the relevant civil statutes is not unconstitutionally **vague or overbroad**, *State v. Kidder*, 843 A.2d 312 (N.H., 2004), *Delgado v. Souders*, 334 Or. 122, 46 P.3d 729 (2002), *Kirkley v. Dudra*, 996 WL 33360281 (Mich.App. 1996)(unpublished opinion), *Scramek v. Bohren*, 429 N.W.2d 501, 505-506 (Wis. Ct. App. 1988), *Gilbert v. State*, 765 P.2d 1208 (Okla. Crim. App. 1988), *Kreitz v. Kreitz*, 750 S.W.2d 681 (Mo. Ct. App. 1988), *State v. Tripp*, 795 P.2d 280 (Haw. 1990), *People v. Whitfield*, 498 N.E.2d 262, 267 (Ill. App. Ct. 1986), *State v. Sarlund*, 407 N.W.2d 544 (Wis. 1987), *People v. Stuart*, 100 N.Y.2d 412 (2003). Only one court has declared a stalking statute unconstitutionally vague, *Commonwealth v. Kwiatkowski*, 418 Mass. 543, 637 N.E.2d 854 (1994), a decision later superseded by a constitutionally valid stalking statute, *Commonwealth v. Alphas*, 430 Mass. 8, 12, 712 N.E.2d 575, 580 (1999).
- D. Civil domestic violence statutes do not violate constitutional protections for **free speech**, *LaFaro v. Cahill*, 203 Ariz. 482, 489, 56 P.3d 56, 62 (Ariz. App., 2002), *Scramek v. Bohren*, 429 N.W.2d 501, 505-506 (Wis. Ct. App. 1988), *People v. Blackwood*, 476 N.E.2d 742 (Ill. App. Ct. 1985), *Gilbert v. State*, 765 P.2d 1208, 1210 (Okla. Crim. App. 1988), *Lampley v. State*, 2005 Alas. App. LEXIS 22 (Alaska Ct. App. 2005), or freedom of travel, *Delgado v. Souders*, 334 Or. 122, 46 P.3d 729 (2002).

1.6 Divorce Action Restraining Orders

- 1.6.1 Restraining orders entered in divorce actions under the general equitable powers of the court do not have the statutory enforcement mechanisms associated with the Family Violence Act (FVA) temporary protective orders(TPO). They may not be as dangerous for victims as mutual temporary protective orders under the FVA, nor are they as effective.

Divorce action restraining orders are not entered onto the Family Violence Registry and are not enforceable through criminal stalking procedures. Law enforcement are reluctant to enforce these civil orders and they may not be entitled to full faith and credit enforcement in other states. Moreover, restraining orders in divorce actions do not invoke the firearms restrictions under federal law.

- 1.6.2 Mutual or standing mutual restraining orders can be entered in divorce actions against both parties without any particular procedural requirements. The Family Violence Act requires that a mutual order in a family violence act case must be requested 3 business days prior to the hearing and be based on written claims of specific acts of violence. O.C.G.A. 19-13-4(a). Where family violence is present between spouses, a FVA protective order claim should be separately pleaded and proved. A FVA TPO will provide more protection for the victim than a restraining order in a divorce.

2 CHAPTER 2 – JURISDICTION AND PROCEDURE

2 JURISDICTION AND PROCEDURE

2.1 Jurisdiction & Venue

- 2.1.1 **Overview:** The three violence protection statutes have identical provisions on jurisdiction and venue.
- A. Jurisdiction for stalking protective orders is the same as for family violence protective orders. O.C.G.A. § 16-5-94 (b), *citing* O.C.G.A. § 19-13-2.
 - B. Jurisdiction for employer protective orders is the same as for family violence protective orders. O.C.G.A. § 34-1-7 (c) (using language identical to that contained in O.C.G.A. § 19-13-2.)
- 2.1.2 **Subject matter jurisdiction:** The superior courts have subject matter jurisdiction over family violence protective orders and stalking protective orders. O.C.G.A. §§ 19-13-2, 16-5-94(b), 34-1-7(c).
- 2.1.3 **Personal Jurisdiction:** In *Anderson v. Deas*, 279 Ga. App. 892, 632 S.E.2d 682(2006), the Court of Appeals held that if the respondent is a non-resident Georgia courts do not have jurisdiction unless the act met the requirements of O.C.G.A. § 9-10-91(2)or(3). In *Deas* the respondent had placed harassing phone calls from another state to the petitioner in Georgia but lacked the requirements of paragraphs 2 or 3 of the long arm statute.
- 2.1.4 **Venue:** Venue depends on the residency of the respondent. Residency exists where the respondent is domiciled, O.C.G.A. § 19-2-1; *Davis-Redding v. Redding*, 246 Ga. App. 792, 793, 542 S.E.2d 197, 198 (2000).
- A. **Resident respondent:** The superior court of the county where the respondent resides normally has jurisdiction. *Id*, § 19-13-2(a). Where the respondent resides in two different Georgia counties, venue may lie in either county. For example, venue exists in two counties where “the respondent has left the family home but has not avowed an intention to remain in his new location.” *Davis-Redding v. Redding*, 246 Ga. App. at 794.
 - B. **Non-resident respondent:** for non-resident respondents, venue may be proper in two alternate counties:
 - 1. the county where the **petitioner resides**; or
 - 2. the county “**where an act involving family violence occurred**”. For venue in such a county, the relevant acts must satisfy the Georgia’s long-arm statute with respect to “tortious acts or omissions” or “tortious injury”. O.C.G.A. § 19-13-2(b), *citing* O.C.G.A. § 9-10-91(2) and (3).
 - 3. In cases involving cyberstalking, when communications come from out of State, temporary protective orders are proper when filed in the state from which the respondent sent the communications. *Huggins v. Boyd*, 2010 Fulton County D. Rep. 2141 (2010).

- C. **Waiver of venue:** If the respondent waives the defense of improper venue, or fails to contest venue, a superior court lacks the authority to dismiss a petition sua sponte for improper venue. *Davis-Redding v. Redding*, 246 Ga. App. at 794 -795.
- D. **Judges sitting by designation:** A superior court may designate the judge of another court to serve as a superior court judge with respect to family violence act petitions without destroying the superior court’s subject matter jurisdiction. *Giles v. State*, 257 Ga. App. 65, 66, 570 S.E.2d 375, 377 (2002) (magistrate court judge designated to sit as a superior court judge).

2.1.5 **Military Jurisdiction:** No Georgia case has ruled on extending a superior court’s jurisdiction over violence protection petitions to military bases. Modern United States Supreme Court cases permit states to exercise “power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government.” *Howard v. Commissioners of the Sinking Fund of Louisville*, 344 U.S. 624, 627, 73 S.Ct. 465, 467, 97 L.Ed. 617 (1953). Courts in at least two other states have held that this precedent permits a trial court both to hear petitions from petitioners who reside on military bases, and to apply violence protection orders to respondents both on and off military bases. *Cobb v. Cobb*, 545 N.E.2d 1161 (Mass. 1989); *Tammy S. v. Albert S.*, 95 Misc.2d 892, 893, 408 N.Y.S.2d 716, 717 (1973). The latter court also held that the order could be enforced on the military base by presenting the order to military authorities, who could then enforce the order.

2.2 Procedure Generally

- 2.2.1 **Application of the Civil Practice Act:** Georgia law does not specify which procedural rules apply to protective order proceedings.
- A. On the one hand, the Civil Practice Act states that, “this chapter governs the procedure in all courts of record of this state in all actions of a civil nature.” O.C.G.A. § 9-11-1.
 - B. On the other hand, an unofficial opinion of the Georgia Attorney General states that, “the Family Violence Act is a special statutory proceeding rather than a regular civil action.” 1995 Op. Atty. Gen. No. U95-7. According to this opinion, since “abbreviated procedures are specifically outlined in the Family Violence Act . . . the CPA would not apply.” *Id.* This opinion also states that, even where the Family Violence Act does not specify a procedure, the Civil Practice Act would not apply, “because the latter is not a civil action in the ordinary meaning of the term.” *Id.* The opinion does assert that “if . . . CPA . . . provisions were used, they would be sufficient.” *Id.*
 - C. The Georgia Court of Appeals reached the same conclusion in dicta, relying on this opinion. *Carroll v. State*, 224 Ga. App. 543, 546, 481 S.E.2d 562, 564 (1997). *See also* O.C.G.A. § 9-11-81 (applying the Civil Practice Act to “special statutory proceedings.”)
 - D. Thus, where a protective order statute creates a process that diverges from the Civil Practice Act, it would appear that the

protective order statute would control. Where a protective order statute is silent on a particular point of procedure that the Civil Practice Act specifies, the CPA may still not control. However, in such a case, compliance with the Civil Practice Act would seem to satisfy the protective order statutes.

2.2.2 **Superior Court Rules:** The Uniform Superior Court rules governing “domestic relations” actions do govern petitions under the Family Violence Act. Uniform Superior Court Rule 24.1. These rules do not explicitly include either stalking or employer protective orders.

2.2.3 **Similarity of Protective Order Procedures:**

A. The stalking protective order statute incorporates by reference certain procedural and substantive provisions of the Family Violence Act. O.C.G.A. § 16-5-94(e) *cross-referencing* O.C.G.A. §§ 19-13-3(c) & (d), 19-13-4(b),(c) & (d), and 19-13-5. These provisions include those:

1. for scheduling hearings within 30 days of ex parte orders.
2. defining the roles of lay advocates and clerks in preparing petitions.
3. requiring issuance of final orders to sheriffs, and retention of orders by sheriffs.
4. governing the duration of final orders.
5. establishing the effectiveness of final orders throughout Georgia.
6. specifying the supplemental nature of remedies under each statute.

B. The employer protective order statute contains its own procedures, which vary in certain details from those for family violence and stalking protective orders. This section addresses those differences separately below.

2.3 Petitions

2.3.1 A person seeking either a family violence protective order or a stalking protective order must file a petition. O.C.G.A. §§ 19-13-3(a), 16-5-94(a). The petition must be verified. *Id.*, §§ 19-13-3(b), 16-5-94(c); *see also* O.C.G.A. §§ 9-11-11 (verified pleadings), 9-10-110 (verified petitions for equitable relief.)

2.3.2 **Financial affidavits:** In family violence protective order cases, petitioners may seek various remedies involving the payment of money, including child support, spousal support, and attorneys' fees, O.C.G.A. § 19-13-4(a)(6), (7), (10).

A. In protective order actions filed under O.C.G.A. § 19-13-1 et seq. and in other emergency actions, the affidavit may be filed and served on or before the date of the hearing or at such other time as the court orders, and shall not be required at the time of filing of the action. Uniform Superior Court Rule 24.2.

B. The court has the discretion to treat failure to file an affidavit as grounds for contempt or to continue the hearing until the affidavit has been filed.

2.3.3 **Assistance from lay advocates and court clerks:** The superior court may designate staff members of family violence shelters or social services agencies to “explain to all victims not represented by counsel the procedures for filling out and filing all forms and pleadings necessary for the presentation of their petition.” O.C.G.A. § 19-13-3(d). Clerks are not required to provide assistance in completing forms or presenting cases in family violence cases. *Id.* Any assistance provided by lay advocates must be without cost to petitioners. *Id.* Assistance by lay advocates within this provision does not constitute the unauthorized practice of law. *Id.*

2.3.4 **Fees:**

A. The superior court may not assess fees “in connection with the filing, issuance, registration, or service of a protection order . . . to protect a victim of domestic violence, stalking, or sexual assault.” O.C.G.A. § 15-6-77(e)(4). The same statutory section bars fees for petitions for prosecution orders of protection, and fees for the filing of criminal charges by “an alleged victim of any domestic violence offense . . .” *Id.*, § 15-6-77(I)(3) and § 15-10-82.

2.3.5 **Forms:** The clerk of each superior court may provide petitioners (or lay advocates) with the forms necessary for both family violence and stalking petitions. O.C.G.A. §§ 19-13-3(d), 16-5-94(e).

2.4 Ex Parte Orders

2.4.1 **Review and Screening of Petitions:** Nothing in either the statute or the court rules describes how a superior court should review and screen petitions for ex parte relief. Judges thus have discretion to decide on granting ex parte relief using only the written allegations of the petition. Alternately, a court may also decide on ex parte relief after review of the petition and direct contact with the petitioner. A court may delegate screening to a court employee, often a law or court clerk, to screen petitions. (See [Appendix B - Assessing for Lethality](#), [Appendix C - Screening for Domestic Violence](#) and [Appendix D - Checklist for Ex Parte Applicants](#))

2.4.2 **Contact with Respondent:** The statute does not explicitly specify whether the court may have contact with the respondent before issuing an ex parte order. However, the term “ex parte” necessarily implies issuance of an order “for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.” Black’s Law Dictionary (6th ed. 1990)(definition of ex parte), *cited in Cagle v. Davis*, 236 Ga. App. 657, 661-662, 513 S.E.2d 16, 21 (1999). The statute’s use of the term “ex parte” appears to indicate a legislative intent that a court not contact the respondent prior to issuing an ex parte order under the statute. This legislative intent likely arises from the fact that women are more likely to be victims of homicide when they are estranged from their abusive partners than when they live with them. The risk of homicide is higher in the first two months after separation (Wilson and Daly, 1993)(Campbell, 2003). Contact with the respondent prior to service

could in many cases endanger the petitioner. The statutes state that the court “may issue such temporary relief ex parte;” neither authorizes the issuance of interim relief after contact with the respondent. O.C.G.A. §§ 19-13-3(b), 16-5-94(c).

2.4.3 **Issuing Ex Parte Orders:**

- A. A person seeking an ex parte family violence or stalking order must allege “specific facts” indicating the occurrence of family violence or stalking. O.C.G.A. §§ 19-13-3(b), 16-5-94(c).
- B. The court may grant ex parte relief if it finds that “probable cause” exists that family violence or stalking “has occurred in the past and may occur in the future.” *Id.*
 - 1. The court may grant whatever temporary relief it “deems necessary to protect the petitioner or a minor of the household.” *Id.*
 - 2. Upon issuance of the ex parte order, the court must immediately provide the petitioner with a copy. *Id.*
- C. The statute specifies a range of possible remedies that the court might order, which will be more fully described later. O.C.G.A. §§ 19-13-4(a) (family violence), 16-5-94(d) (stalking). In issuing ex parte orders, the court should consider:
 - 1. protection for the petitioner and the petitioner’s children, including cessation of violent behavior by the respondent, and prevention of all efforts by the respondent to contact or come near the petitioner and the petitioner’s children.
 - 2. provision for temporary custody of the parties’ children;
 - 3. possession of a residence.
 - 4. respondent’s possible use of firearms.
- D. **Repeat Petitioners:**
 - 1. A court might sometimes receive frequent petitions from the same petitioner, each petition followed by a withdrawal or dismissal. Such a practice can create understandable concern about the use of court resources. At the same time, these repeat filings may reflect a compelling aspect of intimate violence or stalking, that of the abuser’s ability to use professions of love, promises to change and appeals for mercy so that in the eyes of the abused party the balance of power appears to change in their favor. This seeming power shift does not last for long (Herman, 1992).
 - 2. Neither the family violence nor the protective order statutes permit a court to dismiss a petition solely because the petitioner has filed and dismissed petitions on multiple prior occasions. Instead, the statute contemplates that the court assess probable cause in light of the “specific facts” of the current petition. O.C.G.A. §§ 19-13-3(b), 16-5-94(c).

3. Given the nature of family violence or stalking as a social and interpersonal phenomenon, prior repetitive filings may indicate nothing, or may well indicate support for “probable cause” in the case at hand.
 4. A court concerned with a petitioner’s practice of repetitive filing might consider a referral to a family violence shelter or social services agency for assistance and counseling in the petitioner’s efforts to separate from an alleged abuser. ([See Resources](#)).
- E. **Denial of Ex Parte Relief / Continuation of Petition:** The court may order ex parte relief. Whether or not the court grants a petitioner’s claim for ex parte relief, the statute states that “a hearing shall be held” within a certain time period after “the filing of the petition.” O.C.G.A. §§ 19-13-3(c) (family violence) *cross-referenced by* O.C.G.A. § 16-5-94(d) (stalking). The statute sets the date of the hearing with reference to the filing of the petition, not the decision on ex parte relief. Thus, after denying an ex parte request, the court must still schedule the final hearing if petitioner requests it, at which the petitioner “must prove the allegations of the petition.” *Id.* The hearing requires notice to the respondent and the opportunity for the respondent to contest. The court may dismiss the petition either upon failure of the petitioner’s proof or upon petitioner’s dismissal of the petition.
- F. In most cases the ex parte hearing occurs prior to the filing of the petition, therefore an order (Rule Nisi) for the hearing should be entered and filed with the petition even if ex parte relief is denied. If the petitioner does not wish to pursue the case to the final hearing, the court should enter an order denying ex parte relief and dismissing the petition without prejudice at petitioner’s request. If petitioner wishes to pursue the case to final hearing but the court does not want to grant ex parte relief then the court should enter an order denying ex parte relief but setting a hearing within thirty (30) days as required by the statute.
- G. **Forms Attached:**
1. Form A: Family violence order denying ex parte relief/status of petition
 2. Form B: Stalking order denying ex parte relief/status of petition

IN THE SUPERIOR COURT OF _____ COUNTY

STATE OF GEORGIA

_____ ,	:		:
vs.	:	Petitioner,	:
	:		:
_____ ,	:		:
Respondent.	:		:
	:		:
	:	Civil Action File No.: _____	:

**FAMILY VIOLENCE ORDER DENYING EX PARTE RELIEF/
STATUS OF PETITION**

The petitioner having prayed, pursuant to O.C.G.A. § 19-13-3, that a Protective Order be issued; and alleged that Respondent has committed acts of Family Violence and that Petitioner is in reasonable fear of the Petitioner’s safety and the safety of Petitioner’s children. After having heard Ex Parte the Petitioner’s evidence and reviewed the petition, the Court did not find probable cause that family violence occurred in the past and may occur in the future, **IT IS HEREBY ORDERED AND ADJUDGED:**

1.

The Court denies Petitioner’s Ex Parte request for a Protective Order.

2.

Pursuant to O.C.G.A. § 19-13-3(c), Petitioner has the right to a full and final hearing on this petition 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 at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases.

3.

Petitioner has been advised of his/her right to a full and final hearing pursuant to O.C.G.A. § 19-13-3(c) and the:

[] Petitioner **does not** want to continue to a full and final hearing on their Petition for a Protective Order; therefore, this Petition is dismissed without prejudice.

[] Petitioner **does want** to continue to a full and final hearing on their Petition for a Protective Order; therefore, this Petition is scheduled for a hearing as follows:

**That the Respondent appear before Judge _____, on
the _____ day of _____ at _____ .m. in room _____ of the
_____ County Courthouse at _____ to show
cause why the requests of the Petitioner should not be granted.**

SO ORDERED THIS _____ DAY OF _____, 20_____.

Judge,

~~Magistrate, Pro Hac Vice, Sitting by Designation~~
In the Superior Court of _____ ~~Fulton~~ County

IN THE SUPERIOR COURT OF ~~FULTON~~ COUNTY

STATE OF GEORGIA

_____,	:		:
vs.	:	Petitioner,	:
	:		:
_____,	:		:
Respondent.	:		:
	:		:
	:	Civil Action File No.: _____	:

**STALKING ORDER DENYING EX PARTE RELIEF/
STATUS OF PETITION**

The petitioner having prayed, pursuant to O.C.G.A. § 16-5-94, that a Protective Order be issued; and alleged that Respondent has committed acts of Stalking and that Petitioner is in reasonable fear of the Petitioner’s safety and the safety of Petitioner’s children. After having heard Ex Parte the Petitioner’s evidence and reviewed the petition, the Court did not find probable cause that stalking occurred in the past and may occur in the future, **IT IS HEREBY ORDERED AND ADJUDGED:**

1.

The Court denies Petitioner’s Ex Parte request for a Protective Order.

2.

Pursuant to O.C.G.A. § 16-5-94 (e), *cross referencing applicable statute/provision* O.C.G.A. § 19-13-3(c) Family Violence, Petitioner has the right to a full and final hearing on this petition 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 at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases.

3.

Petitioner has been advised of his/her right to a full and final hearing pursuant to O.C.G.A. § 16-5-94 (e) and the:

[] Petitioner **does not** want to continue to a full and final hearing on their Petition for a Protective Order; therefore, this Petition is dismissed without prejudice.

[] Petitioner **does want** to continue to a full and final hearing on their Petition for a Protective Order; therefore, this Petition is scheduled for a hearing as follows:

**That the Respondent appear before Judge _____, on
the _____ day of _____ at _____ .m. in room _____ of the
_____ County Courthouse at _____ to show
cause why the requests of the Petitioner should not be granted.**

SO ORDERED THIS _____ DAY OF _____, 20_____.

Judge,

~~Magistrate, Pro Hac Vice, Sitting by Designation~~

~~In the Superior Court of _____ Fulton County~~

2.5 Pre-Hearing Process

2.5.1 The family violence and stalking protective order statutes leave unresolved the various possibilities for pre-hearing procedure. The short time frames within which the protective orders hearing must occur naturally limit the extent of pre-hearing activity. The family violence statute does specify rules governing counter petitions for protection. Beyond, the statutes do not specify how courts should handle motions, discovery, or consolidation with other claims.

2.5.2 **Scheduling the Hearing:** The court must set a hearing on a petition within 10 and no longer than 30 days after the filing of a petition. O.C.G.A. § 19-13-3(c), *cross-referenced by* O.C.G.A. § 16-5-94(d) (stalking).

- A. If the court cannot set a hearing date within these time periods in the original county of filing, a court must schedule and hear the case in “any other county of that circuit.” *Id.* Failure to hold the hearing within the stated time periods results in dismissal of the petition, “unless the parties otherwise agree.” *Id.* The Civil Practice Act’s provisions for calculating dates and times can apply. O.C.G.A. § 9-11-6.
- B. The 30 day time period for family violence and stalking hearings can place great strain on a court’s docket, mandating that the court hear these petitions in advance of other pending cases. Some of this docket pressure can be relieved by settlement.
- C. On occasion, a court may find that it lacks the time in its docket to hear the case, even though it had scheduled the case within the 30-day period. As noted, the family violence and stalking statutes permit the parties to agree to extend the time frame. O.C.G.A. § 19-13-3(c). A court may discuss the problem with the parties, with a view to securing their consent to an extension. Lacking the parties consent, the court must either hold the hearing or dismiss the order. Dismissal of the petition where the petitioner has fully prosecuted the complaint seems at odds with the policy, if not the letter, of the protective order statutes.
- D. A solution to the time dilemma would allow a court to commence the hearing, and take evidence, but to continue it to the earliest possible later date when court time is available. Such a solution can be justified on the language of the family violence and stalking protective order statutes, which require that the hearing “be held” within the 30-day time frame. O.C.G.A. § 19-13-3(c). The court would need to extend the ex parte order to that date of the later hearing. Such an approach seems consistent with the statute’s dual concerns to protect the petitioner and to assure the respondent an early hearing. It also seems to fall within the court’s inherent authority to manage its own docket. *See Duggan v. Duggan-Schlitz*, 246 Ga. App. 127, 128, 539 S.E.2d 840, 842 (2000)

(approving the “commence and continue” approach where the court could not complete hearing a motion to extend a six-month order within the original six month period.)

- 2.5.3 **Service on the Respondent:** After setting the hearing date, the petitioner must ensure notice to the respondent of the petition, of the date of the hearing and any ex parte order. O.C.G.A. §§ 9-11-4 (service of petition), 9-11-5 (service of papers after original complaint.) *See also* O.C.G.A. § 34-1-7(f) (requiring service of employer protective order petitions, ex parte orders and notices of hearing on the respondent.). The Family Violence statute does not specify personal service but if child support is requested then there must be personal service.
- A. Failure to assure proper service on the respondent justifies dismissal of the petition by the court. O.C.G.A. § 9-11-41(b). In *Loiten v. Loiten*, 288 Ga. App. 638, 655 S.E.2d 265 (2007), the out-of-state respondent was served with the ex-parte order but not the petition. The trial judge directed that the respondent be served when he left the court. The sheriff served the respondent with the petition in the courthouse parking lot. The Court of Appeals held that service of the petition on the defendant following a noticed hearing at which he made a Motion to Dismiss for insufficient notice and lack of service because he was not served with the petition was insufficient and prohibited under *Steelman v. Fowler*, 234 Ga. 706, 707 (1), 217 SE2d 285 (1975).
 - B. Dismissal in this case is without prejudice; the petitioner may refile when service on the respondent becomes possible, but new acts may be required. O.C.G.A. § 9-11-41. *See also* O.C.G.A. § 9-11-41(b) (involuntary dismissal for want of prosecution or failure to comply with the Civil Practice Act.)
 - C. Service of the ex parte order has a special practical urgency in protective order cases. The respondent does not have legal notice of the order, and law enforcement officials may not enforce it, until respondent has been served.
 - D. Since this is also the most dangerous period for the abused party timely service becomes a life-saving issue (Campbell, 2003) (Wilson & Daly, 1993).
- 2.5.4 **Answers:** Neither the family violence nor the stalking protective order statutes require the defendant to file an answer to the petition. The employer protective order statute permits such a response. O.C.G.A. § 34-1-7(e). The respondent may appear and contest the allegations of the complaint on the merits without having filed a responsive pleading. Such an approach seems justified by the statutes’ concerns for rapid resolution of claims raised by ex parte relief. Such an approach modifies the Civil Practice Act, which treats a party’s failure to file a responsive pleading as waiver of entitlement to all later notices, including notice of the date and time of hearing. O.C.G.A. § 9-11-5(a). In protective order cases, the respondent should continue to receive notice of hearings and all other motions prior to the date and time set for hearing.

- 2.5.5 **Counter petitions:** On occasion, respondents may request that the court issue a restraining order against the petitioner, in addition to any relief that the petitioner seeks. To obtain such a “mutual protective order” under the Family Violence Act, the respondent must file a separate petition “as a counter petition.” O.C.G.A. § 19-13-4(a). This counter petition must be verified, and must independently satisfy the requirements for protection against family violence, *Id, citing* O.C.G.A. §§ 19-3-3. The respondent must file the counter petition “no later than three days, not including Saturdays, Sundays, and legal holidays, prior to the hearing.” *Id.* Until these requirements are satisfied “the court lacks the authority to issue or approve mutual protective orders”. *Id.* In *Williams v. Jones*, 291 Ga. App. 395, 662 S.E.2d 195 (2008) the Court of Appeals reversed portions of a family violence protective order because the respondent had not filed a verified counter petition. The trial court previously issued a family violence protective order that restrained and enjoined both parties from certain acts and ordered both to attend a batterer’s intervention program.
- A. There is considerable debate regarding the issuance of mutual restraining orders. Zorza (1999) enumerates many unintended consequences that are created by mutual orders that can endanger and/or negatively impact all parties involved.
- 2.5.6 **Motions:** Either party may file motions addressed to the court prior to the date set for hearing. O.C.G.A. § 9-11-7.
- A. The Uniform Superior Court rules provide that the party opposing the motion may have up to 30 days to respond to the motion, Uniform Superior Court Rule 6.2. So stated, this time frame seems inconsistent with the 30 day time period required for protective orders. However, the rule permits the court to order a different time period for response. *Id.*
- B. A separate rule relating to emergency motions goes farther. Uniform Superior Court Rule 6.7. It permits the assigned judge “to waive the time requirement applicable for emergency motions” and also to “grant an immediate hearing on any matter requiring such expedited procedure.” *Id.* To justify this expedited process, the motion must 1) be in writing, 2) show good cause, and 3) “set forth in detail the necessity for such expedited procedure.” *Id.*
- C. Nothing in the Superior Court rules or the Civil Practice Act prevents the court from scheduling any motions in protective order cases at the same time as the hearing set for the merits. Moreover, Superior Court rules permit the court to rule on a motion without oral hearing. Uniform Superior Court Rule 6.3.
- 2.5.7 **Discovery:** The 30 day requirement for final hearings in protective order cases severely limits the opportunity for effective discovery, at least within the normal time frames of the relevant rules. The Superior Court rules do permit a court to “shorten the time to utilize the court’s compulsory process to compel discovery.” Uniform Superior Court Rule 5.1 (stating that in the normal course, discovery should be completed

within 6 months). In family violence and stalking cases, the parties themselves may extend the date of the hearing to avoid dismissal of the case. O.C.G.A. § 19-13-3(c). These provisions permit the court and the parties to structure a discovery schedule consistent with the need for an early hearing on the petition for protection. However, in the normal course, the court can expect little if any discovery prior to a hearing on the merits.

2.5.8 **Consolidation:** Before a hearing on the protective order, parties may also file independent claims with which a family violence or stalking case might be consolidated. These claims include divorce, legitimation, or deprivation actions.

2.5.9 **Dismissal:** The petitioner can dismiss the petition before the hearing occurs. O.C.G.A. § 9-11-41(a). If the respondent has filed a counterclaim, the Civil Practice Act states that the counterclaim “shall not be dismissed against the defendant’s objection unless the counterclaim can remain pending for independent adjudication by the court.” O.C.G.A. § 9-11-41(a)(2). Since the Family Violence Act requires that a respondent’s counterclaim satisfy the requirements for an initial petition, it seems likely that such a counterclaim “can remain pending.” Thus, a petitioner’s dismissal should not in the ordinary course lead to dismissal of respondent’s counterclaim.

2.6 Hearings

2.6.1 **Evidence and Findings:** The petitioner has the burden of proving the elements necessary to justify an order providing further relief from abuse. The elements required for different protective orders are covered in more detail above. This section summarizes the basic elements:

A. **Family Violence Protective Order:** under O.C.G.A. §§ 19-13-1, 19-13-3, the petitioner must prove that:

1. the petitioner has a particular *relationship* to the respondent; and
2. the respondent has engaged in one or more particular types of *violence*; and
3. the petitioner *needs protection* against future violence by the respondent.
4. the burden of proof is preponderance of evidence.

B. **Stalking Protective Order:** under O.C.G.A. §§ 16-5-90, 16-5-94, the petitioner must prove that:

1. the respondent has *stalked* the petitioner, meaning that the respondent:
 - (a) has followed, placed under surveillance, or contacted the petitioner;
 - (b) at or about a place or places;
 - (c) without the petitioner’s consent;
 - (d) for the purpose of harassing and intimidating the petitioner.
 - (e) burden of proof is preponderance of evidence.
2. the petitioner *needs protection* against future stalking by the respondent.

- C. **Employer Restraining Order:** under O.C.G.A. § 34-1-7, the employer must prove that:
 - 1. the employer has an **employer-employee relationship** with the employee;
 - 2. the employee has suffered unlawful **violence or a credible threat of violence**;
 - (a) from the respondent,
 - (b) at the employee’s workplace or in the course of the employee’s work.
 - 3. the burden of proof is clear and convincing evidence.
- 2.6.2 In addition to these basic elements, the petitioner must also prove facts sufficient to support the requested relief. ([See Section 3.2 - Remedies](#)).
- 2.6.3 **Standard for Factual Review:**
 - A. Trial courts have broad discretion in finding facts in protective order cases.
 - B. The Court of Appeals has stated that “[C]ases such as this . . . turn largely on questions of credibility and judgments as to the welfare of the child. The trial court is in the best position to make determinations on these issues, and we will not overrule its judgment if there is any reasonable evidence to support it.” *Baca v. Baca*, 256 Ga. App. 514, 568 S.E.2d 746 (2002) (affirming a child custody determination in family violence case), *Buchheit v. Stinson*, 260 Ga. App. 450, 579 S.E.2d 853 (2003) (reversing a determination on the occurrence of family violence.) ([See Appendix J - Guardians Ad Litem In Family Violence Cases](#))
- 2.6.4 **Burden of Proof:**
 - A. In family violence and stalking cases, the petitioner has the burden of proving the allegations of the petition by a preponderance of the evidence. O.C.G.A. § 19-13-3(c), O.C.G.A. § 16-5-94(e).
 - B. In employer protective order cases, the employer has the burden of proving the allegations of the petition by clear and convincing evidence. O.C.G.A. § 34-1-7(e).
- 2.6.5 **Witnesses:** No rule limits the number of witnesses that a party may call in a protective order case.
 - A. Uniform Superior Court Rule 24.5 does limit the numbers of witnesses that parties may present for “temporary hearings” in “domestic relations actions.” Uniform Superior Court Rule 24.5(a), *see also* Uniform Superior Court Rule 24.1 (including Family Violence Act petitions as “domestic relations actions.”)
 - B. However, the Court of Appeals has stated on different facts that these hearings produce “final orders, . . . nothing remains pending.” *Williams v. Stepler*, 221 Ga. App. 338, 471 S.E.2d 284 (1996) (holding that a family violence order constitutes a final order, not requiring interlocutory appeal.)
- 2.6.6 **Absent Parties:**

- A. If the petitioner fails to attend the hearing, a court may (and on request must) dismiss the case for failure to prove the allegations of the petition. O.C.G.A. § 19-13-3(c), *see also* O.C.G.A. § 9-5-41(b) (involuntary dismissal for want of prosecution).
- B. If the respondent fails to attend the hearing, the statute still requires the petitioner to prove the allegations of the pleading. O.C.G.A. § 19-13-3(c), therefore there is no default.

2.6.7 **Interpreters:** The court shall provide an interpreter for either a petitioner and or respondent in a temporary protective order hearing, “when necessary for the hearing on the petition.” O.C.G.A. § 15-6-77(e)(4). The court may arrange for payment of the “reasonable cost” of an interpreter out of the local victim assistance funds. O.C.G.A. § 15-6-130 et seq.

- A. Tapestri, Inc., a state organization that provides national training on issues specific to battered refugee and immigrant women, advises that it is dangerous to use victim’s companions or children as interpreters. They recommend developing a list of contract interpreters that are well-trained in domestic violence. ([See Appendix H - Immigrants and Refugees](#))

2.7 Employer Protective Order Process

2.7.1 The procedures for employer protective orders in general parallel those for family violence and stalking protective orders. An employer must file a petition, and may obtain an ex parte remedy. The court must hold a hearing within a limited time, and may issue a restraining order of longer duration upon proof of the allegations in the petition.

2.7.2 However, employer restraining order proceedings also vary in significant respects from proceedings for family violence or stalking protective orders:

- A. **Affidavit required for ex parte relief:** To obtain a “temporary restraining order”, in addition to filing a petition, the employer must file an affidavit. O.C.G.A. § 34-1-7(d). The affidavit must address the following facts:
 1. the employee has suffered “unlawful violence or a credible threat of violence”;
 2. “great or irreparable harm shall result” to the employee without relief; and
 3. the employer has made “a reasonable investigation into the underlying facts.” *Id. Compare* O.C.G.A. §§ 19-13-3(c), 16-5-94 (in family violence or stalking petitions, requirement of a “verified petition” alleging “specific facts”.)
- B. **Standard for granting ex parte relief:** Before granting a temporary restraining order in an employer petition, the court must find that the affidavit contains “reasonable proof” of its allegations. O.C.G.A. § 34-1-7(d). *Compare* O.C.G.A. §§ 19-13-3(c), 16-5-94 (in family violence or stalking petitions, requirement of “probable cause.”)

- C. **Duration of ex parte relief:** A temporary restraining order in an employer protective order case can last “for a period not to exceed 15 days, unless otherwise modified or terminated by the court.” O.C.G.A. § 34-1-7(d). Note that the court must schedule a hearing “no later than 30 days after the filing of the petition”, *Id* § 34-1-7(e). This suggests that, where the court grants a temporary restraining order, but sets a hearing for a date more than 15 days later, the employer may need to request the court to renew or modify the restraining order before the hearing. *Compare* O.C.G.A. §§ 19-13-3, 19-13-4, 16-5-94 (in family violence or stalking petitions, ex parte order lasts until the hearing.). This is important information for employers since a recent study indicated that two-week orders are less effective than no order at all (Holt, 2002).
- D. **Answer and counter-claim permitted:** “the respondent may file a response which explains, excuses, justifies, or denies” the allegations in the petition. The respondent may also file “a cross-complaint” requesting an employer restraining order. O.C.G.A. § 34-1-7(e). *Compare* O.C.G.A. §§ 19-13-3(c), 16-5-94 (in family violence or stalking petitions, answer by respondent not required; counter-claim required for mutual protective order.)
- E. **Independent inquiry by court:** At a hearing on an employer protective order petition, the court shall hear “any testimony that is relevant.” The court may also “make an independent inquiry.” O.C.G.A. § 34-1-7(e). *Compare* O.C.G.A. §§ 19-13-3(c), 16-5-94 (in family violence or stalking petitions, no provision authorizing independent inquiry.)
- F. **Burden of proof:** The employer must prove the allegations of the petition “by clear and convincing evidence.” O.C.G.A. § 34-1-7(e). *Compare* O.C.G.A. §§ 19-13-3(c), 16-5-94 (in family violence or stalking petitions, requirement of proof by a preponderance of the evidence.)
- G. **Duration of order:** An employer protective order may have duration of up to three years. O.C.G.A. § 34-1-7(e), and may be renewed by motion of petitioner within three months before the expiration of the order. *Compare* O.C.G.A. §§ 19-13-4(c), 16-5-94 (in family violence or stalking petitions, duration of up to one year but may be extended to three years or permanently.)

3 CHAPTER 3 – REMEDIES, SETTLEMENTS AND ORDERS

3 REMEDIES, SETTLEMENTS AND ORDERS

3.1 Overview

- 3.1.1 The three protective order statutes offer various remedies. (*See* Section 3.2 below, Remedies).
- 3.1.2 All three permit parties to provide for remedies through negotiation, (*See* [Section 3.3](#) below, Settlements).
- 3.1.3 Special considerations arise with respect to the mediation of cases involving family violence. (*See* [Section 3.4](#) below and [Appendix K - Mediation](#)).
- 3.1.4 Finally, protective orders have special features with respect to finality, service, duration, extension and enforcement. (*See* [Section 3.5](#) below, Orders).

3.2 Remedies

3.2.1 Family violence protective orders offer the widest range of potential remedies. This section first addresses family violence protective order remedies in four categories: protection; children; property and money; and treatment. The section then discusses the remedies available for stalking protective orders and for employer protective orders. It concludes with a discussion of the court's equitable powers to fashion additional remedies.

3.2.2 **Protection:**

- A. **Restraining orders:** Family violence orders may:
 - 1. Direct the respondents to “refrain from” the acts, which led to the court’s finding of family violence. O.C.G.A. § 19-13-4(a)(1).
 - 2. “Order the respondent to refrain from harassing or interfering with the victim.” O.C.G.A. § 19-13-4(a)(9).
 - 3. A superior court judge can and should apply the general language of these provisions in a variety of more specific ways, with a view towards assuring the safety of the petitioner and any children involved. For example, under these provisions, courts routinely award:
 - (a) **Stay-away orders:** requiring the respondent to stay a specified distance away from the petitioner, or the petitioner’s children, or the petitioner’s residence or workplace.
 - (b) **No-contact orders:** requiring the respondent to have no contact with the petitioner. These orders should be as specific as possible for the intended purpose.

Orders can and should specify those types of contact that are of particular concern, including phone contact, letters, e-mail. At the same time, orders should make clear that all contact is prohibited, even through methods of communication not specifically listed in the order.

- (c) **Limited or structured contact orders:** on occasion, the parties might require contact for a limited purpose, such as transportation or transfer of children, or the exchange or pick up of personal property. Protective orders should prevent or at the outside minimize such incidental contact. Where it must happen, the circumstances of contact should be clear, specific and carefully limited, and should include provision for a third-party presence during the contact.
- (d) Georgia law suggests that the court has the authority to enter these orders. *See* O.C.G.A. § 16-5-95. This section describes the misdemeanor offense of violating a family violence order. The section specifically notes stay-away, no-contact, and distance-limiting orders as enforceable orders under the Family Violence Act. *Id.*

- 4. A substantial body of literature indicates that, for maximum effectiveness, protective orders must be clear, unambiguous and specific. Respondents require clear notice of the proscribed behavior; and law enforcement agencies need clarity for those occasions when enforcement becomes necessary.

B. **Firearms:** Many Superior Courts routinely include gun provisions in family violence protective orders. The Family Violence Act does not specifically mention such provisions but allows the court to grant any protective order to bring about the cessation of acts of family violence. However, federal law does prohibit most family violence respondents subject to final orders from possessing or purchasing firearms or ammunition. 18 USC 922

- 1. Solid authority indicates the critical importance of limiting gun possession and use in family violence situations. In 1999 approximately, 15% of the 790,000 violent assaults against intimate partners involved the use of a weapon by the assailant. (Rennison, 2003) Leaving a respondent with access

to a gun increases the risk that later incidents of violence will turn lethal. A study of intimate partner assaults in Atlanta found that these assaults were twelve times more likely to result in death to the victim if a firearm was present (Saltzman, 1992). From 1990 to 2002, over two-thirds of spouse and ex-spouse victims were killed by guns (Bureau of Justice Statistics, 2005). Those who research the risk factors for intimate partner homicide indicate the importance of enforcement of the legal prohibition of gun ownership by those convicted of domestic violence and the inclusion of firearms search-and-seizure provisions in orders of protection. (Campbell et al, 2003)

2. Federal law renders it illegal for any intimate partner respondent against whom a court, after a hearing of which the respondent had notice, and 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 has issued a final restraining order to receive, transfer or possess a firearm. 18 U.S.C.A. § 922(g)(8). ([See Appendix E - Firearms](#)). 18 USC §922(g)(9) prohibits a convicted respondent from possessing firearms if he/she has been convicted of a misdemeanor crime of family violence. In *U.S. V. Hayes*, 129 S. Ct. 1079 (2009) the Supreme Court held that domestic relationship did not have to be a defining element of the predicate offense. The domestic relationship would have to be established but did not need to be an element of the predicate offense. Thus, in a final order, a Georgia court has ample authority to order law enforcement to confiscate any weapons in the respondent's possession. Given the severity of the risk inherent in the link between firearms and domestic violence, courts should consider such provisions in every order.
3. These federal laws apply only to respondents subject to final orders; they do not apply to orders issued ex parte. See 18 U.S.C.A. § 922(g)(8)(A).
 - (a) Under Georgia law, however, a Georgia court has the authority to order temporary

confiscation of the respondent's firearms in a family violence ex parte order. O.C.G.A. § 19-13-3(b). "The court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor child of the household from violence." Such a provision permits law enforcement to remove a major risk to the petitioner's safety during the critical time between ex parte and final orders. See [Section 3.2.7\(B\)\(3\)](#) for limitations regarding firearms in stalking orders.

- (b) Respondents have the opportunity to regain possession of the firearms by successfully contesting the petition at the later hearing.

C. **Restraining the Petitioner (Mutual Orders):** A respondent may not request that a restraining order be issued against the petitioner, and the court shall not issue or approve such an order, unless the respondent has filed a verified counter petition against the respondent sooner than three days before the final hearing. See *Williams v. Jones*, 291 Ga. App. 395, 662 S.E.2d 195 (2008). The three day period does not include Saturdays, Sundays, or legal holidays. O.C.G.A. § 19-13-4(a).

1. This requirement applies both to orders directing the cessation of violence, O.C.G.A. § 19-13-4(a)(1), and orders preventing harassment or interference. O.C.G.A. § 19-13-4(a)(9).
2. Absent such a counter petition, "a court shall not have the authority to issue or approve a mutual restraining order", regardless of evidence at hearing concerning the petitioner's behavior.
3. There is much debate about mutual orders of protection. Zorza (1999) lists several ways that mutual orders have unintended consequences that can endanger and negatively impact all parties.

3.2.3 Children:

- A. If petitioner and respondent have minor children, only family violence orders permit the court to address custody, visitation, and child support. Neither stalking protective orders, O.C.G.A. § 16-5-94(d), nor employer protective orders O.C.G.A. § 34-1-7(e) permit courts to address these issues.
- B. Since batterers are twice as likely as non-batterers to ask for custody of their children (Bowermaster & Johnson, 1998) (Zorza, 1995), and since "approximately 70% of

contested custody cases, (in the U.S.), that involve a history of domestic violence result in an award of sole or joint custody to the abuser" (Aiken & Murphy, 2000), the court plays a crucial role in assuring not just the physical but also the emotional safety of each child raised in a violent home. Most sources recommend that a finding of domestic violence should create a presumption that the perpetrators of violence not have sole or joint custody of children including the NCJFCJ Model Code, the American Psychological Association, the American Bar Association, and the U. S. Congress through a Sense of Congress Resolution (Jaffe, Lemon et.al., 2003).

- C. A custody or visitation order that leaves the details about exchanges and holiday time unspecified other than "to be negotiated by the parties" poses a safety risk. (Mathis & Tanner, 1998) Very young children are particularly vulnerable. The first two years of life have a critical impact on brain development. Trust, impulse control, and the ability to form positive intimate relationships are formed during this time. The absence of appropriate nurturing to develop these life-long qualities, form the seeds of adult violence. (Karr-Morse & Wiley, 1997) (Hunter, 2003)
- D. Due to the toll that family violence takes on children, the court may want to consider assessing all domestic relations cases for violence. ([See Appendix C - Screening for Domestic Violence](#)) ([See also Appendix O - Children and Domestic Violence](#))
- E. **Custody and Visitation:** In family violence orders, the court may award "temporary custody of minor children and establish temporary visitation rights." O.C.G.A. § 19-13-4(a)(4).
 - 1. The "temporary" nature of such orders refers both:
 - (a) to the period between an ex parte order and the hearing on the petition; and
 - (b) to the period of the final order, which the statute limits to "up to one year." O.C.G.A. § 19-13-4(c) unless extended through motion and a hearing..
 - 2. **Custody:**
 - (a) In making custody decisions, the court shall determine "solely" "what is for the best interest of the child or children and what will best promote their welfare and happiness." 19-13-3(a)(2). *Baca v. Baca*, 256 Ga. App. 514, 568 S.E.2d 746 (2002). However, the court may draw on existing

custody law in reaching custody decisions. [\(See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements\)](#)

- (b) Where the court has made a finding of family violence, O.C.G.A. § 19-9-3(a)(3) adds additional factors that a court must consider in reaching a custody decision:
 - (1) the court “shall consider as primary” the child’s safety and well-being, and that of the parent who is the victim of violence.
 - (2) the court “shall consider” the respondent’s history of causing harm or fear of harm.
 - (3) the victim has been forced to relocate or to be absent from the child because of the alleged violence, the court shall not treat the absence or relocation as an abandonment.
 - (c) O.C.G.A. § 19-9-1 exempts family violence petitioners and respondents from the requirement of filing parenting plans with the family violence court.
3. **Visitation:** Special statutory considerations apply when a court awards visitation to a respondent found to have committed acts of family violence.
- (a) In general, a court may award visitation to a parent who has committed acts of family violence “only if the court finds that adequate provision for the safety of the child and the parent who is a victim of family violence can be made.” O.C.G.A. § 19-9-7.
 - (b) As a practical matter, ongoing contact between parents about visitation represents a flashpoint where violence (or threats of violence) can recur. Protective orders can ease these risks through careful consideration of both the rights and the protections afforded the parties. [\(See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements\)](#) (See also Appendix N, Paragraph [B. Suggestions for Consideration in Cases Involving Domestic Violence](#))

- (c) O.C.G.A. § 19-9-7 identifies a range of different protective measures a court may take, including:
 - (1) requiring exchange of the child “in a protected setting.”
 - (2) requiring supervised visitation. *See also* O.C.G.A. § 19-9-3.
 - (3) mandating completion of an FVIP program “as a condition of visitation.”
 - (4) preventing the use of alcohol, marijuana or any regulated substance during and for 24 hours before scheduled visitation.
 - (5) prohibiting overnight visitation.
 - (6) requiring a bond from the perpetrator.
 - (d) Supervised visitation:
 - (1) where the court orders supervised visitation, it may also order the perpetrator to pay the costs of supervision. O.C.G.A. § 19-9-7(a)(5).
 - (2) where a family or household member is to supervise visitation under the order, the court “shall establish conditions to be followed during visitation.” O.C.G.A. § 19-9-7(d).
 - (e) These remedies are non-exclusive. The court may impose “any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or another family or household member.” O.C.G.A. § 19-9-7(a)(8). *See e.g. Carroll v. State*, 224 Ga. App. 543, 546, 481 S.E.2d 562, 564 (1997) (describing an order requiring 48 hours notice before the exercise of visitation.)
 - (f) Whether the court prevents or allows visitation, the court may order that the address of the child and the victim remain confidential. O.C.G.A. § 19-9-7(b).
4. A court may not condition an award of custody or visitation to an adult victim of family violence on the victim’s attendance at joint counseling with the perpetrator. O.C.G.A. § 19-9-7 (c).

5. The Court of Appeals has stated that it may be the “better practice” to include findings of fact in support of orders of custody and visitation. *Baca v. Baca*, 256 Ga. App. 514, 568 S.E.2d 746 (2002).
 - (a) In *Baca*, however, the court affirmed an award of custody and visitation even where the court failed to include specific findings of fact.
 - (b) “We will not simply presume the trial court misapprehended the law unless the record clearly reflects such misapprehension.” *Id.*, 256 Ga. App. at 518.

F. **Child support:** In family violence orders, the court may “Order either party to make payments for the support of a minor child as required by law” O.C.G.A. § 19-13-4(a)(6). ([See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements](#)) (See also Appendix N, Paragraph [B- Suggestions for Consideration in Cases Involving Domestic Violence](#))

1. The reference to “support. . . as required by law” refers generally to the provisions of Georgia’s child support statutes. O.C.G.A. § 19-6-14 – 19-6-34.
2. O.C.G.A. § 19-6-15 (c)(1) requires the use of child support worksheets and the new child support guidelines in all temporary or final legal child support proceedings. The child support worksheets shall be used when the court enters a temporary or permanent child support order. Currently, the worksheets and schedules do not have to be filed with the protective orders. Thus child support worksheets are not required with the filing of the Family Violence petition or Order, but the guidelines and provisions are to be used to determine the amount. www.georgiacourts.org/csc/.
3. If a petition requests child support, Superior Court Rule requires the parties to file financial affidavits and child support worksheets. Uniform Superior Court Rule 24.2. www.georgiacourts.org/csc/.
 - (a) “In family violence actions filed under O.C.G.A. § 19-13-1 et seq., the affidavit and schedules may be filed and served on or before the date of the hearing... and shall not be required at the time of the filing of the action.” Uniform Superior Court Rule 24.2.

- (b) The rule leaves the court discretionary authority:
 - (1) to hold parties in contempt for failing to file an affidavit; and
 - (2) to continue the hearing until an affidavit is filed, which may cause a problem with the 30 day period.

4. Contempt: If a non-custodial parent does not pay child support as ordered in the Protective Order, a contempt action can be brought. In *James-Dickens v. Petit-Compere*, 299 Ga. App. 519, 683 S.E.2d 83 (2009) the petitioner attempted to file for a contempt hearing on child support arrears but was denied because the TPO would expire before the hearing. The Court held that the child support arrears are enforceable after an underlying order has expired

3.2.4 **Property and Money:** The Family Violence Act permits the court to address possession of the premises and the provision of shelter to the petitioner; temporary division of personal property if married; and spousal support. Neither stalking protective orders, O.C.G.A. § 16-5-94(d), nor employer protective orders. O.C.G.A. § 34-1-7(e) permit courts to address these issues in those actions.

A. Shelter and possession of the residence:

- 1. Family violence can severely dislocate the petitioner; indeed, the risk of losing shelter may serve as one pressure keeping the petitioner in an abusive relationship.
 - a. The Family Violence Act recognizes this reality by providing both for possession of an existing residence and for payment for alternate housing for a spouse, former spouse or parent and the party's child or children.
 - b. Note that petitioners in crisis may also have access to family violence shelters. However, many shelters in Georgia are not equipped to provide housing to male children over the age of twelve. ([See Resources, A. Local Resources](#))
 - c. At the same time, courts will often face the prospect of removing the respondent from a residence in which the respondent has a primary, and perhaps even sole ownership interest.

- d. The emergency created by the underlying acts of family violence can thus result in dislocation for the respondent, and the imposition of added housing costs.
2. **Possession of Residence:**
- a. The Family Violence Act permits a court to “grant to a party possession of the residence or household of the parties.” O.C.G.A. § 19-13-4(a)(2).
 - b. There appears to be a difference between superior courts on whether the statute allows an award of possession to a party with no ownership interest in the premises.
 - (1) A party seeking protection and possession of the residence may have a variety of different forms of interest in the premises, including:
 - (i) sole or joint title: the court has clear authority to order that the party receive possession.
 - (i) inchoate interests: a spouse may claim an inchoate interest in the assets of the other spouse. The other party can counter that the premises reflect separate property. Spouses would normally resolve contested inchoate claims through divorce.
 - (ii) tenancy: a party who lives in premises owned by another by agreement with the owner may qualify as a tenant, with rights to possess defined by the terms of their agreement. Parties would normally resolve competing claims to possession through a dispossessory action.
 - (iii) invitee status: a party who lives in premises owned by another by permission of the owner may qualify as an invitee. The owner in such a case would have the ability to

dispossess the invitee without resort to judicial process.

- (2) The Family Violence Act refers to “residence or household” of the parties, terms which in normal usage refer to either where or with whom a person lives. These terms often cover arrangements in which the resident or household member does not have an ownership interest, such as leases. The statute does not explicitly require fact-finding on legal ownership of the relevant property.
 - (3) Any order of possession under the Family Violence Act has a maximum time limit of one year unless extended. Orders of possession thus do not constitute a permanent shift in legal title, although permanent orders could in effect do this. The statute also provides limited authority for the court to order one party to bear the cost of two residences. *See below* (alternate housing for spouses, former spouses, or parents of shared children).
 - (4) It seems clear that the legislature did not intend that parties use Family Violence action to settle permanently disputes over title.
 - (5) At the same time, it also seems clear that the legislature did intend to allow courts to award possession of the premises where necessary to alleviate dislocations caused by family violence.
 - (6) The possessory provisions of the Family Violence Act are discretionary, not mandatory, and leave a court with discretion to find other remedies relating to shelter. *See O.C.G.A. § 19-13-4 (a).*
- c. A court can consider these practical and legal dimensions, and can structure possessory remedies that include:

- (1) Shorter time frames for an owner to regain possession of the premises by a party-owner that differ from those of the underlying order.
 - (2) Provisions for payment of rent or mortgage to ensure ongoing stability of possession. ([See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements](#)).
 - (3) Provisions for alternate shelter should a third party successfully foreclose or regain possession of the residence or household.
- d. Rights of third parties:
- (1) Ownership: Orders for possession only bind the parties to the action, and not any interested third parties, including mortgagees.
 - (2) Lease: A court order for possession does not bind the landlord to accept the remaining tenant. Petitioners who remain in possession of leased premises may face eviction if they are not already party to the lease agreement. Moreover, tenants renting from HUD-subsidized public housing may face eviction because they have been party to a violent incident, even where they were an innocent victim.
- e. Exclusion or eviction of “other party”: where the court has awarded possession to one party, the court may also:
- (1) “exclude the other party from the residence or household”, O.C.G.A. § 19-13-4(a)(2).
 - (2) “order the eviction of a party from the residence or household”, O.C.G.A. § 19-13-4(a)(5).
 - (3) “order assistance to the victim in returning to” the residence or household. *Id.*
3. **Alternate housing**: Instead of awarding possession, the court can also “require a party to provide suitable alternate housing for a spouse,

former spouse, or parent and the parties' child or children.” O.C.G.A. § 19-13-4(a)(3).

- a. A court cannot provide for alternate housing for unmarried parties who have not had children together.

B. gPersonal property:

1. The court may also “provide for possession of personal property of the parties.” O.C.G.A. § 19-13-4(a)(8).
 - a. The statute states no standard for the division of personal property, nor does case law provide guidance.
 - b. A potential question exists about the extent of the court’s authority over “personal property”:
 - (1) On the one hand, items such as clothing, utensils, furniture, cars and personal tools would seem well within the scope of the statute.
 - (2) On the other hand, personal property such as stocks and investments, pension plans and other assets of comparable value might raise more questions:
 - (3) Married parties would normally resolve their competing claims through divorce.
 - (4) Unmarried parties would have to use a partition action with respect to jointly held assets.
 - (5) It is not clear that the legislature intended the Family Violence Act as an alternative to those remedies.
 - c. The Family Violence Act grants the court authority only to “provide for possession.”
 - (1) It does not authorize permanent settling of competing claims to title.
 - (2) Family violence orders are necessarily time-limited, and seem intended only to meet needs, which might arise during that time period.
 - d. A rule of reason would seem to distinguish between:
 - (1) “Dividing” personal assets to which the parties will need access during a time-limited order, and

- (2) Permanently settling ownership of assets to which the parties have contested claims.
- 2. **Transferring personal property:** contact between parties around retrieval of personal property presents another point where violence (or threats of violence) can recur.
 - a. Protective orders can ease these risks through careful advance delineation of the times, places and circumstances of retrieval.
 - b. The court may “order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered”. O.C.G.A. § 19-13-4(a)(5). To prevent problems the court can order that the respondent be accompanied by local law enforcement to retrieve personal property.
 - c. The statute does not explicitly mention structuring an order for retrieval of the respondent’s personal property if the respondent has been evicted. However, the court’s authority to structure the respondent’s contact with the petitioner gives it discretion to arrange for the respondent to recover possession of personal property.
- C. **Spousal support:**
 - 3. The court may “order either party to make payments for the support of a spouse as required by law.”19-13-4(a)(7). ([See Appendix K, Paragraph D - Safeguards for Judicial Consideration in Mediated Agreements](#))
 - a. The statute specifies “support of a spouse”; the provision does not authorize support between unmarried partners.
 - b. The reference to “support . . . as required by law” refers generally to the provisions of Georgia’s alimony statutes. O.C.G.A. § 19-6-1 – 19-6-13.
 - 4. The alimony statute distinguishes between temporary and permanent alimony. O.C.G.A. § 19-6-1 (a).
 - a. The Family Violence Act does not specify whether to use the standards for “temporary alimony”, O.C.G.A. § 19-6-3, or for “permanent alimony”, O.C.G.A. §§ 19-6-1,

19-6-5 (a), in calculating the amount of the award.

- b. The temporary alimony statute states that the court “in fixing the amount of alimony, may inquire into the cause and circumstances of the separation rendering the alimony necessary and in his discretion may refuse it altogether”. O.C.G.A. § 19-6-3(c).
- c. The permanent alimony statutes also permit the court to consider the conduct of either party in determining whether and how much alimony to award. O.C.G.A. § 19-6-1 (b), (c); *Bryan v. Bryan*, 242 Ga. 826, 251 S.E.2d 566 (1979); *Davidson v. Davidson*, 243 Ga. 848, 257 S.E.2d 269 (1979). In general, the court must also consider “the wife's need and the husband's ability to pay.” *Bryan*, 242 Ga. at 828. The statute requires the court to consider a series of more specific factors in determining the amount of alimony. O.C.G.A. § 19-6-5(a).

3.2.5 Counseling and Family Violence Intervention Programs:

A. **Psychiatric or Psychological Services:**

- 1. In family violence actions, the court may “order the **respondent** to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.” O.C.G.A. § 19-13-4(a)(11).
 - (a) Family violence orders can require only the respondent to undergo counseling.
 - (b) Counseling must serve “to prevent the recurrence of family violence.”
- 2. In stalking actions, the court may “order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of stalking.” O.C.G.A. § 16-5-94 (d)(4).
 - (a) Stalking orders can require either the respondent, the petitioner or both to undergo counseling.
 - (b) Counseling must serve “to prevent the recurrence of stalking.”
- 3. In employer protective order cases, the statute does not authorize the court to order counseling of any kind.

- B. The statutory requirement for “appropriate” services seem to require fact-finding on the need for and impact of any proposed counseling service.
1. The petitioner has the burden of proving the need for and the particular type of counseling requested in the order.
 2. The mandate for “appropriate” services suggests a relationship between the nature and goals of the specific services and its intended effect on the specific individual.
 3. Types of “psychiatric and psychological services”: a court might consider various forms of psychiatric and psychological services. ([See Appendix I - Mental Illness and the Court](#) and [Appendix G - Family Violence Intervention Programs](#))
- C. **Joint counseling:**
1. Joint counseling requires ongoing contact between petitioner and respondent and is not recommended because it presents a risk that further violence, threats of violence or re-traumatization may occur.
 2. In family violence cases, the court has authority to require only the **respondent**, and not the petitioner, to engage in counseling. The court may require petitioner to engage in counseling only where the respondent files an appropriate counter-petition. O.C.G.A. § 19-13-4(a). The presence of a properly filed counter-petition does not mandate joint counseling.
 3. In stalking cases, the court has authority to order “either or all parties” to engage in counseling. O.C.G.A. § 16-5-94 (d)(4). The statute neither mandates nor prohibits joint counseling. The term “either or all” can be interpreted either to require separate counseling or to permit joint counseling. No case law interprets the point.
 4. The overarching purpose for both, family violence orders or stalking orders remains “to bring about a cessation of acts of family violence” or “of conduct constituting stalking.”
 - (a) Both family violence orders and stalking orders permit the issuance of orders for conduct, which might recur during future contact between the parties.
 - (b) Given this, the court must weigh:

- (1) The extent to which joint counseling might lead to the cessation of violence or stalking
- (2) Against the risk that violence or stalking might recur during, or as a result of, joint counseling.
- (c) Other provisions suggest a presumption against joint counseling:
 - (1) The guidelines for mediation between couples in cases involving family violence explicitly prevents mediation in cases where the victim does not consent, after full disclosure: “No case involving issues of domestic violence should be sent to mediation without the consent of the alleged victim given after a thorough explanation of the process of mediation.
 - (2) In custody disputes, a court may not order joint counseling as condition of receiving custody or visitation of a child. O.C.G.A. § 19-9-7(c).

D. Family Violence Intervention Programs (FVIP):

1. A “family violence intervention program” means:
 - (a) “Any program that is certified by the Department of Corrections pursuant to Code Section 19- 13-14 and designed to rehabilitate family violence offenders.” O.C.G.A. § 19-13-10(6).
 - (b) The term includes “batterer intervention programs, anger management programs, anger counseling, family problem resolution, and violence therapy.” *Id.*
2. Family violence intervention programs differ significantly from programs that address anger management. ([See Appendix G - Family Violence Intervention Programs](#))
 - (a) The latter targets individuals involved in road rage, bar fights or neighbors fighting: individuals who make a poor choice and use their anger offensively during an isolated incident.
 - (b) In domestic violence, where there is a pattern of using violence and intimidation to control an intimate partner, anger

management does not account for premeditated controlling behaviors of abusers and may be dangerous to the victim. (Gondolf & Russell, 1986) Recent research has raised further questions about the use of anger management as a remedy for batterers. (Gondolf, 2002)

- (c) Certified family violence intervention programs directly address the unique aspects of this behavior and have proven a far more effective method than anger management programs.
3. Georgia law requires the certification of these programs:
- (a) The Department of Corrections certifies these programs, O.C.G.A. § 19-13-15, and promulgates and administers the rules and regulations under which the programs operate, O.C.G.A. § 19-13-14.
 - (b) The programs may be operated by private business, or by public entities, including specifically the Department of Corrections and the State Board of Pardons and Paroles. O.C.G.A. §§ 19-13-14(b), 19-13-15.
 - (c) The Department of Corrections must maintain a list of certified programs, available to the public and the courts. O.C.G.A. § 19-13-14(f). The list is available and updated on the Georgia Commission on Family Violence at <http://www.gcfv.org/>
4. **FVIP orders:**
- (a) “When imposing a protective order against family violence”, a court “**shall** order the defendant to participate in a family violence intervention program.” O.C.G.A. § 19-13-16(a).
 - (1) The definition of “family violence” excludes employer protective orders. O.C.G.A. § 19-13-10(5). Courts need not order FVIP in such cases.
 - (2) Participation in FVIP by the respondent is mandatory in family violence cases.
 - (3) A court may waive the requirement only if “the court determines and

states on the record why participation in such a program is not appropriate.” O.C.G.A. § 19-13-16(a).

- (b) The defendant must bear the cost of participation in FVIP. O.C.G.A. § 19-13-16(c). “If the defendant is indigent, the cost of the program shall be determined by a sliding scale based upon the defendant’s ability to pay.” *Id.*

E. **Enforcement:** FVIP orders, and orders for psychiatric or psychological counseling, pose special problems of enforcement.

1. If the respondent fails to comply with such an order, only the petitioner or the service provider stand in a position to request enforcement of the order. ([See Appendix G, Paragraph C - Monitoring by the Court](#)). Some courts are ordering the respondents to return to court on a specific date to prove that they are in compliance with this order; and some require them to prove that they have attended three sessions by that date, and order them held on contempt if they are not in compliance.
 - (a) The petitioner’s ability to enforce the order depends upon the petitioner’s knowledge of the respondent’s compliance. Nothing in the statute requires notice to the petitioner of the respondent’s record of compliance.
 - (b) The service provider may or may not have sufficient incentive to report non-compliance to the court, at least in the civil context. Nothing in the statute gives the court authority to compel the service provider to report on the respondent’s record of compliance.
2. In the event the court does learn of non-compliance, the court has a limited pool of remedies for non-compliance with an order.
 - (a) Neither the remedial provisions of the family violence or stalking statutes, nor the FVIP article in the Family Violence Act provide any explicit method for enforcement of these orders.
 - (b) The misdemeanor offense of “violating [a] family violence order” does not include failure to attend counseling or FVIP in the

definition of the offense. O.C.G.A. § 19-5-95(a)(1-4).

(c) The felony offense of “aggravated stalking” for violation of a stalking order does not include failure to attend court-ordered counseling in the definition of the offense. O.C.G.A. § 19-5-91(a).

3. Civil contempt represents the most likely remedial measure available to a court. (See [Section 3.5.5](#), below). Civil contempt orders permit the court to impose incarceration or fines, which the respondent may purge by complying with the provisions of the order.

3.2.6 Attorneys fees:

A. In family violence and stalking cases, the court may “award costs and attorney's fees to either party.” O.C.G.A. §§ 19-13-4(a)(10), 16-5-94(d)(3).

1. The award of costs and fees is not authorized for employer protective order cases, O.C.G.A. § 34-1-7.
2. The family violence and stalking statutes provide no explicit standard for determining whether to award costs and fees or how much to award.
3. The divorce standard for determining an award of fees appears not to apply under the Family Violence statute, O.C.G.A. § 19-6-2(a)(“disparity in income”); *Suarez v. Halbert*, 246 Ga. App. 822, 543 S.E.2d 733 (2000). The Court of Appeals reversed an award of fees, stating in dicta that the “disparity of income” standard was inapplicable in family violence cases.

B. Awarding costs and fees “to either party”:

1. The stalking and family violence statutes permit the court to award costs and fees “to either party.” The language appears to permit the award of fees in favor of the prevailing party.
2. The language “either party” does not justify an award of fees against the prevailing petitioner. In *Suarez v. Halbert*, 246 Ga. App. 822, 543 S.E.2d 733 (2000), the Court of Appeals reversed the award of fees against grandparents who have successfully obtained a restraining order granting them custody of a grandchild.
 - (a) In that case, a trial court had awarded attorney’s fees against a prevailing party in a

family violence act, finding a “disparity of income” between the parties.

- (b) The Court of Appeals held that the Family Violence Act contained no authority for awarding attorney’s fees against the prevailing party.
- (c) “Imposing attorney fees upon well-intentioned petitioners seeking to thwart the occurrence or recurrence of family violence would only serve to deter others from filing similar actions.” *Id* at 825.

C. **Standard of review:** the Georgia Supreme Court has applied an abuse of discretion standard in reviewing an award of attorney’s fees under the Family Violence Act. *Schmidt v. Schmidt*, 270 Ga. 461, 463, 510 S.E.2d 810 (1999) (“we cannot say that the trial court abused its discretion in awarding \$1,500.00 in fees in this case.”)

3.2.7 Stalking order remedies:

- A. Georgia law provides for fewer remedies in a stalking order than for a family violence order, O.C.G.A. § 16-5-94(d)(1-4). A court may:
 - 1. “Direct a party to refrain from” stalking conduct.
 - 2. “Order a party to refrain from harassing or interfering with the other.”
 - 3. “Award costs and attorney's fees to either party.”
 - 4. “Order . . . appropriate psychiatric or psychological services.”
 - (a) The statute permits the court to order “either or all parties” to undergo these services.
 - (b) The statute does not require a court to order a party into a family violence intervention program. O.C.G.A. § 19-13-16(a).
- B. The statute states that stalking remedies should be designed “to bring about a cessation of conduct constituting stalking.”
 - 1. An order may not restrict behavior that does not constitute stalking as defined in the statute.
 - 2. In *Collins v. Bazan*, 256 Ga. App. 164, 568 S.E.2d 72 (2002), the Court of Appeals reversed a stalking order that prevented the respondent from publishing or discussing the petitioner’s medical records.
 - (a) The court found that the respondent’s behavior, although “extremely insensitive and unacceptable”, would not “threaten [the petitioner] or [her] family’s safety.”

- (b) The court noted that it interpreted the statute in such a way as to avoid an unconstitutional burden on the respondent’s freedom of speech.
 - 3. In *Rawcliffe v. Rawcliffe*, 283 Ga. App. 264 (2007), the Georgia Court of Appeals held that the trial court exceeded its authority when it prohibited the respondent from owning or possessing firearms in a Stalking Twelve Month Protective Order. The Court held that the prohibition of owning or possession a firearm for the duration of the protective order was not set forth in O.C.G.A. 16-5-94(d). *Id.* at 265. The Court stated that the relief a court may provide pursuant to O.C.G.A. § 16-5-94 is limited to that listed in the statute. The protective order was not vacated, only the section dealing with possession of or owning firearms. The parties did not come under the protection of the Brady Gun Act 18 USC 922(g) as they had not been intimate partners. The court was not specifically authorized to prohibit owning or possessing a firearm.
- C. Where the parties meet the relationship requirements of the Family Violence Act then O.C.G.A. § 19-13-1 et seq. should be used so that the additional remedies available under the Family Violence Act can be used.
 - 1. The family violence act extends only to a limited pool of relationships, but it does include “stalking” in the definition of family violence. *See above* and O.C.G.A. § 19-13-1.
 - (a) The stalking act applies to anyone who stalks another person, with relational restrictions.
 - (b) Petitioners who suffer from stalking and who have a relationship defined in the Family Violence Act may use either or both statutes.
 - 2. Stalking petitioners who seek family violence remedies must satisfy the petition and filing requirements of the Family Violence Act.

3.2.8 Employer protective order remedies:

- A. Employer protective orders may only order the cessation of “unlawful violence or threats of violence”. O.C.G.A. § 34-1-7(e). Since the petitioner is not the victim, but the employer, no overlap with either family violence or stalking orders exists.

- B. An employer protective order can be effective at one or more locations:
 - 1. “At the employee’s workplace”; or
 - 2. “While the employee is acting within the course and scope of employment with the employer.” *Id.*
- C. Orders designed to protect the employee while “acting within the course or scope of employment” might refer to many additional locations, depending on the employee’s work responsibilities.
- D. If the court issues a “scope of employment” order, the court should consider proper service on law enforcement personnel in jurisdictions where the employee might work, if outside the court’s jurisdiction.
 - 1. The employer protective order statute puts the initial burden on the petitioner to suggest to the court those law enforcement agencies to whom the order should be delivered. O.C.G.A. § 34-1-7(g).
 - 2. The court has discretion to select among those agencies requested by the petitioner. *Id.*
 - 3. Once the court has determined the appropriate agencies, the court “shall order the petitioner or the petitioner’s attorney” to assure proper deliver of the order by the close of the business day on which the order was issued. *Id.*

3.2.9 Judicial discretion over remedies:

- A. **Combination and Selection of Remedies:**
 - 1. In family violence and stalking cases, a court has discretion over which remedies to order. The language of the relevant statutes uses permissive, rather than mandatory language. O.C.G.A. §§ 19-13-4(a) (“may”), 16-5-94(d) (“may”).
 - (a) A court also has discretion over the duration of the order, which may remain in effect “up to one year”, O.C.G.A. §§ 19-13-4(c), 16-5-94(e).
 - (b) Courts may thus consider how to tailor orders to best meet the proof and the needs of the parties.
 - (c) For example, a court may enter:
 - (1) protective provisions for the full year,
 - (2) provisions for possession of a premises for a shorter time,
 - (3) provisions to transfer personalty within one week.

2. A court does not have discretion in employer protective order cases. If a court finds that the petitioner has met the relevant burden of proof, “an injunction shall issue.” O.C.G.A. § 34-1-7(h).

B. Remedies under Other Statutes:

1. The Family Violence Act does not bar petitioners from seeking other legal remedies. “The remedies provided by this article are not exclusive but are additional to any other remedies provided by law.” O.C.G.A. § 19-13-5.
 - (a) The stalking order statute incorporates this language by reference. O.C.G.A. § 16-5-94(e).
 - (b) The employer protective order statute does not so state, but does clarify that it should not “be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.”
2. Other remedies to prevent the occurrence and to cope with the consequences of family violence include:
 - (a) Criminal law: a variety of different crimes, sentences and bonds address the specific demands of those seeking protection from family violence. ([See Chapter 4 - Criminal Law](#)).
 - (b) Family law: family law offers a variety of similar remedies, including protection through preliminary relief, custody, child support, and division and disposition of property.
 - (c) Juvenile law: juvenile law offers remedies addressed to protecting children where neither parent can protect them.
 - (d) Tort law: tort law offers causes of action such as assault and battery, providing both injunctive and monetary relief.
 - (e) Federal law: the federal Violence Against Women Act and civil rights acts may offer some relief to petitioners.
3. Petitioners seeking these other specific remedies in the context of a family violence action must satisfy the pleading and proof requirements of those laws:

- (a) Properly filed pleadings might permit the superior court to consolidate actions on protective orders with other cases.
- (b) However, other Georgia courts may have primary jurisdiction (e.g. juvenile remedies in juvenile court.)

C. **Equitable Powers:**

1. On occasion, a party may request (or a court might identify the need for) remedies other than those stated either in the protective order statutes or “other law”. A question arises about the scope of the court’s authority to fashion remedies other than those specifically stated in the relevant statutes.
2. As an initial matter, all three protective order statutes present their remedies in exclusive lists. O.C.G.A. §§ 19-13-4(a), 16-5-94(d), 34-1-7(e).
 - (a) The permissive “may” in the family violence and stalking statutes, and the mandatory “shall” in the employer statutes, each appear before a list of specific remedies.
 - (b) None of the statutes contain inclusive language, and none contain catchall remedial language at the end of the list.
 - (c) Well-accepted canons of statutory construction could apply to restrict the remedies to those stated:
 - (1) *expressio unius est exclusio alterius* (the express mention of one thing implies the exclusion of another)
 - (2) *expressum facit cessare tacitum* (if some things are expressly mentioned, the inference is stronger that those omitted were intended to be excluded).
3. On the other hand, when acting under the protective order statutes, the superior court most likely acts as a court of equity, with equitable powers.
 - (a) The central remedy of all three statutes, an injunction, is equitable in nature.
 - (b) A superior court has authority to adjust its decrees in response to the circumstances of each case:
 - (1) “the superior court may mold the verdict so as to do full justice to the parties in the same manner as a

decree in equity.” O.C.G.A. § 9-12-5.

(2) “A superior court shall have full power to mold its decrees so as to meet the exigencies of each case.” O.C.G.A. § 23-4-1.

(3) *See Aycock v. Aycock*, 251 Ga. 104, 303 S.E.2d 456 (1983) (affirming a trial court order, requiring that rental property be held in trust for children as a form of child support.)

(c) The protective order statutes deal with the same subject matter as, and offer similar remedies to, divorce actions. “Proceedings for a divorce . . . have always, under the practice in this State, been regarded as equitable.” *Rogers v. Rogers*, 103 Ga. 763, 765, 30 S.E. 659 (1898).” *Allen v. Allen*, 260 Ga. 777, 778, 400 S.E.2d 15 (1991)(requiring a trial court to rule on the enforceability of a settlement.)

(d) However, in exercising equitable authority, a court may not issue the requested relief if the party can obtain the same relief through some other adequate remedy at law.

(e) *See also Davis-Redding v. Redding*, 246 Ga. App. 792, 794, 542 S.E.2d 197, 199 (2000): “divorce cases are different from other cases, requiring some flexibility in the application of our jurisdictional and venue rules.’ [citation omitted] We realize this is a family violence case rather than a divorce case; however, even more flexibility may be required in cases filed to bring about an end to family violence.”

4. Delimiting judicial discretion on remedies:

(a) The protective order statutes have clearly stated standards by which a court must exercise its remedial authority:

(1) The family violence statute requires that the court seek “to bring about a cessation of acts of family violence.” O.C.G.A. § 19-13-4(a).

(2) The stalking statute requires that the court seek “to bring about a cessation

of conduct constituting stalking.”
O.C.G.A. § 16-5-94(d).

- (3) The general purpose of an employer protective order is to prohibit “further unlawful violence or threats of violence.” O.C.G.A. § 34-1-7(b).
- (b) Judicial flexibility seems most appropriate when:
 - (1) Specifically linked to the language of one of the remedial clauses of the statute; and
 - (2) Logically connected to the stated purpose of the relevant statute; and
 - (3) Stated on the record with support in specific findings of fact.

3.3 Settlements And Waiver Of Remedies

3.3.1 Consent Decrees:

- A. **Consent agreements permitted:** A superior court may approve consent agreements by the parties as the basis for its order in family violence and stalking proceedings. O.C.G.A. § 19-13-4(a) (family violence order), O.C.G.A. § 16-5-94 (d) (stalking orders). Although no similar, explicit provision appears in the employer protective order statute, *see* O.C.G.A. § 34-1-7 (e), general Georgia law permits the entry of consent decrees upon submission of a settlement agreement to the court for approval. When a court approves a consent decree, the decree operates as a waiver of any claims addressed by that decree. *Hargraves v. Lewis*, 3 Ga. 162 (1847).
- B. **Limits on consent agreements:** The Superior Court has the authority to revise or reject the parties’ agreement in protective order cases.
 - 1. Superior Court shall not have the authority to approve a consent-mutual protective order unless the statutory requires of a counterpetition have been satisfied. O.C.G.A. § 19-13-4(a)
 - 2. As to family violence and stalking protective orders, the statutes indicate that the superior court “may approve a consent agreement”; nothing in either statute mandates that a court accept the parties’ proposed settlement. O.C.G.A. § 19-13-4(a) (family violence order), O.C.G.A. § 16-5-94 (d) (stalking orders). No Georgia case has determined the scope of a superior court’s authority to revise or reject proposed consent decrees in violence protective order cases.

3. With respect to certain remedies, at least, the superior court's authority is clearer:
 - (a) With respect to child custody and child support issues, in divorce cases, the court may review, revise or reject any settlement agreement relating to these issues. *See Arrington v. Arrington*, 261 Ga. 547 (1991) (child support), *Crisp v. McGill*, 229 Ga. 389 (1972) (child custody).
 - (b) The same principles would appear to apply, for family violence orders involving child custody or child support.
4. For potential dangers concerning alternative orders to TPOs see: www.gcfv.org/files/TPOstatement.pdf

C. **Consent without admissions by respondent:**

1. On occasion, respondents may face criminal (or other) charges arising out of the events, which gave rise to the civil petition.
2. In order to obtain stipulated agreements, a practice has arisen through which petitioner and respondent:
 - (a) stipulate to the court's authority to enter into the order,
 - (b) waive findings of fact on the occurrence of abuse, and
 - (c) state that the respondent has made no admissions of fact with respect to the underlying events.
3. These provisions seek to minimize the risks that the civil order may be used against the respondent in the later criminal case:
 - (a) Stipulations to authority: such a provision bars later challenges to the validity of the order by the respondent. In general, parties may stipulate to the court's authority over their persons; however, objections to service of process might survive such a stipulation.
 - (b) Waiver of findings of fact: parties may waive findings of fact, even on facts otherwise necessary to the underlying judgment.
 - (1) Such a stipulation reduces the risk that prosecution might successfully admit the order on the issue of abuse in the later criminal case.
 - (2) A general Georgia rule exists that "[t]he judgment in a civil action is

not admissible in a criminal action to prove any fact determined in the civil action.” *Flynt v. State*, 153 Ga. App. 232, 243, 264 S.E.2d 669 (1980).”

- (c) No admissions: such a provision benefits the respondent by avoiding an admission *in judicio* that could be used against him in the later criminal trial.
4. Such orders may or may not prevent later evidentiary use of the events underlying the order.
Compare
- (a) *Johnson v. State*, 231 Ga. App. 823, 499 S.E.2d 145 (1998): reversing a conviction where trial court admitted a prior family violence order. The Court of Appeals reviewed the circumstances of the stipulated order, noted that the defendant has not been represented and lacked adequate opportunity to review the terms of the order, and held that the stipulated order could not be treated as an admission.
 - (b) *Murden v. State*, 258 Ga. App. 585, 574 S.E.2d 657 (2003): refusing to apply *Johnson*, where the prosecution sought to introduce prior family violence orders to establish “course of conduct.”

3.3.2 Waiver:

- A. **Methods of waiver:** Waiver of claims and remedies may occur in at least two different ways: by consent decree or by dismissal. As discussed above, Georgia law permits courts to approve consent decrees, and also permits petitioners to dismiss claims against respondents.
- B. **Limits on waiver:** Parties may have a limited ability to waive certain remedies:
 - 1. **Child support:** a party’s agreement to waive the right to collect child support is subject to the same conditions as apply to child support in other actions. O.C.G.A. § 19-13-4 (a)(6). A Georgia court need not accept a purported waiver of the right to collect child support, but may review the parties’ agreement to determine what the welfare of the child requires. *Collins v. Collins*, 172 Ga. App. 748, 749 (1984); *Barrow v. State*, 87 Ga. App. 572, 575-576 (1953).
 - 2. **Child custody:** a superior court may also reject a party’s waiver of claims with respect to child

custody in divorce cases, if against the best interest of the children. *Stanton v. Stanton*, 213 Ga. 545, 549 (1957); *Mock v. Mock*, 258 Ga. 407, 407 (1988). The rationale underlying these cases, appear to apply to family violence cases.

3. **Family Violence Intervention Programs (FVIP):** Georgia law mandates that a superior court order the respondent to an FVIP program: “a court . . . shall order the defendant to participate in a family violence intervention program.” O.C.G.A. § 19-13-16 (a). A court may determine that participation in FVIP is “not appropriate”, but if so, it must state its reasons on the record. This language appears to prevent the waiver of FVIP participation by any party to a family violence protective order.

3.4 Mediation

- 3.4.1 The Georgia Commission on Dispute Resolution, the Georgia Supreme Court’s policy-making body for court-connected ADR processes, has issued guidelines concerning domestic violence issues in mediation. Those guidelines provide that mediation is not appropriate in cases arising solely under the Family Violence Act, that those cases should not be referred to mediation, and that issues related to protection from family violence are not an appropriate subject of negotiation.
- 3.4.2 Because domestic violence allegations arise in other civil cases that are often referred to mediation, the Georgia Commission on Dispute Resolution has issued Guidelines for Mediation in Cases Involving Issues of Domestic Violence. These guidelines apply to court-connected ADR programs. These guidelines apply to the various kinds of domestic relations cases such as divorce, custody, modification, or paternity that may involve allegations of domestic violence. The Commission’s policy is that, in domestic relations cases, which would otherwise be referred to mediation, the alleging party should not be automatically denied the opportunity to mediate when there are allegations of domestic violence. At the same time, the guidelines permit the alleging party to choose not to mediate where these allegations exist. To these ends, the Commission requires that domestic relations cases be screened for domestic violence allegations; where those allegations are present, the alleging party must be provided with information about mediation and the opportunity to make an informed decision as to whether to decline or proceed with mediation. However, if the party chooses to mediate, issues concerning abusive or violent behavior are not subject to negotiation. In general, these guidelines:

- A. state that all domestic relations cases referred to mediation must be screened for allegations of domestic violence;
 - B. state that a party alleging domestic violence must be provided with detailed information about the mediation process, must be interviewed to discuss the particular circumstances of the case, and that the alleging party then be allowed to make a decision based on informed consent as to whether she or he wishes to participate in mediation;
 - C. Specify screening procedures for use in domestic relations cases and training requirements for screening personnel;
 - D. Define domestic violence for purposes of the guidelines;
 - E. Prohibit mediation in criminal cases involving domestic violence;
 - F. Provide that only mediators who have received specialized training may mediate these cases;
 - G. Specify protocols for ADR programs and mediators to follow when mediating cases involving domestic violence; and
 - H. Describe protocols for maintaining confidentiality of information about domestic violence elicited during screening or mediation.
- 3.4.3 The full text of these guidelines appears in [Appendix K, Mediation](#) to this section of the benchbook.

3.5 Orders

- 3.5.1 This section deals with
- A. service of Georgia protective orders,
 - B. their duration and extension,
 - C. their enforceability within and outside Georgia, and
 - D. remedies for violating them.
- 3.5.2 **Service of Orders**
- A. None of the protective order statutes explicitly require service of the protective order on the respondent; however, basic principles of due process impose such an obligation. *See also* O.C.G.A. § 9-11-5 (“every order required by its terms to be served . . . shall be served upon each of the parties.”)
 - B. All three protective order statutes mandate delivery of a copy of a protective order to certain law enforcement agencies, although the statutes provide different methods:
 - 1. For family violence and stalking protective orders, the clerk of the superior court shall issue a copy of the order to the sheriff of the county in which the order was entered. O.C.G.A. §§ 19-13-4(b) (family violence order), 16-5-94(e) (stalking orders, cross-referencing the family violence statute.) The sheriff in that county shall retain the order “as long as that

order shall remain in effect”, presumably including any extensions.

2. For employer protective orders, the court must order the employer or the employer’s attorney to deliver the order (including modifications or terminations of the order) to those “law enforcement agencies . . . as are requested by the petitioner.” O.C.G.A. § 34-1-7(g). The court has discretion to review and revise the list of such agencies. *Id.* Every law enforcement agency that receives such an order must assure that information about the order and its status be made available to “officers responding to the scene of reported unlawful violence or a credible threat of violence.”

3.5.3 Duration and Extension of Orders

A. Duration:

1. **Family violence and stalking protective orders** may remain in effect for up to one year unless extended. O.C.G.A. §§ 19-13-4(c) (family violence), 16-5-94 (stalking, incorporating the family violence provisions.)
 - a. The language “up to one year” permits the issuance of orders for shorter periods. *Id.*
 - b. The 30 day period of the Civil Practice Act does not apply to family violence orders. *Carroll v. State*, 224 Ga. App. 543, 481 S.E.2d 562 (1997).
 - c. Research indicates that Orders of Protection of two- week duration are less effective than no order at all, whereas 12-month orders reduced police-reported physical violence by 80% (Holt et al, 2002).
 - d. Because the motivation for most stalking (particularly for intimate stalkers) is control over the abused party, court appearances often reinforce abusers' efforts to harass their victims. The court can counteract this by holding short, timely hearings and by providing a separate waiting room for the abused party, thereby limiting their time in the courtroom with the abuser. *See also* O.C.G.A. § 17-17-9.
2. **Employer protective orders** may remain in effect for not more than three years but may be extended for an additional period. O.C.G.A. § 34-1-7(e).

B. Extension:

1. Family violence and stalking protective orders: The petitioner may move to extend either a family violence or a stalking order by filing a motion with the court, requesting such an extension. O.C.G.A. § 19-13-4(c); O.C.G.A. § 16-5-94(e). *Reynolds v. Kresge*, 269 Ga. App. 767 (2004), cert. denied, 2005 LEXIS 189 (2005).
 - a. The court may not act on such a motion ex parte: the respondent must receive notice, and the court must hold a hearing on the motion. *Id.*
 - b. The court may deny the request, but may also convert the order into “an order effective for not more than three years or to a permanent order.” *Id.*
 - (1) The language “not more than three years” permits the conversion of the initial one-year order into an order for an additional period less than three years or a permanent order.
 - c. The petitioner must file the motion within the time period designated by the original order.
 - (1) The court should attempt to hear and rule on that motion within that time period.
 - (2) Where the court can start, but cannot complete a hearing within the original time period, the court has limited authority to extend the original order long enough to complete the hearing. *Duggan v. Duggan-Schlitz*, 246 Ga. App. 127, 128, 539 S.E.2d 840, 842 (2000) (hearing scheduled and started within original six month period, but no evidence taken; evidence completed at a later date; held, authorized by the Family Violence Act.)
 - (3) In *Nguyen v. Dinh*, 278 Ga. 887 (2005), the Georgia Supreme Court held that the request for the permanent order only has to be initiated during the time the original order is in effect. It is immaterial

that the order had expired by the time the court granted the request.

2. **Employer protective orders** may remain in effect for not more than three years. O.C.G.A. § 34-1-7(e).
 - a. The employer may apply for “a renewal” of the order “by filing a new petition for an injunction pursuant to this Code section.” *Id.*
 - b. The language “renewal” implies that, should the court grant the request, the order can last for up to an additional three years.

3.5.4 Enforcement of Orders

A. Enforcement within Georgia:

1. Once issued, both family violence orders and stalking protective orders “apply and shall be effective throughout this state.” O.C.G.A. § 19-13-4(d), O.C.G.A. § 16-4-94(e).
2. These statutes impose a duty to enforce valid orders; the duty applies to “every superior court, . . . sheriff, . . . deputy sheriff, . . . state, county or municipal law enforcement officer within this state.” *Id.*
3. No similar statewide provisions appear in the employer protective order statute. *See* O.C.G.A. § 34-1-7(e).
 - a. When issued, employer protective orders become effective “at the employee’s workplace” or “while the employee is acting within the course and scope of employment with the employer.” *Id.*
 - b. In addition, the petitioner must deliver the employer protective order to such law enforcement agencies as the court, in its discretion and upon request by the petitioner, may designate. O.C.G.A. § 34-1-7(g).

B. Georgia Protective Order Registry:

1. **Purpose and operation of registry:** The Georgia Protective Order Registry (GPOR) “is intended to enhance victim safety by providing [enforcement officials] access to protective orders issued by the courts of this state and foreign courts 24 hours of the day and seven days of the week.” O.C.G.A. § 19-13-52(a). ([See Appendix M - Georgia Protective Order Registry](#)). “Access to the registry is intended

to aid law enforcement officers, prosecuting attorneys, and the courts in the enforcement of protective orders and the protection to victims of stalking and family violence”. *Birchby v. Carboy*, 311 Ga.App. 538 (2011).

- a. The Registry “shall include a complete and systematic record and index of all valid protective orders and modifications,” *Id.*, § 19-13-52(c), and “shall be linked to the National Crime Information Center Network (NCIC).” *Id.*, § 19-13-52(d).
 - b. The Georgia Crime Information Center (GCIC) maintains the Registry. The Georgia Commission on Family Violence may consult with the GCIC regarding the effectiveness of the registry in enhancing the safety of victims of domestic violence and stalking. O.C.G.A. § 19-13-52(b); GCIC also collaborates with the Georgia Superior Court Clerks’ Cooperative Authority on the creation of forms. *Id.*, § 19-13-53 (a).
 - c. “Given the mandatory language of the Act, it is clear that the legislature intended all family violence protective orders be transmitted to the Registry, without exception. *Birchby v. Carboy*, 311 Ga.App. 538 (2011).
2. **Transmittal and entry of Georgia orders:** The Superior Court clerk’s office must transmit a copy of the protective order, or a modification of the protective order, to the registry no later than the close of the next business day after the order is filed with the clerk of court. O.C.G.A. § 19-13-53(b). Transmittal should occur electronically, or, if electronic means fail, in a manner designated by the GCIC. *Id.* GCIC will ensure that all protective order information is entered into the registry within 24 hours of receipt from the court. O.C.G.A. § 19-13-53(c). The order continues in force throughout this period: “entry of a protective order in the registry shall not be a prerequisite for enforcement of a valid protective order.” O.C.G.A. § 19-13-53(e).
 3. **Full Access to Georgia Orders:** The Georgia Protective Order Registry is a comprehensive web site that is available to law enforcement officials

and the courts. The Georgia Protective Order Registry accepts 100% of all orders filed in Georgia. The Georgia registry will attempt to transmit all orders to NCIC for inclusion in the National Protective Order file. Currently 82% to 83% of all orders received from the Georgia registry are successfully transmitted to NCIC. Approximately 20% are rejected by NCIC due to lack of required information – information that many petitioners, particularly stalking victims may not have. Protective order information will remain on the Georgia Registry and NCIC for the remainder of the year in which the order expires plus five years.

Used together NCIC and Georgia's Registry provide a comprehensive resource for the court.

Judicial access through the Sidebar is not available at this time. While this method of access is being explored, judicial officers may gain access similar to other agencies:

- a. Obtain a user ID/password form from GCIC
- b. Fill out form and return to GCIC
- c. GCIC will assign a user ID/password
- d. Confirmation form will be faxed/emailed back to the user

4. **Approval and entry of foreign orders:** a person with a valid foreign protective order may file it with the Registry by filing a certified copy of the order with any Georgia Superior Court Clerk. O.C.G.A. § 19-13-54(a). No fee or cost may be charged for this service. *Id.*, § 19-13-54(b). Upon filing, the clerk must give the petitioner a receipt as proof of submission. *Id.*, § 19-13-54(c). The clerk must then transmit the information in the same way as for a Georgia order, although the foreign order need not be in the same form as a domestic order. *Id.*, §§ 19-13-54(d), (e). Entry in the Registry is not a prerequisite for enforcement of a valid foreign order. *Id.*, § 19-13-54(f); see also 18 U.S.C.A. § 2265 (d) (according foreign protective orders full faith and credit whether or not registration in the state of enforcement has occurred.)

5. **Access, confidentiality, and liability:** Only law enforcement officers and the courts shall have access to the Registry. O.C.G.A. § 19-13-52(c). “Law enforcement officers” include any state agent or officer “with authority to enforce the criminal or traffic laws and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime”, O.C.G.A. § 19-13-51(4). The term includes state or local officers, sheriffs, deputy sheriffs, dispatchers, 911 operators, police officers, prosecuting attorneys, members, hearing officers or parole officers of the State Board of Pardons and Paroles, and probation officers with the Department of Corrections. *Id.* Information obtained from the Registry must remain confidential, and may not be disclosed except as provided by law; breach of this obligation is a misdemeanor. O.C.G.A. § 19-13-55. Law enforcement officers, court officials and registry officials are held harmless for any delay or failure in getting information into the Registry, or for any reliance on information contained in the Registry. O.C.G.A. § 19-13-56.
6. **Forms:** Forms for use in transmitting Georgia orders or modifications are promulgated under the Uniform Superior Court Rules, and are subject to the approval of GCIC and the Georgia Superior Court Clerks’ Cooperative Authority as to form and format. O.C.G.A. § 19-13-53(a). These forms must at a minimum all the information required for entry into the Registry and the NCIC Protection Order file. *Id.* “A court may modify a standardized form to comply with the court’s application of the law and facts to an individual case.” *Id.*

C. **Enforcement outside of Georgia:**

1. A federal statute provides that a Georgia protective order, which meets certain requirements will receive full faith and credit in any other state or tribal court. 18 U.S.C.A. § 2265(a).
 - a. The statute requires that the Georgia protective order has been issued by a court with jurisdiction over the parties and the matter under Georgia law.
 - b. The statute also requires that the respondent have received notice and an opportunity to

be heard on the issuance of the order. *Id.*, § 2265(b). In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State. *Id.*

- c. Any validly issued Georgia family violence, stalking or employer protective order would appear to satisfy the provisions of this act.
2. **Mutual orders:** The same federal statute indicates that a protective order which provides for protection of the respondent against the petitioner may not receive full faith and credit if: 1) “no cross or counter petition, complaint, or other written pleading was filed” against the petitioner; or 2) such a cross or counter petition was filed, but the court failed to “make specific findings that each party was entitled to such an order.” 18 U.S.C.A. § 2265 (c). Thus, to enforce a restraining order issued against the petitioner outside of Georgia, the respondent must have filed a petition or pleading requesting that relief, and the court must have made specific findings that the respondent was entitled to that relief under the relevant statute.

3.5.5 Contempt:

- A. A superior court may punish a violation of a family violence protective order through contempt. O.C.G.A. § 19-13-6. No similar specific statutory section exists for stalking protective orders, or for employer protective orders. However, the superior court has inherent authority to use contempt for breach of its orders, O.C.G.A. § 15-6-8 (5) and O.C.G.A. § 15-1-4. This would seem to permit orders of contempt to issue for violations of these latter types of orders.
- B. **Civil Contempt distinguished from Criminal Contempt:** Contempt may be either civil or criminal; the difference rests on the nature of the penalty imposed by the court. If the court imposes unconditional incarceration, the contempt is criminal. If it imposes conditional punishment, in an effort to force future compliance with the order, the contempt is civil.
- C. **Civil Contempt:**
 1. **Findings of Contempt:** Contempt consists of a party’s willful disobedience of a court’s order, *Davis v. Davis*, 250 Ga. 206, 207, 296 S.E.2d 722, 723 (1980). The court recognizes three defenses to

contempt actions. “The defenses to both civil and criminal contempt are that

- a. the order was not sufficiently definite and certain,
 - b. was not violated, or
 - c. that the violation was not willful (e.g., inability to pay or comply).”
 - d. *Schiselman v. Trust Co. Bank*, 246 Ga. 274, 277, 271 S.E.2d 183, 186 (1980).
2. A superior court has broad discretion to determine whether the original order has been violated; the court’s findings will not be disturbed unless there is no evidence on which the order could rest. *Davis v. Davis*, 250 Ga. 206 at 207 (1982); *Kaufman v. Kaufman*, 246 Ga. 266, 269, 271 S.E.2d 175, 178 (1980).
3. Contempt Remedies: as remedy for a finding of contempt, the court may impose unconditional incarceration, conditional incarceration, fines, or a reassertion or clarification of its original order:
- a. Conditional incarceration: A court may also use contempt to secure performance in the future, and can condition incarceration upon the performance of an act. The punished party can purge the contempt by performing the act. Such an order would render the contempt civil. *In Re Harvey*, 219 Ga. App. 76, 79, 464 S.E.2d 34, 36 (1996). The act required may involve the payment of money, including the payment of child support, *Floyd v. Floyd*, 247 Ga. 551, 552 (1981), but it may also require the performance of some other act. *See In Re Harvey*, 219 Ga. App. 76 (requiring production of certain photographs as evidence.)
 - b. Conditional Fines: a court may punish contempt by imposing a fine, not to exceed \$500 for a single act of contempt. O.C.G.A. § 15-6-8(5).
 - c. Reassertion of original order: the court may enforce a finding of contempt by reasserting the provisions of its original order. If that original order requires interpretation or clarification, a court may interpret or clarify it in the course of imposing a contempt

sanction. *Davis v. Davis*, 250 Ga. 206, 207, 296 S.E.2d 722, 723 (1982). At the same time, a court may not modify the original decree in the course of issuing a contempt decree: “the decree must stand as written.” *Gallit v. Buckley*, 240 Ga. 621, 626, 242 S.E.2d 89, 93 (1978). “The test to determine whether an order is clarified or modified is whether the clarification is reasonable or whether it is so contrary to the apparent intention of the original order as to amount to a modification.” *Davis*, 250 Ga. at 207.

4. **Double Jeopardy:** In *Tanks v. State*, 292 Ga. App. 177, 663 S.E. 2d 812 (2008) the Court of Appeal vacated the judgment in the criminal proceeding and remanded the case for determination of whether jeopardy had attached before the prior contempt proceeding was suspended. The respondent had been indicted for aggravated stalking in March 2006. In April 2006, the petitioner moved for contempt. A hearing was begun in May 2006 but the proceeding was stayed pending the outcome of the criminal prosecution. Both proceedings contained the same elements.
5. **Contempt Against Petitioners:** in many if not most cases, protective orders restrain the respondent from coming into contact with the petitioner.
 - a. On occasion, however, the petitioner may voluntarily initiate contact with the respondent. ([See Appendix A - Dynamics of Domestic Violence](#)) No Georgia case has expressly ruled whether such voluntary contact would subject the petitioner to a finding of contempt.
 - b. One Georgia Court of Appeals case suggests that it would not. *Salter v. Greene*, 226 Ga. App. 384, 386, 486 S.E.2d 650, 652 (1997). In that case, a defendant in a family violence battery prosecution was released with a bond specifying that he was not to have contact with his ex-wife. Later, the ex-wife initiated contact with the defendant, and voluntarily traveled to Florida with him. The Court of Appeals reversed a finding of contempt against the ex-wife, reasoning that the bond condition applied only to the defendant, that

it did not apply to the ex-wife, and that it was “issued for her protection.” *Id.*; In *Bradley v. State*, 252 Ga. App. 293, the victim had previously consented to contact by the respondent but the Court upheld his conviction for aggravated stalking because he did not have permission on the date he entered the house.

D. Criminal Contempt:

1. Criminal contempt differs both substantively and procedurally from civil contempt:
 - a. Criminal contempt permits the court to impose unconditional punishment, including both fines and incarceration.
 - b. At the same time, criminal contempt proceedings may require greater procedural protections than civil contempt.
2. Procedural requirements:
 - a. Georgia law requires proof of criminal contempt beyond a reasonable doubt; by contrast, proof of civil contempt need only be by a preponderance of the evidence. *Schmidt v. Schmidt*, 270 Ga. 461, 463, 510 S.E.2d 810, 812 (1999).
 - b. Great variations exist in the other procedural requirements required to impose criminal contempt:
 - (4) One position would treat criminal contempt as similar to any other criminal charge, requiring proper accusation (through indictment or information), right to counsel, and other provisions of criminal procedure.
 - (5) Another position would find that, other than the mandatory burden of proof, criminal contempt may be handled through process similar to civil contempt.
 - c. Other than the burden of proof, Georgia law does not specify the degree of procedural protection necessary for the imposition of criminal contempt.
3. Alternatives to criminal contempt:
 - a. aggravated stalking.
 - b. misdemeanor violation of protective order.

4. Unconditional incarceration: as noted above, a court may impose unconditional incarceration as a penalty for contempt, provided it finds that contempt has occurred beyond a reasonable doubt; such an order would render the contempt criminal. Georgia statute authorizes a superior court to imprison for a single act of contempt for no longer than 20 days, O.C.G.A. § 15-6-8 (5). A court may order incarceration for longer periods, but only if determines that multiple acts of contempt have occurred, and only if it makes specific findings as to the separate acts of contempt that account for each 20 day period. *Gay v. Gay*, 268 Ga. 106, 107, 485 S.E.2d 187, 188-189 (1997).

3.5.6 **Criminal violation** of protective orders: in addition to criminal contempt, Georgia law recognizes two other kinds of crimes resulting from violation of restraining orders.

- A. Georgia law recognizes a separate misdemeanor of “violating a protective order.” O.C.G.A. § 16-5-95.
 1. This statute applies when a violation of an order occurs both “knowingly” and “in a non-violent manner.” *Id*, § 16-5-95 (a).
 2. The statute applies only to family violence protective orders, and only to the terms of such orders which apply to:
 - a. excluding respondent from a residence. *Id*, (a)(1)
 - b. directing respondent to stay away from a residence, workplace or school. *Id*, (a)(2).
 - c. keeping respondent from approaching within a specific distance of petitioner. *Id*, (a)(3).
 - d. restricting communication with the respondent. *Id*, (a)(4).
 3. Violation of this section does not prevent prosecution for “stalking” or “aggravated stalking.” *Id*, § 16-5-95(c).
 4. By its terms, the statute applies only to violations “in a non-violent manner”; it does not apply to acts of further violence.
 5. Violations of the original order, which involve violent behavior, may justify prosecution for other criminal charges, i.e.: aggravated stalking, a finding of contempt or an additional restraining order. (*See* above Section 3.5.5 -Contempt).

- B. In addition, the crimes of “stalking” and “aggravated stalking” each contain definitions which focus on violations of various different kinds of restraining orders:
1. “Stalking” includes a requirement of proof that the defendant violated a restraining order by publishing or broadcasting the “picture, name, address, or phone number” of the protected person in such a way as to harass or intimidate the person. O.C.G.A. § 16-5-90(a)(2).
 2. “Aggravated stalking” requires a violation of an existing order that prevents stalking behavior by engaging in further stalking conduct towards the protected person. O.C.G.A. § 16-5-91(a).
 - a. Aggravated stalking requires that the violation of the order be without the consent of the other person, and be for the purpose of harassing and intimidating. In order to prove the purpose of harassing and intimidating, a single violation of the order is not sufficient and there must be a pattern of behavior. *State v. Burke*, 287 Ga. 377 (2010).
 3. Both of these statutes punish violations not just of civil stalking orders, but also of other types of orders, including:
 - a. a bond to keep the peace.
 - b. a temporary restraining order, and other forms of temporary or permanent equitable injunctions.
 - c. a family violence order.
 - d. an employer protective order.
 - e. conditions of pre-trial release, probation, or parole.

4 CHAPTER 4 – CRIMINAL LAW

4 CRIMINAL LAW.

Until the latter part of the 20th Century, domestic violence crimes in Georgia were typically treated the same as any other crimes of violence and, if treated differently at all, were usually treated as being of less consequence. Today, however, in recognition of the special societal harm posed by such crimes, many Georgia statutes have been enacted that create special categories of domestic violence crime with increased penalties.

4.1 Family Violence Act

The Family Violence Act, O.C.G.A. § 19-13-1 et seq., is principally designed to afford civil remedies, e.g., temporary protective orders, to victims of domestic abuse. However, because this Act defines “**family violence**” by making reference to codified criminal offenses, it is summarized here.

4.1.1 **Applicable predicate acts.** O.C.G.A. § 19-13-1 provides that the following acts may constitute “**acts of family violence**”:

- A. Any felony; or
- B. Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass.

4.1.2 **Inapplicable predicate acts.** O.C.G.A. § 19-13-1 provides that the term “family violence” shall not be deemed to include **reasonable discipline** administered by a parent to a child in the form of **corporal punishment**, restraint, or detention.

- A. *Buchheit v. Stinson*, 260 Ga. App. 450, 455-456 (2003) (mother’s action of slapping minor child in response to child’s disrespectful behavior constituted reasonable discipline administered in form of corporal punishment).
- B. *Bowers v. State*, 241 Ga. App. 122, 123 (1999) (beating child with a metal-studded leather belt was not reasonable parental discipline).
- C. *Bearden v. State*, 163 Ga. App. 434 (1982) (defendant’s requested jury charge on “justification for reasonable discipline” properly denied where evidence showed that defendant’s 5-year old stepdaughter had visible bruises on 75% of her face and on 25% of her body).
- D. *Taylor v. State*, 155 Ga. App. 11 (1980) (pouring gasoline on child and threatening her with a lighted match was not reasonable parental discipline).

4.1.3 **Applicable offender/victim relationships.** O.C.G.A. § 19-13-1 provides that one of the following relationships must exist before an offense will qualify as an act of family violence:

- A. past or present spouses,

- B. persons who are parents of the same child,
 - C. parents and children,
 - D. stepparents and stepchildren,
 - E. foster parents and foster children, or
 - F. other persons living or formerly living in the same household.
1. *Gillespie v. State*, 280 Ga. App. 243, 245 (2006) (if a pregnancy results from a single indiscretion between veritable strangers, the mere fact of pregnancy is not sufficient to create a "family" relationship for purposes of enhanced punishment for "family violence").
 2. *Allen v. Clerk*, 273 Ga. App. 896 (2005) (trial court held that an uncle who has never lived in the same household as the victim does not meet the criteria for the applicability of the Act).
 3. *State v. Barnett*, 268 Ga. App. 900, 901 (2004) (defendant sufficiently apprised of a "family violence" charge when aggravated assault indictment alleged that defendant and victim were "parents of the same child").
 4. *Holland v. State*, 239 Ga. App. 436 (1999) (upholding conviction for family violence battery when victim was a "female friend with whom [the defendant] was residing").
 5. *McCracken v. State*, 224 Ga. App. 356 (1997) (victim was defendant's live-in girlfriend).

4.2 Domestic Violence Crimes

The following is a partial list of criminal offenses that may constitute "**acts of family violence**" under the Family Violence Act, O.C.G.A. § 19-13-1, et seq. Moreover, if such crimes involve persons who are related and/or reside or formerly resided in the same household, enhanced criminal penalties may be available. (See [Section 4.3.](#), Domestic Violence Sentences below.)

4.2.1 **Felony Crimes** (O.C.G.A. § 19-13-1(1)). Below is a partial list of felony offenses that would qualify as "acts of family violence" if the qualifying relationship between the offender and the victim exists under O.C.G.A. § 19-13-1.

- A. **Crimes Against Persons** (Title 16, Article 5)
 1. **Murder, Felony Murder** (O.C.G.A. § 16-5-1).
 - a. *Bridges v. State*, 279 Ga. 351, 352 (2005) (motivated to collect insurance benefits and to reunite with his first wife, defendant murdered his wife by stabbing and severely beating her).

- b. *Lewis v. State*, 255 Ga. 101 (1985) (police had probable cause to arrest mother for malice murder of her ten-month-old infant daughter based on information that child died from severe abuse and pneumonia secondary to malnutrition from weeks or months of neglect, that mother had bound infant with belts, taped her eyes and mouth shut, and whipped the baby with a belt).
- 2. **Voluntary Manslaughter** (O.C.G.A. § 16-5-2).
 - a. *Fuller v. State*, 265 Ga. App. 271, 272 (2004) (defendant became enraged and shot his wife while the two were engaged in a domestic argument over his handling of the family's money and his cocaine habit).
- 3. **Involuntary Manslaughter** (O.C.G.A. § 16-5-3).
 - a. *Early v. State*, 170 Ga. App. 158, 163-164 (1984) (defendant's conviction for involuntary manslaughter upheld where his act of beating his wife with a piece of wood materially contributed to her death).
- 4. **Aggravated Assault** (O.C.G.A. § 16-5-21).
 - a. *Lord v. State*, 297 Ga. App. 88 (2009)(defendant punched and bashed his live-in girlfriend's head into a car dashboard and shoved a curling iron down her throat).
 - b. *Gilbert v. State*, 209 Ga. App. 483, 484 (1993) (defendant drove his wife into the woods, ordered her at knife-point to exit the vehicle and remove her clothes, then chased her through the woods).
- 5. **Aggravated Battery** (O.C.G.A. § 16-5-24).
 - a. *Biggins v. State*, 299 Ga. App. 554 (2009) (defendant struck live-in girlfriend's ear with a stereo speaker causing her to suffer at least temporary hearing loss).
 - b. *Johnson v. State*, 260 Ga. App. 413, 415 (2003) (defendant grabbed and twisted his estranged wife's wrist rendering it useless for several weeks and punched and broke her nose).
- 6. **Kidnapping** (O.C.G.A. § 16-5-40).
 - a. *Hargrove v. State*, 299 Ga. App. 27 (2009) (asportation element of crime of kidnapping was not proven where defendant's dragging of his live-in girlfriend from one room of

- duplex to another was not sufficiently independent of his DV aggravated battery upon her); see also *Horne v. State*, 298 Ga. App. 601 (2009).
- b. *Carter v. State*, 268 Ga. App. 688, 690 (2004) (defendant forced his wife into a car against her will and backhanded her several times leaving her face swollen and bruised).
7. **False Imprisonment** (O.C.G.A. § 16-5-41). False Imprisonment, a felony, involves the unlawful restraint of another in violation of his or her personal liberty. (See [Section 4.1.1.B.](#), above - *Unlawful Restraint*).
 - a. *Pitts v. State*, 272 Ga. App. 182, 187 (2005), aff'd 280 Ga. 288 (2006) (defendant held his wife down on a bed as she screamed and blocked her bedroom door preventing her escape).
 8. **Reckless Conduct** (HIV infected persons) (O.C.G.A. § 16-5-60(c)).
 - a. *Burk v. State*, 223 Ga. App. 530, 530-531 (1996) (conviction for the lesser-included offense of reckless endangerment sustained in this non-domestic violence case).
 9. **Cruelty to Children** (O.C.G.A. § 16-5-70).
 - a. *Yearwood v. State*, 297 Ga. App. 633 (2009) (mother's spanking of two-year old child resulted in multiple bruises and a skull fracture).
 - b. *Bowers v. State*, 241 Ga. App. 122, 123 (1999) (defendant beat his daughter with a metal-studded leather belt). *Bowers v. State*, 241 Ga. App. 122, 123 (1999) (defendant beat his daughter with a metal-studded leather belt).
 10. **Stalking** (2nd or subsequent offense) (O.C.G.A. § 16-5-90(c)). O.C.G.A. § 16-5-90(a)(1) provides that a person commits stalking when he "contacts another person ... for the purpose of harassing and intimidating the other person."
 - a. Harassing and Intimidating. O.C.G.A. § 16-5-90(a)(1) provides that "harassing and intimidating" means conduct which causes "emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her

immediate family.” The statute does not require actual physical injury or even an overt threat of physical injury.

- b. Reasonable fear: Studies show that some stalking victims may deny the existence of fear as a way of coping with the danger and lack of control they experience. (Herman, 1992) To reveal such hidden fears, a victim might be asked whether she believes that the defendant is capable of hurting her or her family. (Hunter, 2002)

11. **Aggravated Stalking** (O.C.G.A. § 16-5-91).
O.C.G.A. § 16-5-91(a) provides that a person commits aggravating stalking when he “follows, places under surveillance, or contacts another person ... without the consent of the other person for the purpose of harassing and intimidating the other person” in violation of one of the following:

- a. a bond to keep the peace;
- b. a temporary restraining order;
- c. a temporary protective order;
- d. a permanent restraining order;
- e. a permanent protective order;
- f. a preliminary injunction;
- g. a good behavior bond;
- h. a permanent injunction;
- i. a condition of pretrial release;
- j. a condition of probation; or
- k. a condition of parole.

(1) *State v. Burke*, 287 Ga. 377 (2010)(A single violation of a protective order is not sufficient to prove aggravated stalking. The violation must be without the consent of the other person, for the purpose of harassing and intimidating, which is established by a pattern of behavior.)

(2) *Wright v. State*, 292 Ga. App. 673 (2008)(evidence failed to establish that defendant’s actions placed his ex-wife in reasonable fear for her safety).

- (i) Note: “Harrassing and intimidating” has the same meaning as in O.C.G.A. § 16-5-90(a)(1)(misdemeanor

stalking). *Wright*, supra at 676.

- (3) *Holmes v. State*, 291 Ga. App. 196 (2008)(defendant violated a family violence protective order by making repeated phone calls to and sending emails to his estranged wife causing her to fear for her safety).
- (4) *Newsome v. State*, 289 Ga. App. 590 (2008)(defendant violated family violence protection order by contacting his estranged wife and their infant child at their home and wounding both with a firearm).
- (5) *Bragg v. State*, 285 Ga. App. 408 (2007)(despite a no contact provision in his probated sentence for family violence battery, husband not guilty of aggravated stalking when *she* arranged and consented to their subsequent meeting).
- (6) *Ford v. State*, 283 Ga. App. 460, 461 (2007) (by confronting his wife and her male companion with a gun in a public park, defendant violated a temporary protective order which enjoined him from approaching within 100 yards of his wife).
- (7) *Revere v. State*, 277 Ga. App. 393 (2006) (victim's previous consent to contact after a no contact order was issued does not alter the fact that, on *this* occasion, she did not consent).

12. **Cruelty to a Person 65 Years of Age or Older** (O.C.G.A. § 16-5-100).

- a. *Wood v. State*, 279 Ga. 667, 668-670 (2005) (defendant and his girlfriend removed her mother from nursing home in order to receive victim's social security checks and their inattentive care led to her death).

B. **Sexual Crimes** (Title 16, Article 6).

1. **Rape** (O.C.G.A. § 16-6-1). O.C.G.A. § 16-6-1(a) provides that "[t]he fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape."

- a. *Childs v. State*, 257 Ga. 243, 252 (1987) (jury was authorized to conclude that defendant raped his wife despite his contention that the intercourse was consensual).
 - b. *Warren v. State*, 255 Ga. 151, 156 (1985) (there is no “implicit marital exclusion” under Georgia’s rape statute that would preclude prosecution of a husband for raping his wife).
2. **Aggravated Sodomy** (O.C.G.A. § 16-6-2).
O.C.G.A. § 16-6-2(a) provides that “[t]he fact that the person allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated sodomy.”
 - a. *Warren v. State*, 255 Ga. 151, 157 (1985) (there is no “implicit marital exclusion” under Georgia’s aggravated sodomy statute that would preclude prosecution of a husband from forcibly sodomizing his wife).
 3. **Child Molestation** (O.C.G.A. § 16-6-4(a)).
 - a. *Perdue v. State*, 250 Ga. App. 201 (2001) (defendant routinely entered his stepdaughter’s room at night where he fondled and engaged in sexual intercourse with her).
 4. **Aggravated Child Molestation** (O.C.G.A. § 16-6-4(c)).
 - a. *Perdue v. State*, 250 Ga. App. 201 (2001) (defendant routinely entered his stepdaughter’s room at night where he engaged in mutual oral sodomy with her).
 5. **Incest** (O.C.G.A. § 16-6-22).
 - a. *Benton v. State*, 265 Ga. 648, 648-649 (1995) (rejecting defendant’s claim of a constitutional right to have intercourse with a non-blood relative where defendant repeatedly engaged in consensual sexual intercourse with his adult stepdaughter).
 6. **Aggravated Sexual Battery** (O.C.G.A. § 16-6-22.2).
 - a. *Temple v. State*, 238 Ga. App. 146, 147 (1999) (defendant beat his wife in the head with a gun before sexually penetrating her with the barrel of the gun).
- C. **Property Crimes** (Title 16, Article 7).

1. **Criminal Damage to Property**, 2nd Degree (O.C.G.A. § 16-7-23). Criminal Damage to Property, a felony, involves the intentional damaging of another's property without consent in an amount greater than \$500. (See [Section 4.1.1.B. above - Criminal Damage to Property.](#))
 - a. *Gooch v. State*, 289 Ga. App. 74(1) (2007)(citing *Ginn v. State*, 251 Ga. App. 159(2)(2001))(suggesting that "property of another" includes marital or family property jointly owned by the defendant and his spouse).
 - b. *Johnson v. State*, 260 Ga. App. 413, 415 (2003) (defendant keyed his estranged wife's car causing damage in excess of \$500).
2. **Arson**, 1st, 2nd, 3rd Degrees (O.C.G.A. § 16-7-60, 61, and 63).
 - a. *Senior v. State*, 273 Ga. App. 383 (2005) (defendant set his girlfriend's car on fire following an argument).
 - b. *Lathan v. State*, 241 Ga. App. 750 (1999) (defendant set fire to a house owned by his ex-wife after attempts at reconciliation with her had failed).

D. **Offenses Against Public Order** (Title 16, Article 11).

1. **Terroristic Threats and Acts** (O.C.G.A. § 16-11-37).
 - a. *Mullins v. State*, 298 Ga. App. 368 (2009)(victim's claimed lack of memory at trial regarding the defendant's alleged threats no obstacle to conviction because there is "no requirement that the victim testify for there to be sufficient evidence to sustain a conviction for terroristic threats").
 - b. *Johnson v. State*, 260 Ga. App. 413, 416 (2003) (defendant's words to his estranged wife that she "didn't have long to live" could reasonably be inferred as a threat to kill).

4.2.2 **Misdemeanor Crimes** (O.C.G.A. § 19-13-1(2)). Below is a list of misdemeanor offenses, set forth in O.C.G.A. § 19-13-1, that qualify as "**acts of family violence**", if the qualifying relationship between the offender and the victim exists under O.C.G.A. § 19-13-1.

- A. **Crimes Against Persons** (Title 16, Article 5).
 1. **Simple Assault** (O.C.G.A. § 16-5-20).

- a. *Bearden v. State*, 291 Ga. App. 805 (2008)(defendant's violent outburst placed his daughter in reasonable fear of injury).
 - b. *Johnson v. State*, 260 Ga. App. 413, 414-415 (2003) (defendant's aggressive driving toward his estranged wife's car held sufficient).
2. **Simple Battery** (O.C.G.A. § 16-5-23).
- a. *Pitts v. State*, 272 Ga. App. 182, 187-188 (2005), aff'd 280 Ga. 288 (2006) (officer's testimony that he saw defendant holding his wife down on a bed while she screamed sufficient to establish simple battery and false imprisonment, even without the victim's testimony).
 - b. *Shaw v. State*, 247 Ga. App. 867, 871 (2001) (testimony that defendant grabbed victim by throat and shoved her against the wall, coupled with officer's observation of red marks on her neck, sufficient to uphold simple battery verdict).
 - c. *Watkins v. State*, 183 Ga. App. 778 (1987) (victim's statement that defendant beat his wife with a chair, threatened her with a gun, and stabbed her with a pair of scissors, plus the presence of a stab wound on the victim's back, the presence of several weapons, and the disordered condition of the scene provided officers with probable cause to believe that an act of family violence had occurred).
3. **Battery** (O.C.G.A. § 16-5-23.1).
- a. *Thompson v. State*, 291 Ga. App. 355 (2008)(responding officer found victim bleeding profusely from her mouth and had one eye swollen shut).
 - b. *Simmons v. State*, 285 Ga. App. 129 (2007)(defendant hit his live-in girlfriend in the head with his fists causing her head to bleed).
 - c. *Southern v. State*, 269 Ga. App. 556 (2004) (defendant hit his girlfriend, with whom he had two children, leaving her with a bloody nose).

- d. *Rigo v. State*, 269 Ga. App. 383, 384 (2004) (defendant bruised his wife’s throat by strangling her).
 - (1) *Lee Wilbur, et. al.*, “*Survey Results Of Women Who Have Been Strangled While In An Abusive Relationship*,” *Journal of Emergency Medicine*, Vol. 21, no. 3 (Oct. 2001) (study found that strangulation as a method of abuse is common in women seeking safe shelter and/or medical assistance and noted that it “occurs late in the abusive relationship; thus, women presenting with complaints consistent with strangulation probably represent women at higher risk for major morbidity or mortality.”).
 - (2) Unfortunately, 50% of victims who were strangled and survived had no visible markings on the neck and 35% had only very minor injuries thus making physical evidence virtually non-existent (*Strack, et al*, 2003). In light of this new medical information, five states have now made strangulation a felony. ([See Appendix B – Assessing for Lethality](#))
- e. *Spinner v. State*, 263 Ga. App. 802 (2003) (defendant placed his hands around his wife’s neck and began to choke her).
- f. *Johnson v. State*, 260 Ga. App. 413, 414 (2003) (defendant struck, choked, and threw his wife against a wall leaving visible scrapes and bruises).
- g. *Cobble v. State*, 259 Ga. App. 236, 237 (2003) (defendant attacked his mother with car keys, pulled her hair out and left her scalp bloodied).
- h. *Cox v. State*, 243 Ga. App. 582 (2000) (defendant’s act of splashing beer on his estranged wife’s clothes insufficient to satisfy element of “substantial physical harm or visible harm”).

- i. *Bowers v. State*, 241 Ga. App. 122, 123 (1999) (defendant committed family violence battery when he struck and bruised his 12-year old son’s face).
- 4. **Stalking** (1st offense) (O.C.G.A. § 16-5-90(a)).
 - a. *Anderson v. Deas*, 273 Ga. App. 770 (2005) (“As used in the [Family Violence Act], the term ‘family violence’ . . . include[s] stalking).
 - b. *Johnson v. State*, 260 Ga. App. 413, 414 (2003) (defendant appeared uninvited and harassed his estranged wife at her doctor’s office).
 - c. See [Section 4.2.1.A.10](#)- Stalking above, for additional discussion.

B. Property Crimes (Title 16, Article 7).

- 1. **Criminal Trespass** (O.C.G.A. § 16-7-21).
Criminal Trespass, a misdemeanor, involves the intentional damaging of another’s property without consent in an amount equal to or less than \$500, or the entry without authority upon the property of another. (See [Section 4.1.1.B](#). above - *Criminal Trespass*).
- a. *Ginn v. State*, 251 Ga. App. 159(2)(2001) (defendant guilty of criminal trespass when he destroyed a computer keyboard during an argument with his wife *even if* the keyboard was their joint marital property).
- b. *Cox v. State*, 243 Ga. App. 582, 582-583 (2000) (defendant committed criminal trespass when he damaged an exterior light fixture belonging to his estranged wife).

4.2.3 **Miscellaneous Crimes / Civil Contempt of Court.**

- A. **Violation of Family Violence Order** (O.C.G.A. § 16-5-95). The crime created by this code section appears to be an alternative to a charge of stalking (O.C.G.A. § 16-5-90) or aggravated stalking (O.C.G.A. § 16-5-91) which, unlike this crime, each contain an element requiring that the prohibited contact be “without the consent of the other person for the purpose of harassing and intimidating the other person.”

O.C.G.A. § 16-5-95(a), in contrast, provides that “[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 [the **Family Violence Act**].”

O.C.G.A. § 16-5-95(c) provides that “[n]othing 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 [Stalking] or 16-5-91 [Aggravated Stalking] that arose out of the same course of conduct.”

1. *Newsome v. State*, 296 Ga. App. 490 (2009)(accusation charging this offense must set forth the terms of the order alleged to have been violated).

B. **Disclosure of Location of Family Violence Shelter** (O.C.G.A. § 19-13-23). This code section provides that “[a]ny person who knowingly ...discloses the location of a family violence shelter is guilty of a misdemeanor.”

C. **Disclosure of Family Violence and Stalking Protective Order Registry Information** (O.C.G.A. § 19-13-55). O.C.G.A. 19-13-55 provides that “[a]ny individual, agency, or court which obtains information from the registry shall keep such information or parts thereof confidential. ...Violation of this Code section shall be a misdemeanor.”

D. **Contempt of Court** (O.C.G.A. § 19-13-6). This code section recognizes civil contempt as an alternative to criminal prosecution under O.C.G.A. § 16-5-95. O.C.G.A. § 19-13-6 provides that “[a] violation of an order issued pursuant to [the **Family Violence Act**] may be punished by an action for contempt or criminally punished as provided in Article 7 of Chapter 5 of Title 16.”

1. *Tanks v. State*, 292 Ga. App. 177 (2008)(non-summary criminal contempt proceedings can trigger the Fifth Amendment's double jeopardy bar to subsequent prosecution predicated on the same act allegedly violating a protective order).
2. *Schmidt v. Schmidt*, 270 Ga. 461, 463 (1999) (court must apply the reasonable doubt standard of proof to violations of orders under the Family Violence Act, rather than the preponderance standard, when imposing unconditional incarceration as punishment for criminal contempt).

3. *Salter v. Greene*, 226 Ga. App. 384, 386 (1997) (a wife cannot be held in contempt for voluntarily contacting her husband merely because his bond condition barred *him* from having contact with her).
4. *Kinney v. State*, 223 Ga. App. 418, 420-421 (1996) (the state may not prosecute a defendant for aggravated stalking based upon the same set of facts previously used to prosecute the same defendant for a violation of a domestic violence order).

4.3 Domestic Violence Sentences

In special recognition of the societal harm caused by domestic violence, the legislature has adopted a number of sentencing enhancement provisions applicable to offenders convicted of domestic violence offenses. These provisions are summarized below.

4.3.1 Domestic Violence Sentencing – First Offenses.

- A. **Simple Assault.** O.C.G.A. § 16-5-20(d) provides that “[i]f the offense of simple 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 for a **misdemeanor of a high and aggravated nature**. In no event shall this subsection be applicable to **corporal punishment** administered by a parent or guardian to a child or administered by a person acting in loco parentis.” (Note: Siblings are not excluded from the definition of “family violence” set forth in § 19-13-1.)
- B. **Aggravated Assault.** O.C.G.A. § 16-5-21(j) provides that “[i]f 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**.” (Note: Siblings are not excluded from the definition of “family violence” set forth in § 19-13-1.)
- C. **Simple Battery.** O.C.G.A. § 16-5-23(f) provides that “[i]f the offense of simple 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 for a **misdemeanor of a high**

and aggravated nature. In no event shall this subsection be applicable to **corporal punishment** administered by a parent or guardian to a child or administered by a person acting in loco parentis.” (Note: Siblings are not excluded from the definition of “family violence” set forth in § 19-13-1.)

- D. **Battery.** O.C.G.A. § 16-5-23.1(f) provides that “[i]f the offense of 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 living or formerly living in the same household, then such offense shall constitute the offense of family violence battery and shall be punished as follows:

Upon a first conviction of family violence battery, the defendant shall be guilty of and punished for a **misdemeanor.**”

1. The misdemeanor penalty for a first offense family violence battery seems anomalous in light of the stiffer penalty (misdemeanor of a high and aggravated nature) for a first time simple assault or simple battery offense involving similarly situated persons. This may be the result of a legislative oversight.
2. The offense of family violence battery includes siblings among its possible victims whereas siblings as victims are specifically excluded from the definition of the lesser offenses of simple assault and simple battery and the greater offenses of aggravated assault and aggravated battery. This may also be the result of a legislative oversight.
3. See [Section 4.2.2.A.3 -Battery](#), above, for additional discussion.

- E. **Aggravated Battery.** O.C.G.A. § 16-5-24(h) provides that “[i]f 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.**” (Note: Siblings are not excluded from the definition of “family violence” set forth in § 19-13-1.)

4.3.2 **Domestic Violence Sentencing - Second or Subsequent Offenses.**

- A. **Battery.** O.C.G.A. § 16-5-23.1(f) provides that “[i]f the offense of 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 living or formerly living in the same household, then such offense shall constitute the offense of family violence battery and shall be punished as follows:

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**. In no event shall this subsection be applicable to reasonable **corporal punishment** administered by parent to child.”

1. *Spinner v. State*, 263 Ga. App. 802, 803-804 (2003) (a nolo contendere plea to a prior battery involving a family member can be considered a prior conviction for purposes of O.C.G.A. § 16-5-23.1(f)(2) which simply enhances the penalty for the newly-committed act).
2. *State v. Dean*, 235 Ga. App. 847, 847-848 (1998) (defendant’s prior battery conviction involving his wife could serve as basis for enhanced sentence under O.C.G.A. § 16-5-23.1(f)(2) for second such conviction despite fact that first conviction predated the enactment of that subsection; not ex post facto because penalty for first conviction not increased).
3. Note: The offense of family violence battery *includes* siblings among its possible victims whereas siblings as victims are specifically excluded from the definition of the lesser offenses of simple assault and simple battery and the greater offenses of aggravated assault and aggravated battery. This may be the result of a legislative oversight.

4.3.3 **Proof of Prior Family Violence Act Conviction(s).**

- A. *Apprendi v. New Jersey*, 530 U.S. 466 (2000) (a criminal defendant’s Sixth Amendment right to a jury trial, applied to the states through the Due Process clause of the Fourteenth Amendment, requires that any fact that increases the penalty for a crime beyond the prescribed statutory maximum for that offense, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt).

- B. The *Apprendi* rule seems to require the State to both allege and prove the familial relationship between the victim and defendant in order to authorize a sentencing enhancement for a first offense involving family violence. The sentencing judge is not permitted to make that factual finding on his own.
 1. *Grogan v. State*, 297 Ga. App. 251 (2009)(a defendant may not wait until after his second conviction for FVB to challenge on direct appeal the validity of this recidivist felony sentence based upon his first conviction for FVB).
- C. The *Apprendi* rule does not seem to require the State to allege or prove to the trier of fact the existence of a first offense in order to authorize a sentencing enhancement for a second offense involving family violence.
 1. *Grogan v. State*, 297 Ga. App. 251 (2009)(trial court properly relied on defendant’s prior conviction for FVB in sentencing defendant to felony recidivist punishment).
 2. *Spinner v. State*, 263 Ga. App. 802, 803-804 (2003) (O.C.G.A. § 16-5-23.1(f) is a recidivist statute that simply enhances the punishment for repeat offenders of family violence battery, thus proof of a prior conviction is not an element of the crime of felony family violence battery).
 3. *State v. Dean*, 235 Ga. App. 847, 847-848 (1998) (defendant’s prior conviction for battery against wife properly served as basis for enhanced sentence under O.C.G.A. § 16-5-23.1(f)(2)).

4.3.4 **Special Conditions of Probation.**

- A.. **Psychological evaluation and treatment.** O.C.G.A. § 16-5-90(d) provides that “[b]efore sentencing a defendant for any conviction of **stalking** under Code Section 16-5-90 or **aggravated stalking** under Code Section 16-5-91, the sentencing judge may require **psychological evaluation** of the offender.... At the time of sentencing, the judge is authorized to ...require **psychological treatment** of the offender as a part of the sentence, or as a condition for suspension or stay of sentence, or for probation.”
 1. *Benton v. State*, 256 Ga. App. 620, 623(fn.9) (2002) (trial court did not abuse its discretion in imposing family counseling as a condition of defendant’s probation following his conviction for stalking his own daughter).
- B. **Permanent restraining orders.** O.C.G.A. § 16-5-90(d) provides that “[a]t the time of sentencing [for any

conviction of stalking under Code Section 16-5-90 or aggravated stalking under Code Section 16-5-91], the judge is authorized to issue a **permanent restraining order** against the offender to protect the person stalked and the members of such person's immediate family.”

C. **No contact with victim/Stay away provisions.**

1. *Talley v. State*, 269 Ga. App. 712, 714-715 (2004) (upheld condition of probation barring defendant from having contact with his ex-wives and his own children after defendant used threats to kill his children to manipulate his ex-wives).
2. *Benton v. State*, 256 Ga. App. 620, 623 (2002) (trial court did not abuse its discretion in restraining defendant from contacting his daughter and her family following his stalking conviction based on “ample basis for the victim’s concern”).

D. **Mandatory family violence intervention programs.**

O.C.G.A. § 19-13-16(a) provides that “[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.”

1. [See Appendix G – Differences Between Anger Management and Family Violence Intervention Programs.](#)

4.3.5 **Additional Consequences of Domestic Violence Sentencing.**

- A. **Felony Domestic Violence Offenses.** A person convicted of any felony offense, including domestic violence offenses, is prohibited by law from receiving, possessing, or transporting any firearm. O.C.G.A. §16-11-131(b).
- B. **Misdemeanor Domestic Violence Offenses.** Federal law (Gun Control Act of 1968, as amended) prohibits persons convicted of certain qualifying domestic violence misdemeanor offenses from receiving or possessing any firearms. 18 U.S.C. 922(g)(9). *See* <http://www.atf.gov/firearms/faq/misdemeanor-domestic-violence.html> for a more detailed definition of these qualifying domestic violence misdemeanors.
 1. **Note:** Sentencing judges should advise persons being sentenced for domestic violence

misdemeanors that federal law *may* prohibit such persons from thereafter receiving or possessing any firearms. [This notification is a requirement for those states receiving federal funding from the US Department of Justice, Violence Against Women Act STOP grant program.]

4.4 Domestic Violence Arrests

It was formerly the law in Georgia that a police officer could not make an arrest for a misdemeanor offense unless that offense occurred in the officer's presence. When responding to domestic violence calls, this often resulted in officers being unable to make contemporaneous arrests. If victims of domestic violence desired to prosecute their abusers, they were told that they would have to swear out their own criminal warrant. To remedy this situation, Georgia's arrest statute was amended in 1988 to permit police officers to make family violence arrests based upon probable cause, whether or not the officer personally witnessed the crime.

4.4.1 **Powers of Arrest, in General** (O.C.G.A. § 17-4-20). O.C.G.A. § 17-4-20 delineates circumstances justifying an arrest by a law enforcement officer under Georgia law.

A. *Hight v. State*, 293 Ga. App. 254(1)(2008) (any arrest that is constitutional under federal law is also permissible under Georgia law, even if not specifically authorized by this code section); *Quick v. State*, 166 Ga. App. 492, 494 (1983)(same).

4.4.2 **Authority to arrest for family violence offenses.** O.C.G.A. § 17-4-20(a) provides that an officer may make an arrest with or without a warrant "if the officer has probable cause to believe that an **act of family violence**, as defined in Code Section 19-13-1, has been committed."

A. *Wright v. State*, 276 Ga. 454, 460 (2003) (arrest without warrant justified following the mysterious disappearance of defendant's estranged wife).

B. *McCracken v. State*, 224 Ga. App. 356, 358 (1997) (warrantless arrest properly based upon victim's on-the-scene accusation that her former boyfriend had beaten her and officer's observation of visible bodily harm, specifically victim's eye which was almost completely swollen shut).

4.4.3 **Victim need not press charges.** O.C.G.A. § 17-4-20.1(a) provides that "[w]henver a law enforcement officer responds to an incident in which an **act of family violence**, as defined in Code Section 19-13-1, has been committed, the officer shall not base the decision of whether to arrest and charge a person on the specific consent of the victim...."

- A. *Shaw v. State*, 247 Ga. App. 867, 867-868 (2001) (police authorized to make warrantless arrest despite visibly injured victim’s expressed desire not to prosecute).
 - B. *Holland v. State*, 239 Ga. App. 436, 436-437 (1999) (despite victim’s claim that the defendant never struck her, evidence supported the arrest and subsequent conviction of defendant based on eyewitness accounts of defendant’s attack upon her).
- 4.4.4 **Officer shall not threaten to arrest victim.** O.C.G.A. § 17-4-20.1(a) provides that “[n]o officer investigating an incident of family violence shall threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention.”
- A. *Harrison v. State*, 238 Ga. App. 485 (1999) (responding officer concluded that probable cause existed to arrest *both* the husband and the wife for simple battery committed upon one another).
- 4.4.5 **Discretion to arrest the “primary aggressor”.** O.C.G.A. § 17-4-20.1(b) provides that “[w]here complaints of family violence are received from two or more opposing parties, the officer shall evaluate each complaint separately to attempt to determine who was the **primary aggressor**. If the officer determines that one of the parties was the primary physical aggressor, the officer shall not be required to arrest any other person believed to have committed an act of family violence during the incident. In determining whether a person is a primary physical aggressor, an officer shall consider:
- A. Prior family violence involving either party;
 - B. The relative severity of the injuries inflicted on each person;
 - C. The potential for future injury; and
 - D. Whether one of the parties acted in self-defense.”
 - 1. *McCracken v. State*, 224 Ga. App. 356, 358 (1997) (responding officer was authorized to make a warrantless arrest based upon the victim’s statement and her visible injuries without first investigating the defendant’s explanation that she had thrown a bowl of hot chili on him).
- 4.4.6 **Family violence reports.** O.C.G.A. § 17-4-20.1 (c) provides that “[w]henever a law enforcement officer investigates an incident of family violence, whether or not an arrest is made, the officer shall prepare and submit to the supervisor or other designated person a written report of the incident entitled ‘**Family Violence Report.**’ Forms for such reports shall be designed and provided by the Georgia Bureau of Investigation. The report shall include the following:

- A. Name of the parties;
- B. Relationship of the parties;
- C. Sex of the parties;
- D. Date of birth of the parties;
- E. Time, place, and date of the incident;
- F. Whether children were involved or whether the act of family violence was committed in the presence of children;
- G. Type and extent of the alleged abuse;
- H. Existence of substance abuse;
- I. Number and types of weapons involved;
- J. Existence of any prior court orders;
- K. Type of police action taken in disposition of case, the reasons for the officer's determination that one party was the primary physical aggressor, and mitigating circumstances for why an arrest was not made;
- L. Whether the victim was apprised of available remedies and services; and
- M. Any other information that may be pertinent.
 - 1. *Meagher v. Quick*, 264 Ga. App. 639, 643 (2003) (whenever an incident of possible family violence is investigated by police, whether the complaint is founded or unfounded, preparation of a written Family Violence Report is mandatory).

4.4.7 **Entry into home without arrest/search warrant.**

- A. *Randolph v. State*, 278 Ga. 614, 614-615 (2004); aff'd *Georgia v. Randolph*, 547 U.S. 103 (2006) (police officers lacked authority to search marital residence, even though wife consented to the search, where defendant, husband, unequivocally declined to grant officers such consent).
- B. *Chambers v. State*, 252 Ga. App. 190 (2001) (a victim may invite police into her residence to investigate a claim of domestic violence and thereby authorize a subsequent warrantless arrest).
- C. *Shaw v. State*, 247 Ga. App. 867, 870-871 (2001) (a warrantless entry by police to ask questions or to make an arrest, absent invitation or exigent circumstances, may be unconstitutional).
- B. *Lord v. State*, 297 Ga. App. 88(1)(a)(2009) (exigent circumstances may authorize police to make a warrantless entry into a home following a report of domestic violence and to photograph or seize evidence in plain view); see also *McCauley v. State*, 222 Ga. App. 600, 601 (1996)(exigent circumstances).
- D. *Duitsman v. State*, 212 Ga. App. 348, 349 (1994) (officers may pursue in "hot pursuit" a fleeing suspect into his home after witnessing an act of family violence).

4.4.8 **Act of family violence need not occur at home.**

- A. *Holland v. State*, 239 Ga. App. 436 (1999) (a physical altercation took place in public outside the residence).
- B. *Gilbert v. State*, 209 Ga. App. 483, 483-484 (1993) (officer authorized to make warrantless arrest for act of family violence despite the fact that the incident occurred on a dirt road far away from the family residence).

4.5 Domestic Violence Bonds

4.5.1 When a person is arrested and released on bond for a domestic violence offense, there is a strong likelihood that he will return to the scene of his crime, i.e., the home he shares with the victim. To minimize the risk of escalating violence in these cases, courts are authorized to delay the setting of bond for such offenders and to impose restrictive conditions of bond once set.

- A. Victims of domestic violence are at grave risk for retribution once their abuser is released from jail. Restrictive bond conditions may contribute significantly to enhancing the safety of the victim and the victim's other family members.
- B. Solid authority indicates the critical importance of limiting gun possession and use in family violence situations. Leaving an abuser with access to a gun increases the risk that later incidents of violence will turn lethal. A study of intimate partner assaults in Atlanta found that assaults were twelve times more likely to result in death to the victim if a firearm was present. Linda E. Saltzman, PhD, et al., "Weapon Involvement and Injury Outcomes in Family and Intimate Assaults," *Journal of the American Medical Association*, vol. 267, no. 22 (1992). From 1990 to 2002, over two-thirds of the spouse or ex-spouse victims, killed as a result of domestic violence, were killed by guns. (Bureau of Justice Statistics, 2005) ([See Appendix E, Paragraph B - Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions](#)) ([See Section 3.2.2.B - Firearms](#) and [Appendix B - Assessing for Lethality](#))
- C. In addition to physical retribution, immigrant and refugee victims are at special risk when their batterers use such victim's documentation and immigration status as a tool of family violence. ([See Appendix H – Immigrants and Refugees](#))

4.5.2 **Offenses bondable only before a superior court judge.** Many common **domestic violence offenses** are bailable only before a judge of the superior court. O.C.G.A. § 17-6-1(a) provides that "[t]he following offenses are bailable only before a judge of the superior court:

- A. Treason;

- B. Murder;
 - C. **Rape;**
 - D. Aggravated sodomy;
 - E. Armed robbery;
 - F. Aircraft hijacking and hijacking a motor vehicle;
 - G. Aggravated child molestation;
 - H. Aggravated sexual battery;
 - I. Manufacturing, distributing, delivering, dispensing, administering, or selling any controlled substance classified under Code Section 16-13-25 as Schedule I or under Code Section 16-13-26 as Schedule II;
 - J. Violating Code Sections 16-13-31 or 16-13-31.1 [drug trafficking];
 - K. **Kidnapping, arson, aggravated assault, or burglary** if the person, at the time of the alleged kidnapping, arson, aggravated assault, or burglary, had previously been convicted of, was on probation or parole with respect to, or was on bail for kidnapping, arson, aggravated assault, burglary, or one or more of the offenses listed in paragraphs (1) through (10) of this subsection; and
 - L. Aggravated stalking.”
- 4.5.3 **All other offenses bondable before a court of inquiry.** O.C.G.A. § 17-6-1(b)(1) provides that “[a]ll offenses not included in subsection (a) of this Code section are bailable by a court of inquiry.”
- 4.5.4 **No person charged with a misdemeanor shall be refused bail.**
- A. A person charged with committing a misdemeanor **domestic violence offense** will generally be entitled to bail provided that special eligibility provisions may apply authorizing a court to deny bail or impose special conditions of bond. (*See* Sections 4.5.5 thru 4.5.8, below.)
 - B. O.C.G.A. § 17-6-1(b)(1) provides that “[e]xcept as provided in subsection (g) of this Code section [relating to appeal bonds], at no time, either before a court of inquiry, when indicted or accused, after a motion for new trial is made, or while an appeal is pending, shall any person charged with a misdemeanor be refused bail.”
- 4.5.5 **Eligibility for bail for family violence offenses.** O.C.G.A. § 17-6-1(b)(2)(B) provides that “[w]hen an arrest is made by a law enforcement officer without a warrant upon an **act of family violence** pursuant to Code Section 17-4-20, the person charged with the offense shall not be eligible for bail prior to the arresting officer or some other law enforcement officer taking the arrested person before a judicial officer pursuant to Code Section 17-4-21.”
- 4.5.6 **Stalking offenses / special conditions of bail.** O.C.G.A. § 17-6-1(b)(3) provides that:

- A. Notwithstanding any other provision of law, a judge of a court of inquiry may, as a condition of bail or other pretrial release of a person who is charged with violating Code Section 16-5-90 [**Stalking**] or 16-5-91 [**Aggravated Stalking**], prohibit the defendant from entering or remaining present at the victim's school, place of employment, or other specified places at times when the victim is present or intentionally following such person.
- B. If the evidence shows that the defendant has previously violated the conditions of pretrial release or probation or parole which arose out of a violation of Code Section 16-5-90 [**Stalking**] or 16-5-91 [**Aggravated Stalking**], the judge of a court of inquiry may impose such restrictions on the defendant which may be necessary to deter further stalking of the victim, including but not limited to denying bail or pretrial release. (See [Section 4.5.1A, B & C](#), above, on Retribution.)

4.5.7 **Schedule of bails for offenses bondable by courts of inquiry.**

O.C.G.A. § 17-6-1(f) provides that:

- A. Except as provided in subsection (a) of this Code section or as otherwise provided in this subsection, the judge of any court of inquiry may by written order establish a schedule of bails and unless otherwise ordered by the judge of any court, a person charged with committing any offense shall be released from custody upon posting bail as fixed in the schedule.
- B. For offenses involving an **act of family violence**, as defined in Code Section 19-13-1, the schedule of bails provided for in paragraph (A) of this subsection shall require **increased bail** and shall include a listing of **specific conditions** which shall include, but not be limited to, having no contact of any kind or character with the victim or any member of the victim's family or household, not physically abusing or threatening to physically abuse the victim, the immediate enrollment in and participation in **domestic violence counseling** (experts in this field warn against counseling – See [Section 3.2.5 - Counseling and Family Violence Intervention Programs](#) and [Appendix G – Family Violence Intervention Programs](#)) and, substance abuse therapy, or other therapeutic requirements. (See [Appendix I – Mental Illness and the Court.](#))
- C. For offenses involving an **act of family violence**, the judge shall determine whether the schedule of bails and one or more of its specific conditions shall be used, except that any offense involving an act of family violence and **serious injury to the victim** shall beailable only before a judge

when the judge or the arresting officer is of the opinion that the danger of further violence to or harassment or intimidation of the victim is such as to make it desirable that the consideration of the imposition of additional conditions as authorized in this Code section should be made. Upon setting bail in any case involving family violence, the judge shall give particular consideration to the exigencies of the case at hand and shall impose any **specific conditions** as he or she may deem necessary. As used in this Code section, the term "**serious injury**" means 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, fractured bones, or permanent disfigurements and wounds inflicted by deadly weapons or any other objects which, when used offensively against a person, are capable of causing serious bodily injury. ([See Appendix B – Assessing for Lethality](#))

4.5.8 **No appeal bond for certain crimes.** O.C.G.A. § 17-6-1(g) provides that “[n]o appeal bond shall be granted to any person who has been convicted of **murder, rape, aggravated sodomy**, armed robbery, **aggravated child molestation, child molestation, kidnapping**, trafficking in cocaine or marijuana, **aggravated stalking**, or aircraft hijacking and who has been sentenced to serve a period of incarceration of five years or more. The granting of an appeal bond to a person who has been convicted of any other felony offense or of any misdemeanor offense involving an **act of family violence** as defined in Code Section 19-13-1, or of any offense delineated as a high and aggravated misdemeanor or of any offense set forth in Code Section 40-6-391, shall be in the **discretion of the convicting court**. Appeal bonds shall terminate when the right of appeal terminates, and such bonds shall not be effective as to any petition or application for writ of certiorari unless the court in which the petition or application is filed so specifies.”

A. *Brooks v. State*, 232 Ga. App 115, 129 (1998) (the burden of seeking an appeal bond is on the convicted applicant and the decision whether to grant an appeal bond is a matter within the discretion of the trial judge).

4.5.9 **Bond conditions.**

A. *Camphor v. State*, 272 Ga. 408, 410 (2000) (when a defendant is charged with a violent crime against a specific victim, it is within the trial court’s inherent powers to require that the defendant avoid any contact with the victim as a condition of remaining free pending trial).

- B. *Clarke v. State*, 228 Ga. App. 219, 220 (1997) (a trial court has inherent authority to set conditions for bonds, even misdemeanor bonds, and such conditions will be upheld by the appellate courts absent an abuse of discretion).
- 4.5.10 **Amendment of bond conditions.** O.C.G.A. § 17-6-18 provides that “[a]ll bonds taken under requisition of law in the course of a judicial proceeding may be amended and new security given if necessary.”
- A. *Camphor v. State*, 272 Ga. 408, 409 (2000) (upholding amendment of bond to add a “stay away” condition).
- 4.5.11 **Revocation of bonds.**
- A. *Hood v. Carsten*, 267 Ga. 579, 581 (1997) (because a bond revocation involves the deprivation of one’s liberty, a trial court’s decision to revoke bond must comport with at least minimal state and federal due process requirements).
 - B. *Clarke v. State*, 228 Ga. App. 219, 221 (1997) (a trial court has inherent authority to revoke a defendant’s bond if, after a hearing, it finds satisfactory proof that the defendant has violated one or more of its provisions).

5 CHAPTER 5 – EVIDENCE

5 EVIDENCE.

The prosecution of domestic violence cases has increased dramatically in recent years. Recurring evidentiary issues raised in such prosecutions have led to a body of case law interpreting and applying general evidentiary principles in the domestic violence context. Effective January 1, 2013, Georgia’s rules of evidence underwent a dramatic change. In April 2011, the Georgia legislature voted to completely replace the rules of evidence, Title 24 of the Code, with a new title based very closely on the Federal Rules of Evidence. Several of these commonly recurring evidentiary issues and the new rules that have taken effect, are summarized below.

5.1 Sufficiency of Evidence

5.1.1 No Corroboration Required.

- A. O.C.G.A. ~~§ 24-4-8~~ 24-14-8 provides that “[t]he testimony of a single witness is generally sufficient to establish a fact.” (replaced OCGA 24-4-8)
1. *Hartley v. State*, 299 Ga. App. 534 (2009)(written statement of defendant’s estranged wife was sufficient to support the verdict of guilty).
 2. *Simmons v. State*, 285 Ga. App. 129, 130 (2007)(victim's testimony on direct examination was adequate, standing alone, to sustain the conviction).

5.1.2 Corroboration, In General.

- A. Although not required, corroborating evidence may in some domestic violence cases be necessary to meet the State’s burden of establishing guilt beyond a reasonable doubt. Some common methods of corroborating a victim’s testimony are listed below.
1. Blood splatter.
 - a. *Peterson v. State*, 274 Ga. 165, 166 (2001) (police observed blood splatters on the walls and blood stains in several places, including where the victim’s head had apparently been slammed into a wall).
 2. Confessions and admissions.
 - a. *Miller v. State*, 273 Ga. App. 761, 762 (2005) (defendant testified at trial and admitted a physical altercation with victim).
 - b. *Demons v. State*, 277 Ga. 724, 725 (2004) (defendant called 911 and informed the dispatcher that he had just killed his housemate).
 3. Emails and letters.

- (a) *Port v. State*, 295 Ga. App. 109(2)(a) (2008)(defendant’s emails to his estranged girlfriend expressing his love and affection for her were admissible to show his state of mind).
- 4. Eyewitness testimony.
 - a. *Holland v. State*, 239 Ga. App. 436, 436-437 (1999) (two eyewitnesses testified that they observed defendant standing over the victim and striking her with his fists).
 - b. *Simpson v. State*, 214 Ga. App. 587, 588(2) (1994) (testimony of two eyewitnesses sufficient to overcome domestic violence victim’s claimed lack of knowledge regarding who had shot her).
- 5. Medical reports.
 - a. *Lewis v. State*, 277 Ga. 534, 535 (2004) (medical examiner testified that defendant’s estranged wife had suffered 42 injuries, including 17-20 stab or cut wounds to the neck).
 - b. *Carter v. State*, 268 Ga. App. 688, 689 (2004) (medical testimony confirmed that defendant’s wife had sustained “quite a bit of head trauma”).
- 6. Photographs of injuries.
 - a. *Miller v. State*, 273 Ga. App. 761, 763-763 (2005) (photographs showing extent of victim’s injuries inconsistent with defendant’s claim of self-defense).
 - b. *Bell v. State*, 278 Ga. 69, 72 (2004) (trial court did not err in admitting a pre-autopsy photograph as the body had not been altered by authorities and the photograph was otherwise admissible to demonstrate the nature and location of the victim’s wounds).
 - c. *Moody v. State*, 277 Ga. 676, 680 (2004) (photographs of victim’s partially buried body not overly gruesome and any prejudice was outweighed by their probative value).
 - d. *Carter v. State*, 268 Ga. App. 688, 690 (2004) (photographs depicting wife’s badly swollen and bruised face admissible to establish “bodily harm” element in this kidnapping with injury case).

- e. *Almond v. State*, 274 Ga. 348, 349 (2001) (properly authenticated digital photographs, i.e., those identified as fair and accurate by one having viewed the scene depicted therein, are admissible).
7. Physician's Medical Exam.
- (a) *Brown v. State*, 293 Ga. App. 633(1)(c)(2008)(physician who performed rape exam of victim properly permitted to testify that victim's demeanor was consistent with someone who had been sexually assaulted).
8. Police officer observations.
- (a) *Horne v. State*, 298 Ga. App. 602 (2009)(investigators testified that the scene was consistent with the victim's story, as were her injuries).
 - (b) *Mullins v. State*, 298 Ga. App. 368 (2009)(it is not improper bolstering for a police officer to express an opinion as to whether objective evidence in the case is consistent with the victim's story).
 - (c) *Shaw v. State*, 247 Ga. App. 867, 871 (2001) (the responding officer noticed red marks around the victim's throat as well as the defendant's demeanor toward the victim).
 - (d) *Holland v. State*, 239 Ga. App. 436, 437 (1999) (officer testified that the victim had a bleeding lower lip and some finger marks on her neck).
 - (e) *Allen v. State*, 213 Ga. App. 290 (1994) (officer testified that the victim's injuries were consistent with her claim of domestic violence and inconsistent with the defendant's accidental fall theory).
9. Property damage.
- a. *Mize v. State*, 262 Ga. App. 486, 489 (2003) (responding officer testified that telephones in the bedroom and living room had been disabled, a vase containing flowers lay broken on the living room floor, and the footboard of a bed was broken off).
 - b. *Nasworthy v. State*, 169 Ga. App. 603, 640 (1984) (officer responding to domestic violence call noticed that several potted

plants had been overturned in the hallway of the house).

10. Torn clothing.
 - a. *Hawks v. State*, 223 Ga. App. 890, 892 (1996) (responding officer testified to observing victim's torn shirt).
 - b. *Nasworthy v. State*, 169 Ga. App. 603, 640 (1984) (officer responding to domestic violence call noticed that victim's housedress had been torn at the sleeve).
11. Weapons.
 - a. *Mize v. State*, 262 Ga. App. 486, 489 (2003) (responding officer found car washing brush that the defendant had allegedly used to beat his wife).
 - b. *Nasworthy v. State*, 169 Ga. App. 603, 640 (1984) (recovery of .22 magnum revolver allegedly used by defendant during a domestic incident).

5.1.3 Intent to Commit Crime, Proof of.

- A. O.C.G.A. § 16-2-6 provides that “[a] person will not be presumed to act with criminal intention but the trier of facts may find such intention upon consideration of the words, conduct, demeanor, motive, and all other circumstances connected with the act for which the accused is prosecuted.”
 1. *Shaw v. State*, 247 Ga. App. 867, 871 (2001) (a jury may infer that a person acted with criminal intent after considering the words, conduct, demeanor, motive, and all other circumstances connected with the act for which the accused is prosecuted).

5.2 Hearsay and Confrontation Issues

5.2.1 Hearsay, In General.

- A. Any analysis of hearsay or the applicability of hearsay exceptions in domestic violence cases must include and take into careful consideration the effect of *Crawford v. Washington*, 541 U.S. 36 (2004), which sharply circumscribed hearsay exceptions purporting to dispense with the Confrontation Clause's cross-examination requirement. (See The Confrontation Clause, Section 5.2.2, below.)
- B. **Hearsay.**
 1. O.C.G.A. § 24-3-1(a) provides that “[h]earsay evidence is that which does not derive its value solely from the credit of the witness but rests

mainly on the veracity and competency of other persons.”

2. The new definition of hearsay can be found in O.C.G.A. 24-8-801. The definition of hearsay is nearly identical to Federal Rule 801(c). This definition is generally consistent with current Georgia law.
3. [O.C.G.A. § 24-8-807](#) (effective January 1, 2013) has replaced O.C.G.A. § 24-3-1(a). The new statute states that “A statement not specifically covered by any law but having equivalent circumstantial guarantees of trustworthiness shall not be excluded by the hearsay rule, if the court determines that:
 - (1)The statement is offered as evidence of a material fact;
 - (2)The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
 - (3)The general purposes of the rules of evidence and the interests of justice will best be served by admission of the statement into evidence.
4. *Mims v. State* 314 Ga. App. 170 (2012) Defendant made a motion for a new trial that was denied and appealed that verdict on the ground that the trial court erred in admitting the victim’s prior consistent statement over his hearsay objection and in admitting a police officer’s allegedly irrelevant testimony. The Court then stated that it was proper to allow the officer’s hearsay testimony as prior consistent testimony in light of defendant’s questioning.

C. **Necessity Exception.**

1. O.C.G.A. § 24-3-1(b) provides that “[h]earsay evidence is admitted only in specified cases from necessity.”
2. [O.C.G.A. § 24-8-807](#) (effective January 1, 2013) is consistent with former O.C.G.A. § 24-3-1(b), the statute it replaced, but adds the additional burden on the statement's proponent to make known to the adverse party, sufficiently in advance of trial, the intention to use the statement so as to provide the adverse party “with a fair opportunity to meet it.”
 - a. To satisfy the necessity exception, the proponent must (1) show a necessity for the

evidence, e.g., the declarant is deceased, (2) a circumstantial guaranty of the statement's trustworthiness, and (3) that the hearsay statement is more probative and revealing than other available evidence *See Smith v. State*, 284 Ga. 304(3)(c)(2008); *Brown v. State*, 278 Ga. 810, 811 (2005).

- b. *Wright v. State*, 285 Ga. 57(3)(b)(2009)(child's statements to her grandmother on the day prior to her death that the defendant had caused the scratches to her stomach held admissible under necessity exception).
- c. *Culmer v. State*, 282 Ga. 330(2)(2008) (trustworthiness of deceased victim's statement to her friend shown by the nature of their friendship in which they would often share the intimate details of their lives and relationships).
- d.. *McPherson v. State*, 274 Ga. 444 (2001) (deceased's statements to her friends and co-workers to whom she routinely confided about her intended breakup with the defendant held admissible under necessity exception).
- e. *Harrison v. State*, 238 Ga. App. 485, 486 (1999) (state failed to make the requisite showing of necessity when it failed to call other available eyewitnesses to the incident).
- f. *Miller v. State* 289 Ga.854 (2011) (Testimony by deceased victim's friend that victim told friend she had been previously beaten up by defendant was admissible).

D. Medical Diagnosis and Treatment.

1. O.C.G.A. § 24-3-4 provides that "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment shall be admissible in evidence."
2. Statements made for the purpose of diagnosis or treatment as well as medical history and information as to the cause or source of an injury are admissible under [O.C.G.A. § 24-8-803](#)

[\(4\)](#) (effective January 1, 2013, replacing § 24-3-4). This new statute is consistent with the old statute.

- a. *Payne v. State*, 273 Ga. App 483, 486 (2005) (statements to a treating physician relating to the cause of a victim’s injuries were held admissible as being pertinent to diagnosis and treatment in this non-domestic violence case).
- b. *Brown v. State*, 273 Ga. App. 88, 89 (2005) (statements regarding the identity of the attacker and the circumstances surrounding the attack do not fall within this statutory exception if they are not pertinent to diagnosis or treatment).
- c. *Roberson v. State*, 187 Ga. App. 485, 486 (1988) (child’s statements relating her medical history in this molestation case were properly admitted, but statements identifying her molester were not).

E. **Prior Consistent Statements.**

1. Under Georgia’s definition of hearsay (O.C.G.A. § 24-3-2), an out-of-court statement made by a witness who testifies and is subject to cross-examination is not hearsay, but such statement may nonetheless be excluded as improper “bolstering” unless it is shown to be relevant to rebut a claim of recent fabrication.
2. O.C.G.A. § [24-3-2](#) has been repealed and replaced by [O.C.G.A. § 24-8-801](#) effective January 1, 2013). [O.C.G.A. § 24-8-801](#) states that “an out-of-court statement shall not be hearsay if the declarant testifies at the trial or hearing, is subject to cross-examination concerning the statement, and the statement is admissible as a prior inconsistent statement or a prior consistent statement under [Code Section 24-6-613](#) or is otherwise admissible under this chapter”.
 - a. *Forde v. State*, 289 Ga. App. 805(1) (2008)(child’s videotaped interview, made well *after* the alleged improper motive came into existence, was inadmissible as a prior consistent statement).
 - b. *Mims v. State* 314 Ga. App. 170 (2012) Defendant tried to get the victim to testify that she had been drinking prior to the incident and could not positively say

defendant was the attacker, thus calling her veracity into question. The Court then stated that it was proper to allow the officer's hearsay testimony as prior consistent testimony in light of defendant's questioning.

F. Prior Inconsistent Statements.

1. O.C.G.A. § 24-9-83 provides that “[a] witness may be impeached by contradictory statements previously made by [the witness] as to matters relevant to [the witness’] testimony and to the case. Before contradictory statements may be proved against [the witness], ...the time, place, person, and circumstances attending the former statements shall be called to [the witness’] mind with as much certainty as possible.”
2. Effective January 1, 2013, [O.C.G.A. § 24-6-613](#) will replace O.C.G.A. § 24-9-83. The new rule steps away from one aspect of the old rule which requires that a witness be given an opportunity to recall his or her prior inconsistent statement before being impeached. The new Georgia rule allows a witness to be confronted with a prior inconsistent statement without any foundation. Moreover, extrinsic evidence of the witness's prior inconsistent statement is admissible as long as the witness “is afforded an opportunity” at some point to admit, deny, or explain the prior statement. The details of this new rule are discussed below. [O.C.G.A. § 24-6-613](#) (a) & (b) provides:
 - a. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time; provided, however, upon request the same shall be shown or disclosed to opposing counsel.
 - b. Except as provided in [Code Section 24-8-806](#), extrinsic evidence of a prior inconsistent statement by a witness shall not be admissible unless the witness is first afforded an opportunity to explain or deny the prior inconsistent statement and the opposite party is afforded an opportunity to interrogate the witness on the prior inconsistent statement or the interests of

justice otherwise require. This subsection shall not apply to admissions of a party-opponent as set forth in paragraph (2) of subsection (d) of [Code Section 24-8-801](#).

- c. Prerequisites to admissibility.
 - (1) *Griffin v. State*, 262 Ga. App. 87, 88 (2003) (first, the prior statement must contradict or be inconsistent with the witness' in-court testimony; second, the prior statement must be relevant to the case; and, third, the examiner must lay the proper foundation with the witness).
- d. Admissible as substantive evidence.
 - (1) *Hartley v. State*, 299 Ga. App. 534 (2009)(written statement of defendant's estranged wife was admissible substantively as a prior inconsistent statement to support the verdict of guilty).
 - (2) *Simmons v. State*, 285 Ga. App. 129 (2007)(jury was authorized to rely upon victim's prior statement to the responding officer regarding defendant's assault as substantive evidence notwithstanding her disavowal of that statement at trial).
 - (3) *Griffin v. State*, 262 Ga. App. 87, 88 (2003) (even though a witness may recant on the stand, her prior inconsistent statements may be considered by the jury as substantive evidence of the defendant's guilt).
 - (4) *Gibbons v. State*, 248 Ga. 858 (1982) (a prior inconsistent statement of a witness who takes the stand and is subject to cross-examination is admissible as substantive evidence, and is not limited in value only to impeachment purposes).
- e. Recanting victims.
 - (1) *Griffin v. State*, 262 Ga. App. 87, 88-89 (2003) (when at trial the defendant's girlfriend recanted her earlier statements about the defendant's abuse, the State was

- permitted to impeach her testimony with her taped 911 call for help).
- (2) *Watkins v. State*, 183 Ga. App. 778, 779 (1987) (a recanting victim's prior inconsistent statements to police at the scene of a domestic dispute may be used not only to impeach her trial testimony, but also as substantive evidence of the defendant's guilt).

G. Res Gestae.

1. O.C.G.A. § 24-3-3 provides that “[d]eclarations accompanying an act, or so nearly connected therewith in time as to be free from all suspicion of device or afterthought, shall be admissible in evidence as part of the res gestae.”
2. As of January 1, 2013, O.C.G.A. § 24-3-3 has been replaced by O.C.G.A § 24-8-803(2). Pursuant to O.C.G.A. § 24-8-803(2), the victim's “outcry” must be close in time to the crime. The new rule states that an “excited utterance is a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition
 - a. *Thompson v. State*, 291 Ga. App. 355(2) (2008)(audiotape of victim's 911 call was made with such immediacy after the attack that it qualified under the res gestae exception).
 - b. *Orr v. State*, 281 Ga. 112 (2006) (admission of a 911 tape where an unknown third party, who was not the caller, can be heard stating the defendant's name was erroneous under res gestae because the statement was reduced to an expression of opinion or conclusion absent evidence showing the declarant spoke from personal knowledge).
 - c. *Wilbourne v. State*, 214 Ga. App. 371, 372 (1994) (determination whether evidence is res gestae is in the discretion of the trial court but such discretion was abused in this case).

5.2.2 The Confrontation Clause.

- A. In *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court held that a criminal defendant's Sixth Amendment right to confront witnesses

against him is violated when at trial a court admits the “**testimonial**” pre-trial statements of an unavailable prosecution witness under a hearsay exception unless the defendant had a prior opportunity for cross-examination. While the Court stopped short of spelling out a comprehensive definition of “testimonial,” it noted that the term includes, at a minimum, prior testimony at a preliminary hearing, before a grand jury, or at a former trial, and statements made in police interrogations. The Court further noted that “testimonial” statements are typically made under circumstances which would lead an objective witness to reasonably believe that his statement would be available for use at a later trial.

B. Under *Crawford*, with some exceptions as noted below, it appears that a domestic violence victim’s on-the-scene and subsequent formal statements to police will ordinarily be considered as “testimonial” in nature and therefore inadmissible in the event that the victim is unavailable for cross-examination at trial, e.g., she invokes a spousal testimonial privilege and refuses to testify or simply fails to appear at trial.

1. **Testimonial Statements.**

a. Statements made to police officers.

- (1) *Davis v. Washington*, 547 U.S. 813; 126 S. Ct. 2266, 2273-74 (2006)(statements taken by police officers in the course of interrogation are “testimonial,” and subject to the Confrontation Clause, when the circumstances objectively indicate that there is no ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution).
- (2) *Davis v. Washington*, 547 U.S. 813; 126 S. Ct. 2266, 2278-79 (2006)(alleged domestic battery victim's written statements in affidavit given to police officer who responded to domestic disturbance call were “testimonial” and, therefore, subject to Confrontation Clause because there was no emergency in progress when statements were given and the

- primary purpose of officer's interrogation was to investigate a possible past crime).
- (3) *Wright v. State*, 285 Ga. 57(3)(a)(2009)(holding that child's words in response to a question by law enforcement after emergency had already ended were reflective of past events and, as such, were testimonial in nature).
 - (4) *Pitts v. State*, 280 Ga. 288 (2006) (statements which are originally non-testimonial, such as statements made to for the purpose of seeking immediate assistance, may shift to testimonial statements).
 - (5) *Jenkins v. State*, 278 Ga. 598, 605 (2004) (police interrogations as delineated in *Crawford* include “structured police questioning”).
 - (6) *Moody v. State*, 277 Ga. 676, 679 (2004) (police interrogations as delineated in *Crawford* include interviews with witnesses conducted in the field shortly after the commission of a crime).
- b. Waiver of Error.
- (1) *Wilkerson v. State*, 286 Ga. 201 (2009) (when a defendant fails to raise an objection at trial to testimony as violating his right of confrontation, he is barred from raising the objection on appeal)
 - (2) *Cranford v. State*, 275 Ga. App. 474, 475 (2005) (when defendant's wife invoked her marital privilege and refused to testify, her testimonial statements to police were nonetheless properly admitted under the necessity exception where defendant failed to raise a constitutional objection under *Crawford*).
 - (3) *Walton v. State*, 278 Ga. 432, 434 (2004) (defendant's failure at trial to raise an objection to the admission of

- a dying declaration under the Sixth Amendment precluded consideration of the *Crawford* issue on appeal).
- (4) *Watson v. State*, 278 Ga. 763, 767 (2004) (*Crawford* error waived where defendant failed to timely object to admission of his deceased wife's prior statements to a police officer regarding her fear of the defendant and his propensity for violence).
- c. Reversible Error.
- (1) *Miller v. State*, 273 Ga. App. 761, 764 (2005) (reversal of some convictions will be required when a wife's testimonial hearsay statements to police are admitted over a defendant's objection and the State is unable to show beyond a reasonable doubt that such statements did not contribute to the verdict).
- (2) *Miller v. State* 289 Ga. 854 (2011) Defendants were a mother and a son. Defendants appealed, arguing that their Sixth Amendment rights to confront witnesses were violated when the trial court allowed a Florida judge to testify to the contents of three petitions for temporary protective injunctions that were filed in his court, two by the victim and one by the mother. In regards to the mother, the Court held that the testimony by the Florida judge constituted reversible error. The Supreme Court reversed the conviction for the mother.
- d. Harmless Error.
- (1) *Boyd v. State*, 286 Ga. 166, 168 (2009) ("a right of confrontation violation is considered harmless if there is not a reasonable probability that it contributed to the verdict or if the other evidence against the defendant is overwhelming")

- (2) *Wright v. State*, 285 Ga. 57(3)(a)(2009)(erroneous admission of child’s testimonial hearsay statements to investigating officer that “Daddy did it” held harmless where no “reasonable probability that the evidence contributed to the verdict”).
- (3) *Humphrey v. State*, 281 Ga. 596, 599 (2007) (a *Crawford* violation is harmless if the hearsay was cumulative of other evidence or if the evidence against the defendant was overwhelming).
- (4) *Bell v. State*, 278 Ga. 69, 72 (2004) (estranged wife’s prior hearsay statements to police about prior difficulties with defendant were testimonial, but admission of such statements was harmless in light of the strength of the evidence including other admissible evidence of prior difficulties).
- (5) *Brooks v. State* 313 Ga. App. 789 (2012) Defendant was convicted of aggravated stalking. The Defendant appealed contending that the trial court erred in excluding or limiting evidence of certain defense witnesses. The Court of Appeals confirmed the defendant’s conviction and held that “any error in the exclusion of evidence was harmless”.
- (6) *Moody v. State*, 277 Ga. 676, 680 (2004) (victim’s prior hearsay statements to police two years before her murder about her being assaulted with a shotgun by the defendant were testimonial, but admission was harmless given such testimony was cumulative of other admissible evidence and because there was no reasonable possibility that it contributed to the conviction).

2. **Non-Testimonial Statements.**

- a. Statements made to police officers.
 - (1) *Davis v. Washington*, 547 U.S. 813, 126 S. Ct. 2266, 2273-74 (2006)(statements taken by police officers in the course of an interrogation are “non-testimonial,” and not subject to the Confrontation Clause, when they are made under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency).
 - (2) *Hester v. State*, 283 Ga. 367(4) (2008)(statements made by cut and bleeding victim to responding police and paramedic in response to question “what happened” deemed non-testimonial).
- b. Statements made to persons other than police officers.
 - (1) *Brown v. State*, 278 Ga. 810, 811 (2005) (victim’s hearsay statements to her cousin that she was distressed because defendant had been stalking her, attacked her, and had threatened to kill her one week before her murder were non-testimonial and properly admitted under the necessity exception to the hearsay rule).
 - (2) *Demons v. State*, 277 Ga. 724, 727-728 (2004) (victim’s hearsay statements were not “testimonial” in nature as they were made in a conversation with a close friend, before the commission of any crime, and without any reasonable expectation that they would be used at a later trial, and thus properly admitted under the necessity exception to the hearsay rule).
- c. 911 calls.
 - (1) *Davis v. Washington*, 547 U.S. 813; 126 S. Ct. 2266, 2276 (2006) (statements made by domestic abuse

victim in response to 911 operator's questions while the defendant was allegedly inside the victim's home were not "testimonial" and, therefore, were not subject to Confrontation Clause because the victim was speaking about events as they were actually happening, and the primary purpose of the 911 operator's interrogation was to enable police assistance to meet an ongoing emergency).

- (2) *Davis v. Washington*, 547 U.S. 813; 126 S. Ct. 2266, 2277 (2006) (a conversation which begins as an interrogation to determine the need for emergency assistance may "evolve into testimonial statements" once the emergency ends, and trial courts should, through in limine procedure, redact or exclude portions of any statement that have become testimonial).
- (3) *Pitts v. State*, 280 Ga. 288 (2006) (admission of 911 tape does not violate the Confrontation Clause where the caller's primary purpose is to thwart an ongoing crime or seek assistance in a situation involving immediate danger).
- (4) *Thomas v. State*, 284 Ga. 668(2)(2008)(admitting victim's 911 call identification of her ex-husband as the person who shot her under rationale of *Davis*).
- (5) *Thompson v. State*, 291 Ga. App. 355(2)(2008) (victim's 911 call deemed "non-testimonial" in that it was made to seek assistance in a situation involving immediate danger).

3. **Exceptions.**

- a. Statements not offered to prove the truth of the matter asserted (i.e., non-hearsay).
 - (1) In *Crawford*, the Supreme Court stated that the Confrontation Clause

does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted. *Crawford*, 541 U.S. at 59, fn.9.

(i) *Robinson v. State*, 271 Ga. App. 584, 587 (2005) (the Confrontation Clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted).

b. Dying declarations.

(1) In *Crawford*, the Supreme Court suggested that dying declarations should be exempted from the cross-examination requirement of the Sixth Amendment because a hearsay exception for such statements existed at common law at the time of the founding. *Crawford*, 541 U.S. at 54-56, fn.6.

(i) *Sanford v. State*, 2010 Ga. LEXIS 395 (2010) (dying declarations made while the subject is conscious of his condition being near death, even when death does not come immediately, are admissible).

(ii) *Sanford v. State*, 2010 Ga. LEXIS 395 (2010) (dying declarations made in response to police inquiries are admissible).

(iii) *Walton v. State*, 278 Ga. 432, 435 (2004) (although many dying declarations will be made under circumstances that render such hearsay statements non-testimonial, there is authority for admitting even those dying declarations that clearly are testimonial).

- c. Witness testifies and/or is subject to cross-examination.
- (1) In *Crawford*, the Supreme Court explicitly stated that if a declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements. *Crawford*, 541 U.S. at 59, fn.9.
- (i) *Dickson v. State*, 281 Ga. App. 539, 539-541 (2006) (declarant's testimony at a pre-trial bond hearing did not afford defendant adequate opportunity for cross-examination regarding a prior testimonial statement to police.)
 - (ii) *Rice v. State*, 281 Ga. 149, 150-151 (2006) (defendant waived any *Crawford* objection when he chose not to cross-examine the declarant at a pre-trial deposition.)
 - (iii) *Robinson v. State*, 271 Ga. App. 584, 587 (2005) (when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements).
 - (iv) *Starr v. State*, 269 Ga. App. 466, 468-469 (2004) (admission of child's hearsay statements did not violate *Crawford* where defendant was afforded the opportunity to call and cross-examine the child but chose not to).
 - (v) *Chambers v. State*, 252 Ga. App. 190, 194 (2001) (no error in admission of statements made by defendant's girlfriend to a

police officer where the girlfriend testified at trial and was subject to cross-examination).

- d. Prior in-court testimony subjected to cross-examination.
- (1) In *Crawford*, the Supreme Court held that a defendant's right to confront the witnesses against him at trial would be satisfied if he had had an opportunity to cross examine an unavailable witness at a previous court proceeding in the case. *Crawford*, 541 U.S. at 57-58.
- (i) *Kilgore v. State*, 291 Ga. App. 892(1)(2008)(*Crawford* satisfied where defendant had prior opportunity to cross-examine his live-in girlfriend at his probation revocation hearing despite her refusal to testify at his trial on the same underlying incident).
- (ii) *Pitts v. State*, 272 Ga. App. 182, 186-187 (2005), cert. granted Sept. 19, 2005 (stating general rule that defendant must have been afforded a prior opportunity to cross-examine his wife before her testimonial statements to police could be admitted).
- e. Forfeiture due to defendant's own misconduct.
- (1) In *Crawford*, the Supreme Court stated that the rule of forfeiture by wrongdoing survives to extinguish the right to confrontation when the hearsay declarant's unavailability is attributable to the defendant's own wrongdoing. *Crawford*, 541 U.S. at 62.
- (2) *Davis v. Washington*, 547 U.S. 813; 126 S. Ct. 2266, 2280 (2006) (one who obtains the absence of a witness

- by wrongdoing forfeits the constitutional right to confrontation).
- (3) *Giles v. Calif.*, 128 S. Ct. 2678 (2008)(in order to invoke the forfeiture exception, the state must prove deliberate witness tampering by the defendant, i.e., that the defendant's actions in rendering the hearsay declarant unavailable were specifically designed to prevent such witness from testifying).
- (i) Note: Addressing concerns raised by the dissent, the majority opinion in *Giles* points out that acts of domestic violence are often intended specifically to dissuade a victim from resorting to outside help, including cooperating with police and prosecutors. *Id.* at 2693.

f. Hearsay admissible at bond hearings, preliminary hearings, motions to suppress, etc.

- (1) The right to cross-examination guaranteed by the Confrontation Clause is generally considered to be a "trial right" and therefore the opportunity to cross-examine a hearsay declarant is not constitutionally mandated for non-trial stages of a criminal prosecution. *See California v. Green*, 399 U.S. 149, 157 (1970); *Pennsylvania v. Ritchie*, 480 U.S. 39, 52-53 (1987).
- (i) *Fair v. State*, 284 Ga. 165(3)(e)(2008)(guilt or innocence is not at issue on a motion to suppress and does not involve the issue of right of confrontation).
- (ii) *Gresham v. Edwards*, 281, Ga. 881 (2007) (the right to confrontation is a trial right, thus *Crawford* is not

- applicable to preliminary hearings.)
- (iii)- *Banks v. State*, 277 Ga. 543, 544 (2004) (admission of hearsay for the purpose of establishing probable cause for search warrant does not violate the constitutional right of a defendant to confront the accusing witnesses, because guilt or innocence is not the issue for determination).
 - (iv) *U.S. v. Ventresca*, 380 U.S. 102, 107 (1965)(a finding of probable cause may rest upon evidence which is not legally competent in a criminal trial).
 - (v)- *Jones v. U.S.*, 362 U.S. 257, 271 (1960) *overruled on other grounds by U.S. v. Salvucci*, 448 U.S. 83 (1980) (it has long been recognized that hearsay is admissible in determining the existence of probable cause).

5.3 Similar Transactions / Prior Difficulties

5.3.1 **Similar Transactions or Occurrences.** Prior incidents involving an accused and the same victim should ordinarily be treated as “prior difficulties,” not as similar transactions. (*See* Prior Difficulties, Section 5.3.2., below.)

- A. **Notice / Timeliness.** Uniform Superior Court Rule 31.1 provides that “[n]otices of the state’s intention to present evidence of similar transactions or occurrences ... shall be given and filed at least ten (10) days before trial unless the time is shortened or lengthened by the judge.”
 - 1. *Rodriguez v. State*, 211 Ga. App. 256, 258 (1993) (the purpose of timely advance notice is to allow the defendant to investigate the validity, relevancy, and other aspects of admissibility of the prior offenses).
- B. **Notice / Content.** Uniform Superior Court Rule 31.3(B) provides that “[t]he notice shall be in writing, served upon the defendant’s counsel, and shall state the transaction, date, county, and name(s) of the victim(s) for each similar transaction or occurrence sought to be introduced. Copies

of accusations or indictments, if any, and guilty pleas or verdicts, if any, shall be attached to the notice.”

- C. **Hearings.** Uniform Superior Court Rule 31.3(B) provides that “[t]he judge shall hold a hearing at such time as may be appropriate, and may receive evidence on any issue of fact necessary to determine the request, out of the presence of the jury. The burden of proving that the evidence of similar transactions or occurrences should be admitted shall be upon the prosecution. The State may present during the trial evidence of only those similar transactions or occurrences specifically approved by the judge.”

1. *McClarity v. State*, 234 Ga. App. 348, 354 (1998) (a hearing at which the State relies upon the statements of the prosecuting attorney to make the required showing for the admissibility of similar transaction evidence is sufficient to satisfy the requirements of USCR 31.3(B)).

- D. **Three affirmative showings required.**

1. In *Williams v. State*, 261 Ga. 640 (1991), the Georgia Supreme Court held that the State must make **three affirmative showings** before a proffered similar transaction should be admitted:
 - a. The **first** of these affirmative showings is that the State seeks to introduce evidence of the independent offense or act, not to raise an improper inference as to the accused’s character, but for some appropriate purpose, which has been deemed to be an exception to the general rule of inadmissibility.
 - (1) *Lamb v. State*, 273 Ga. 729, 731 (2001) (appropriate purposes include: to show a defendant’s bent of mind, including to demonstrate a defendant’s course of conduct, motive, intent, or lack of mistake).
 - (2) *Smith v. State*, 232 Ga. App. 290, 291 (1998) (appropriate purposes include: establishing a defendant’s motive, intent, absence of mistake or accident, plan or scheme, or identity).
 - b. The **second** affirmative showing is that there is sufficient evidence to establish that the accused committed the independent offense or act.

- (1) *Freeman v. State*, 268 Ga. 185, 187-188 (1997) (the State need only establish that the defendant committed the independent act by a “preponderance of the evidence”).
- c. The **third** affirmative showing is that there is a sufficient connection or similarity between the independent offense or act and the crime charged so that proof of the former tends to prove the latter.
 - (1) *Bogan v. State*, 255 Ga. App. 413, 414-415 (2002) (previous incident need not be identical).
 - (2) *Lamb v. State*, 273 Ga. 729, 731 (2001) (proper focus is on the similarities, not the differences).
 - (3) *Ryan v. State*, 226 Ga. App. 180, 181 (1997) (the lapse in time between the similar transaction and the offense being tried generally goes to the weight, not the admissibility of the similar act).
- E. **No limiting instruction required unless requested.**
 1. *Igidi v. State*, 251 Ga. App. 581, 584 (2001) (the law is well settled that the trial court does not commit reversible error by failing to give a contemporaneous limiting instruction without a request that it do so).
- F. **Similar transactions and domestic violence cases.**
 1. *Henry v. State*, 278 Ga. 554, 555-556 (2004) (trial court’s finding of sufficient similarity of the prior incident was not erroneous where it showed that defendant had previously while intoxicated been involved in a shooting after an argument with a girlfriend).
 2. *Talley v. State*, 269 Ga. App. 712, 713-714 (2004) (prior acts can show the accused’s bent of mind as to how sexual partners should be treated; prior acts can also show an accused’s course of conduct in reacting to disappointment or anger in such a relationship).
 3. *Woods v. State*, 250 Ga. App. 164, 166 (2001) (prior similar acts by defendant against a previous sexual partner held admissible).
 4. *Thomas v. State*, 246 Ga. App. 448 (2000) (in cases of domestic violence, prior incidents of abuse

against family members or sexual partners are more generally permitted because there is a logical connection between violent acts against two persons with whom the accused had similar emotional or intimate attachment).

5.3.2 **Prior Difficulties.** Prior difficulties are relevant past incidents between the accused and the victim in the present case. Prior difficulties need not necessarily be similar to the incident for which the accused is being tried. (Compare Similar Transactions, Section 5.3.1., above.)

A. **No notice or hearing required.**

1. *Cooks v. State*, 289 Ga. App. 179 ((2008)(prior difficulties between a defendant and the victim are not subject to the notice requirements of Uniform Superior Court Rule 31.1 and 31.3.); *McCullors v. State*, 291 Ga. App. 393(2)(2008)(same).
2. *Babb v. State*, 252 Ga. App. 518, 519 (2001) (the court is not required to abide by the pre-trial hearing requirements for similar transactions set forth in Uniform Superior Court Rule 31.3 before admitting evidence of prior difficulties between the defendant and the victim).

B. **Relevant purpose.**

1. *Brown v. State*, 278 Ga. 810, 811-812 (2005) (evidence of the defendant's prior acts toward the victim, be it a prior assault, a quarrel, or a threat, is admissible when the defendant is accused of a criminal act against the victim).
2. *Benton v. State*, 256 Ga. App. 620, 623 (2002) (evidence of prior difficulties is always admissible to show bent of mind, intent, and course of conduct between the accused and the victim).
3. *Cunningham v. State*, 243 Ga. App. 770, 771 (2000) (evidence of prior difficulties between the parties is admissible if there is a logical, probative connection between the difficulties and the crimes charged).
4. *Dixson v. State*, 269 Ga. 898, 900 (1998) (prior acts of domestic violence by defendant against his girlfriend were relevant to his abusive course of conduct in this murder case).

C. **No limiting instruction required unless requested.**

1. *Cooks v. State*, 289 Ga. App. 179 (2008)(trial court is not required to give a limiting instruction to the jury on their consideration of prior difficulties in the absence of a request).

2. *Benton v. State*, 256 Ga. App. 620, 623 (2002) (where the defendant did not request a limiting instruction on the prior difficulties evidence, the trial court did not err in failing to give one sua sponte).

D. Similarity not required.

1. *Cunningham v. State*, 243 Ga. App. 770, 771 (2000) (there is no requirement that a prior difficulty be so similar to the crime charged as to also constitute a similar transaction); *McCullors v. State*, 291 Ga. App. 393(2)(2008)(same).
2. *Dixson v. State*, 269 Ga. 898, 900 (1998) (prior acts of domestic violence against defendant's girlfriend were admissible in his trial for murdering her with a firearm despite the fact that the prior acts did not involve the use of a weapon; such prior acts were relevant to show the abusive nature of the relationship).
3. *Herring v. State*, 224 Ga. App. 809, 814 (1997) (mere fact that prior difficulties between defendant and his wife occurred in a variety of places and over different matters did not render such prior acts irrelevant).

E. Lapse in time.

1. *Benton v. State*, 256 Ga. App. 620, 623 (2002) (the statute of limitation as to an indicted offense certainly places no time restrictions on the introduction of prior difficulties when such evidence goes to show the intent with which the indicted act was committed).
2. *Babb v. State*, 252 Ga. App. 518, 519 (2001) (similar offenses occurring eleven and fourteen years earlier between defendant and his sister held admissible; lapse in time goes to weight and credibility, not admissibility).

F. Prior difficulties in domestic violence cases.

1. *Allen v. State*, 284 Ga. 310(2)(2008)(prior DV incidents between defendant and his ex-girlfriend admissible in his trial for her subsequent murder).
2. *Bell v. State*, 278 Ga. 69, 71-72 (2004) (prior difficulties between defendant and his estranged wife, including his prior threats to kill her, were properly admitted in this murder case).
3. *Moody v. State*, 277 Ga. 676, 678 (2004) (evidence of prior difficulties was relevant to show the

- defendant's motive, intent, and bent of mind in committing the act against the victim).
4. *Hayes v. State*, 275 Ga. 173, 175 (2002) (evidence of prior threats, quarrels or assaults by a defendant against a victim are admissible as prior difficulties to show motive and intent).
 5. *McTaggart v. State*, 225 Ga. App. 359, 362 (1998) (defendant's prior aggravated assault against his wife was properly admitted in his trial for offense of solicitation to have her murdered).
 6. *Hawks v. State*, 223 Ga. App. 890, 892 (1996) (photographs showing victim's injuries from prior incident of domestic abuse admissible in defendant's assault trial to show his course of conduct).

5.4 Defenses and Related Issues

5.4.1 Self Defense.

- A. **Justifiable use of force.** O.C.G.A. § 16-3-21(a) provides that “[a] person is justified in threatening or using force against another when and to the extent that he or she **reasonably believes** that such threat or force is necessary to defend himself or herself or a third person against such other's **imminent use of unlawful force**; however, except as provided in Code Section 16-3-23, a person is justified in using force which is intended or likely to cause **death or great bodily harm** only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.”
- B. **Unjustifiable use of force.** O.C.G.A. § 16-3-21(b) provides that “[a] person is **not justified** in using force under the circumstances specified in subsection (a) of this Code section if he:
 1. initially provokes the use of force against himself with the intent to use such force as an excuse to inflict bodily harm upon the assailant;
 2. is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or
 3. was the aggressor or was engaged in a combat by agreement unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force.

- a. *Miller v. State*, 273 Ga. App. 761, 762-763 (2005) (although the defendant contended that he had beaten his wife in self-defense, the jury was authorized to disbelieve him based on the extent of his wife’s injuries as depicted in photographs taken at the scene).
 - b. *McCracken v. State*, 224 Ga. App. 356, 358 (1997) (defendant was not justified in beating his live-in girlfriend’s face in response to her act of tossing a bowl of hot chili on him).
- C. **Immunity from prosecution.** O.C.G.A. § 16-3-24.2 provides that “[a] person who uses threats or force in accordance with [Georgia’s law of self defense] shall be immune from criminal prosecution...”
- 1. *State v. Yapo*, 296 Ga. App. 158(2)(2009)(a defendant claiming immunity under this statute must convince the trial court by a preponderance of evidence at a pre-trial hearing that he was acting in self defense).
- D. **Jury Charge: Justification.**
- 1. *Buice v. State*, 281 Ga. App. 595, 598 (2006) (prima facie case of justification requires a showing that the victim was the aggressor, that the victim assaulted the defendant, and that the defendant was honestly trying to defend himself; thus, defendant not entitled to justification instruction where two theories presented at trial were either that defendant was aggressor or that defendant never touched victim).

5.4.2 Mutual Combat.

- A. If there was an intention on the part of both the deceased and the defendant to enter into a fight or mutual combat and that under these circumstances the defendant killed the deceased, then ordinarily such killing would be **voluntary manslaughter**, regardless of which party struck the first blow or fired the first shot. (See *Suggested Pattern Jury Instructions*, Vol. III, Criminal Cases, 2.03.43.)
- 1. *Demons v. State*, 277 Ga. 724, 726 (2004) (jury instruction on mutual combat not required where there was no evidence that defendant and the victim were both armed with deadly weapons and mutually intended or agreed to fight).
 - 2. *Brannon v. State*, 188 Ga. 15, 17-19 (1939) (the evidence did not disclose an intent to fight on the part of the deceased wife who was killed by the

defendant while on Christmas furlough from jail where he had been serving time for a previous fight with her).

3. *Eich v. State*, 169 Ga. 425 (1929) (where there was evidence that the defendant and his wife had been fighting all night and evidence that she may have shot him first, a charge of voluntary manslaughter under the theory of mutual combat was required).

5.4.3. **Battered Person Syndrome.**

A. O.C.G.A. § 16-3-21(d) provides that “[i]n a **prosecution for murder or manslaughter**, if a defendant raises as a defense a justification provided by subsection (a) of this Code section, the defendant, in order to establish the defendant’s reasonable belief that the use of force or deadly force was immediately necessary, may be permitted to offer:

1. Relevant evidence that the defendant had been the victim of **acts of family violence or child abuse** committed by the deceased, as such acts are described in Code Sections 19-13-1 and 19-15-1, respectively; and
2. Relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to the family violence or child abuse that are the bases of the expert’s opinion.
 - a. *Graham v. State*, 239 Ga. App. 429, 431 (1999) (battered person syndrome is not a separate defense and evidence supporting this syndrome is admissible only to assist the jury in evaluating a defendant’s claim of self-defense under O.C.G.A. § 16-3-21, and such self-defense is not an issue where the criminal acts were directed toward non-aggressor victims).
 - b. *Nguyen v. State*, 234 Ga. App. 185 (1998) (verbal threats alone, unaccompanied by actual or attempted violence, cannot authorize reliance upon the battered person syndrome).
 - c. *Smith v. State*, 268 Ga. 196, 199 (1997) (battered person syndrome is not a separate defense, but evidence of the syndrome is relevant as a component of the defense of justification by self-defense).

- d. *Chester v. State*, 267 Ga. 9, 11 (1996) (defendant seeking to rely on the battered person syndrome must show that she was previously subjected to acts of actual or attempted violence committed by the victim, and not simply verbal threats).
- e. *Johnson v. State*, 266 Ga. 624, 626 (1996) (the battered woman syndrome describes a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives).
- f. *Chapman v. State*, 259 Ga. 706, 707-708 (1989) (evidence of battered woman syndrome is admissible to show that the defendant had a mental state necessary for the defense of justification although the actual threat of harm does not immediately precede the homicide).
- g. *Smith v. State*, 247 Ga. 612, 619 (1981) (expert testimony admitted to explain why a person suffering from battered woman's syndrome would not leave her mate, would not inform police or friends, and would fear increased aggression against herself).
- h. Browne's (1998) ground breaking study found that one of the significant characteristics of abusers who were killed by their victims is they more frequently raped or sexually assaulted their partners. ([See Appendix B – Assessing for Lethality](#))

B. Jury Charge: Battered Person Syndrome.

1. In *Smith v. State*, 268 Ga. 196, 200-201 (1997), the Georgia Supreme Court recommended the following jury charge be given if evidence of the battered person syndrome has been properly placed before the jury:

I charge you that the evidence that the defendant suffers from battered person syndrome was admitted for your consideration in connection with the defendant's claim of self-defense and that such evidence relates to the issue of the reasonableness of the defendant's belief that the use of force was immediately necessary,

even though no use of force against the defendant may have been, in fact, imminent. The standard is whether the circumstances were such as would excite the fears of a reasonable person possessing the same or similar psychological and physical characteristics as the defendant, and faced with the same circumstances surrounding the defendant at the time the defendant used force.

5.4.4. **Prior Violent Acts by Victim.**

A. **Notice and hearing requirements.**

1. Uniform Superior Court Rule 31.1. provides that “[n]otices of ... the intention of the defense to introduce evidence of **specific acts of violence by the victim** against third persons, shall be given and filed at least ten [10] days before trial unless the time is shortened or lengthened by the judge.”
2. Uniform Superior Court Rule 31.6(A) provides that “[t]he defense may upon notice filed in accordance with Rule 31.1, claim justification and present during the trial of the pending case evidence of relevant **specific acts of violence by the victim** against third persons.”
3. Uniform Superior Court Rule 31.6(B) provides that “[t]he notice shall be in writing, served upon the states counsel, and shall state the act of violence, date, county and the name, address and telephone number of the person for each specific act of violence sought to be introduced. The judge shall hold a hearing at such time as may be appropriate and may receive evidence on any issue of fact necessary to determine the request, out of the presence of the jury. The burden of proving that the evidence of specific acts of violence by the victim should be admitted shall be upon the defendant. The defendant may present during the trial evidence of only those specific acts of violence by the victim specifically approved by the judge.”
4. Uniform Superior Court Rule 31.6(B) provides that “[n]otice of the State’s intention to introduce evidence in rebuttal of the defendant’s evidence of the victim’s acts of violence and of the nature of such evidence, together with the name, address and telephone number of any witness to be called for such rebuttal, shall be given defendant’s counsel

and filed within five days before trial unless the time is shortened or lengthened by the judge.”

a. *Williams v. State*, 255 Ga. App. 177, 179 (2002) (Uniform Superior Court Rules 31.1 and 31.6 require a defendant to provide the State with written notice at least ten days before trial which states the specific violent act, the date of the act, and the name, address, and telephone number of the person involved).

B. Threshold showing for admissibility.

1. *Williams v. State*, 255 Ga. App. 177, 178-179 (2002) (in order to present evidence of prior violent acts by the victim, a defendant is required to (1) follow the procedural requirements for introducing the evidence, (2) establish the existence of prior violent acts by competent evidence, and (3) make a prima facie showing of justification).

2. *Peterson v. State*, 274 Ga. 165, 167 (2001) (to make a prima facie showing of justification, a defendant must show that the victim was the aggressor, that the victim assaulted the defendant, and that the defendant was honestly seeking to defend himself).

5.4.5 Accident.

A. O.C.G.A. § 16-2-2 provides that “[a] person shall not be found guilty of any crime committed by misfortune or accident where it satisfactorily appears there was no criminal scheme or undertaking, intention, or criminal negligence.”

1. *Griffin v. State*, 262 Ga. App. 87, 89 (2003) (jury charge not required where defendant denied the act itself).

5.4.6 Abusive Language.

A. O.C.G.A. § 16-5-25 provides that “[a] person charged with the offense of **simple assault or simple battery** may introduce in evidence any opprobrious or abusive language used by the person against whom force was threatened or used; and the trier of facts may, in its discretion, find that the words used were justification for simple assault or simple battery.”

1. *Danzis v. State*, 198 Ga. App. 136, 137 (1990) (the defense of verbal provocation in O.C.G.A. § 16-5-25 is limited to the offenses of simple assault and simple battery; it does not apply to the offense of battery).

5.4.7. Corporal Punishment.

- A. O.C.G.A. § 16-3-20(3) provides that a person's conduct may be justified "[w]hen the person's conduct is the **reasonable discipline of a minor** by his parent or a person in loco parentis." ([See Section 4.1.2. - Family Violence Act, above.](#))
1. *Marshall v. State*, 276 Ga. 854, 857 (2003) (what is reasonable parental discipline may depend upon the age and physical condition of the child).
 2. *Buchheit v. Stinson*, 260 Ga. App. 450, 455-456 (2003) (mother's action of slapping child in response to child's disrespectful behavior constituted reasonable discipline administered in form of corporal punishment, not simple battery).
 3. *Bearden v. State*, 163 Ga. App. 434 (1982) (not error to refuse to give charge on reasonable parental discipline where defendant's 5-year old stepdaughter had bruises on 75% of her face and 25% of her body).

5.4.8 Joint Property, Damage to:

- A. *Mack v. State*, 255 Ga. App. 210 (2002) (defendant's conviction for criminal damage to property upheld despite the fact that he damaged a car that was jointly titled in his name and that of his estranged wife).
- B. *Ginn v. State*, 251 Ga. App. 159, 161 (2001) (a jury could reasonably conclude that the damaged property, a computer keyboard, was not the defendant's property alone, and that his damaging of it would make him guilty of criminal trespass).

5.5 Privileges

5.5.1 **Characteristics of a Valid Privilege:** The communication originated in confidence, confidentiality is essential to the relationship, the relationship is one that is publicly recognized, and disclosure would cause more long term harm than the short term benefit.

5.5.2 Spousal Testimonial Privilege.

- A. O.C.G.A. § 24-9-23(a) provides that "[h]usband and wife shall be **competent but shall not be compellable** to give evidence in any criminal proceeding for or against each other."
- B. Effective January 1, 2013, [O.C.G.A. § 24-5-503\(a\) and \(b\)\(1\)](#) will replace § 24-9-23. The new statute incorporates the spousal privilege in Georgia as it existed prior to January 1, 2013. The balance of [§ 24-5-503\(b\)](#) is new and provides additional exceptions to the general rule of privilege. The privilege will no longer be available in cases:

where one spouse is charged with a crime against the other; where one spouse is charged with causing physical damage to either marital property or the separate property of the other; or, where the alleged crime against a spouse occurred prior to the marriage of the parties. The Code section is designed to facilitate the prosecution of spousal abuse cases.

1. *Harrison v. State*, 238 Ga. App. 485, 486 (1999) (a spouse who refuses to testify against a defendant by invoking the marital privilege is "unavailable" for the purpose of finding necessity under O.C.G.A. § 24-3-1(b) replaced by . [O.C.G.A. § 24-8-807](#) (effective January 1, 2013).
 2. *State v. Peters*, 213 Ga. App. 352 (1994) (the spousal testimonial privilege may be asserted even when the marriage was entered into for the explicit purpose of preventing the spouse's testimony).
 3. *White v. State*, 211 Ga. App. 694, 695 (1994) (if a spouse chooses to testify, it is presumed that she has waived her spousal testimonial privilege and she may be cross-examined as any other witness).
 4. Caution: *See Crawford v. Washington*, Section 5.2.2, A. above (invocation of a marital testimonial privilege will likely bar the admissibility of all testimonial statements made by the invoking spouse notwithstanding so-called necessity exceptions to the hearsay rule)..
- B. **Privilege inapplicable in child cruelty cases.** O.C.G.A. § 24-9-23(b) provides that "[t]he privilege created by subsection (a) of this Code section ... shall not apply in proceedings in which the husband or wife is charged with a crime against the person of a minor child, but such person **shall be compellable** to give evidence only on the specific act for which the defendant is charged."
- C. Effective January 1, 2013, [O.C.G.A. § 24-5-503\(b\)\(1\)](#) will replace 24-9-23(b). The new statute directs that the inter-spousal communication privilege "shall not apply in proceedings in which the husband or wife is charged with a crime against the person of a child under the age of 18, but such husband or wife shall be compellable to give evidence only on the specific act for which the accused is charged."
1. *Beck v. State*, 263 Ga. App. 256, 258-259 (2003) (spousal testimonial privilege would not have been applicable to relieve wife of duty to testify against her husband regarding his alleged molestation of his stepdaughter).

- D. Privilege inapplicable in criminal domestic violence cases.** Under the 2012 HB 711, in criminal cases, a judge may order disclosure if the evidence is material and relevant to: guilt, degree of guilt, or sentencing for the offense charged or a lesser included offense.
1. This evidence cannot be used to challenge the victim’s character for truthfulness or untruthfulness. However, prior inconsistent statements are fair game.
 2. The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.
- E. Privilege inapplicable in civil cases.** Evidence is material and relevant to factual issues to be determined.
1. This evidence cannot be used to challenge the victim’s character for truthfulness or untruthfulness. However, prior inconsistent statements are fair game.
 2. The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.
- F. Privilege belongs to the witness spouse, not the defendant.**
1. *Smith v. State*, 254 Ga. App. 107, 108 (2002) (the privilege of refusing to testify, i.e., the spousal testimonial privilege, belongs to the witness spouse and not to the defendant).
- G. No duty to advise victim spouse of her right not to testify.**
1. *Smith v. State*, 254 Ga. App. 107, 108 (2002) (court has no obligation to inform victim spouse of the spousal testimonial privilege and where a spouse takes the stand and testifies voluntarily, it is presumed that she has waived that privilege).
- H. Applicability of privilege to “common law” marriages.** O.C.G.A. § 19-3-1.1 provides that “[n]o common-law marriage shall be entered into in this state on or after January 1, 1997. Otherwise valid common-law marriages entered into prior to January 1, 1997, shall not be affected by this Code section and shall continue to be recognized in this state.”
- 5.5.3. Marital Communications Privilege.**
- A. O.C.G.A. § 24-9-21(1) provides that “[c]ommunications between husband and wife” are excluded on grounds of public policy.”

- B. Effective January 1, 2013 [O.C.G.A. § 24-5-501](#) will replace § 24-9-21. The new statute has been interpreted to apply only to “confidential communications” and not to impersonal communications not made in reliance on the marital relationship.
1. *Helton v. State*, 217 Ga. App. 691, 692 (1995) (marital communications privilege does not prohibit testimony by someone who overheard communications between spouses).
 2. Caution: The court should be careful not to confuse the Marital Communications Privilege with the Spousal Testimonial Privilege, Section 5.5.1. above. *See, e.g., Webb v. State*, 284 Ga. 122 (5)(2008).
- C. **Privilege inapplicable in child cruelty cases.** O.C.G.A. § 24-9-23(b) provides that “[t]he privilege created by ... paragraph (1) of Code Section 24-9-21 ... shall not apply in proceedings in which the husband or wife is charged with a crime against the person of a minor child, but such person **shall be compellable** to give evidence only on the specific act for which the defendant is charged.
- D. Effective January 1, 2013, [O.C.G.A. § 24-5-503\(b\)\(1\)](#) will replace 24-9-23(b). The new statute directs that the inter-spousal communication privilege “shall not apply in proceedings in which the husband or wife is charged with a crime against the person of a child under the age of 18, but such husband or wife shall be compellable to give evidence only on the specific act for which the accused is charged.”
3. *Pirkle v. State*, 234 Ga. App. 23 (1998) (defendant’s statement to his then-wife not barred by marital communications privilege where subject matter of such statement related to defendant’s alleged molestation of a child).
- E. **Privilege inapplicable in criminal domestic violence cases.** Under the 2012 HB 711, in criminal cases, a judge may order disclosure if the evidence is material and relevant to: guilt, degree of guilt, or sentencing for the offense charged or a lesser included offense.
1. This evidence cannot be used to challenge the victim’s character for truthfulness or untruthfulness. However, prior inconsistent statements are fair game.
 2. The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.
- F. **Privilege inapplicable in civil cases.** Evidence is material and relevant to factual issues to be determined.

1. This evidence cannot be used to challenge the victim's character for truthfulness or untruthfulness. However, prior inconsistent statements are fair game.
 2. The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.
- G. **Privilege belongs to BOTH spouses.**
1. *White v. State*, 211 Ga. App. 694, 695 (1994) (the marital communications privilege, unlike the spousal testimonial privilege, belongs to both the communicating spouse and the spouse receiving the communication, and may extend to confidential acts as well as verbal communications).
- H. **Applicability of privilege to "common law" marriages.** O.C.G.A. § 19-3-1.1 provides that "[n]o common-law marriage shall be entered into in this state on or after January 1, 1997. Otherwise valid common-law marriages entered into prior to January 1, 1997, shall not be affected by this Code section and shall continue to be recognized in this state."
1. *Abrams v. State*, 272 Ga. 63, 64 (2003) (evidence supported trial judge's conclusion that defendant and prosecution witness did not have a common-law marriage, thus defendant's statements to the witness were not privileged).
- 5.5.4. **Privileges of Parties and Witnesses.**
- A. O.C.G.A. § 24-9-27(a) provides that "[n]o party or witness shall be required to testify as to any matter which may ... bring infamy, disgrace, or public contempt upon ... any member of his family."
 - B. [O.C.G.A. § 24-5-505\(a\)](#) will replace [§ 24-9-27 \(a\)](#) effective January 1, 2013. Like the previous statute, [O.C.G.A. § 24-5-505\(a\)](#) provides that a person shall not be required to incriminate himself or herself or to testify as to any matter which shall "tend to bring infamy, disgrace or public contempt upon such party." However, the Supreme Court has ruled that this privilege has no application where "the proposed answer has no effect on the case except to impair the witness' credibility." If the testimony is material and relevant to the issues in the case, the privilege is not available to the witness.
 1. *Glisson v. State*, 188 Ga. App. 152, 154 (1988) (a witness cannot refuse to testify relative to material matters concerning a crime committed by a member of her family on the basis that her answer would

bring disgrace, infamy or public contempt upon her or her family).

B. Privilege inapplicable in child cruelty cases.

1. O.C.G.A. § 24-9-23(b) provides that “[t]he privilege created by ... subsection (a) of Code Section 24-9-27 shall not apply in proceedings in which the husband or wife is charged with a crime against the person of a minor child, but such person **shall be compellable** to give evidence only on the specific act for which the defendant is charged.”
2. Effective January 1, 2013, [O.C.G.A. § 24-5-503\(b\)\(1\)](#) will replace 24-9-23(b). The new statute directs that the inter-spousal communication privilege “shall not apply in proceedings in which the husband or wife is charged with a crime against the person of a child under the age of 18, but such husband or wife shall be compellable to give evidence only on the specific act for which the accused is charged.”

C. Privilege inapplicable in criminal domestic violence cases. Under the 2012 HB 711, in criminal cases, a judge may order disclosure if the evidence is material and relevant to: guilt, degree of guilt, or sentencing for the offense charged or a lesser included offense.

1. This evidence cannot be used to challenge the victim’s character for truthfulness or untruthfulness. However, prior inconsistent statements are fair game.
2. The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.

D. Privilege inapplicable in civil cases. Evidence is material and relevant to factual issues to be determined.

1. This evidence cannot be used to challenge the victim’s character for truthfulness or untruthfulness. However, prior inconsistent statements are fair game.
2. The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.

5.5.5 Exceptions to Privileges

- A. In order for their to be a waiver, the person holding the privilege must consent to disclosure. Consent must be expressed or result from “decisive, unequivocal conduc.” Silence is not enough. *Kennestone Hosp. v. Hopson*, 273 Ga. 145, 148 (2000). The person holding the privilege

makes the information public. *In re Paul*, 270 Ga. 680, 686 (1999).

- B. A privilege “can not be invoked for the benefit of other persons who are strangers to such relationship”. *White v. Regions Bank*, 275 Ga. 38,41 (2002).

5.5.6 Family Violence Rape Crisis Privilege O.C.G.A. § 24-5-509 / 2012 HB711

- A. An agent of a program cannot be compelled to disclose any evidence in a judicial proceeding that the agent either acquired while providing services to the victim or provided that such evidence was necessary to enable the agent to render services.

- 1. An agent of a program is an employee or volunteer that has successfully completed a minimum of 20 hours of training in family violence and sexual assault intervention and prevention conducted by a Criminal Justice Coordinating Council approved program.

- B. [O.C.G.A. § 24-5-509](#) (effective January 1, 2013) creates a new privilege for communications between a family violence or sexual assault victim and counselors, including volunteers, providing services to such victims at family violence shelters and rape crisis centers. However, in both civil and criminal cases, a party may by motion, compel the testimony of an agent of a family violence or rape crisis unit to whom disclosures were made by an alleged victim upon showing: that the evidence is material and relevant; that it is not otherwise available; and, that the probative value of the evidence sought substantially outweighs “the negative effect of the disclosure on the victim.” Other than evidence of prior inconsistent statements, disclosures will not be ordered if the only purpose of the evidence relates to the alleged victim's character for truthfulness. If the moving party requests disclosure on proper grounds, the court is to take the evidence under seal for *in camera* review and may order disclosure of those portions of the evidence which are proper under the code section.

5.5.7 Prosecution-Based Victim Advocate Work Product Privilege

- A. O.C.G.A. § 17-17-9.1: Communications between a victim and victim assistance personnel appointed by a prosecuting attorney and any notes, memoranda, or other records made by such victim assistance personnel of such communication are privileged.

- 1. These communications are work product of the prosecuting attorney and are not subject to

disclosure except where such disclosure is required by law. Such work product shall be subject to other exceptions that apply to attorney work product generally.

2. This statute only applies to “victim assistance personnel appointed by a prosecuting attorney”. Victim assistance personnel included employees or volunteers acting under direction and authority of the District Attorney or Solicitor-General. O.C.G.A. §15-18-14.2, 15-18-20, 15-18-71.
3. This statute does not apply to employees or volunteers of non-governmental organizations such as Non-profit organizations and for profit organizations. However, these organizations may be covered by other privileges. O.C.G.A. §§ 24-9-21(5), (6), (7) & (8); 24-5-503.

5.5.8 Duration of Privilege

- A. Privilege usually survives death of holder or other party. *Spence v. Hamm*, 226 Ga. App. 357, 358 (1997) (attorney - client). *Sims v. State*, 251 Ga, 877, 881 (1984) (psychiatrist-patient). *Co. v. Boney*, 139 Ga. App. 575, 577 (1976) (Spousal).

5.6 Experts

5.6.1 Expert Witnesses, In General.

- A. O.C.G.A. § 24-9-67 provides that “[i]n criminal cases, the opinions of experts on any question of science, skill, trade, or like questions shall always be admissible; and such opinions may be given on the facts as proved by other witnesses.”
- B. Effective January 1, 2013, [O.C.G.A. § 24-7-707](#) will replace O.C.G.A. § 24-9-67. This new statute is an exact revivitation of the old statute. [O.C.G.A. § 24-7-707](#) states that “in criminal proceedings, the opinions of experts on any question of science, skill, trade, or like questions shall always be admissible; and such opinions may be given on the facts as proved by other witnesses.

5.6.2 Expert’s Qualifications.

- A. *Moorer v. State*, 290 Ga. App. 216 (3) (2008)(licensed clinical social worker with extensive training and experience in domestic violence cases was properly qualified).
- B. *Miller v. State*, 273 Ga. App. 761, 764 (2005) (witness’ 20 years experience in the field of domestic violence and her educational background in psychology held sufficient).

- C. *Bell v. State*, 278 Ga. 69, 72 (2004) (trial court did not abuse its discretion in qualifying one witness as an expert while refusing to qualify another).
- D. *Caldwell v. State*, 245 Ga. App. 630, 633 (2000) (officer permitted to testify based on her training and experience that victim’s wounds were “defensive” ones).
- E. *Siharath v. State*, 246 Ga. App. 736, 738 (2000) (to qualify as an expert, generally all that is required is that a person be knowledgeable in a particular matter; his special knowledge may be derived from experience as well as study, and formal education in the subject is not a requisite for expert status).

5.6.3 Expert Testimony, Subject Matter.

A. Admissibility of Scientific Principles or Techniques, in General.

1. In *State v. Tousley*, 271 Ga. App. 874, 876 (2005), the Georgia Court of Appeals held that a scientific principle or technique is admissible upon a showing that (1) the general scientific principles and techniques involved are valid and capable of producing reliable results and (2) the person performing the test substantially performed the scientific procedures in an acceptable manner.
 - (a) Valid scientific principles or techniques.
 - (1) *Harper v. State*, 249 Ga. 519, 525-526 (1982) (the trial judge must decide whether the procedure or technique in question has reached a scientific stage of verifiable certainty, i.e., whether it “rests upon the laws of nature”; once a procedure has been recognized in a substantial number of courts, a trial judge may judicially notice, without receiving evidence, that the procedure has been established with verifiable certainty).
 - (2) *Vaughn v. State*, 282 Ga. 99(3) (2007)(*Harper* test still applicable in criminal cases despite the adoption of the *Daubert* test in Georgia Tort Reform Act, O.C.G.A. 24-9-67.1).
 - (b) Acceptable scientific procedures.
 - (1) *State v. Tousley*, 271 Ga. App. 874, 877 (2005) (if the basic science and techniques used by the expert are reliable, the fact that the expert’s

conclusions are weak or subject to a certain margin of error usually goes to the weight, not admissibility, but if the expert substantially departed from principles and procedures that are the basis for the evidence's usual reliability, the evidence should be declined).

B. Dynamics of domestic abuse.

1. **“Battered person syndrome”** (See [Section 5.4.3](#), Self-defense, above.)
 - (c) *Moorer v. State*, 290 Ga. App. 216 (1)(2008)(admission of testimony from an expert in the area of battered woman syndrome permissible because it is an area beyond the ken of the ordinary layperson).
 - (d) *Alvarado v. State*, 257 Ga. App. 746, 748 (2002) (domestic violence expert's testimony regarding battered person syndrome – cycle of violence, delayed reporting, remaining with abuser - was beyond the ken of the average layman and thus admissible to explain the victim's behavior).
 - (e) *Chester v. State*, 267 Ga. 9, 13-14 (1996) (approving the use of expert testimony regarding the battered person syndrome to explain conduct of victims of domestic violence).
2. **“Cycle of violence”**.
 - (a) *Jones v. State*, 276 Ga. 253, 255 (2003) (at the beginning of an abusive relationship, the abuser is usually repentant; that the longer such a relationship goes on, the more the victim blames herself for the problems; that the episodes of violence do not repeat with the same frequency and there may be years between incidents; that it is common for abusive relationships to end in death or serious injury).
 - (b) *Hawks v. State*, 223 Ga. App. 890 (1996) (trial court did not err in permitting expert to testify regarding the "cycle of abuse" which characterizes certain relationships in which repeated domestic violence occurs).
3. **Delayed reporting of abuse.**

- (a) *Moorer v. State*, 290 Ga. 216 (1) (2008)(expert testimony is admissible to explain the behavior of a domestic violence victim who does not report abuse or leave the abuser).
- (b) *Raymond v. State*, 232 Ga. App. 228, 229-230 (1998) (a psychologist testified that exposure to family violence might explain why a child would delay reporting abuse).
- 4. **Denial of the abuse.**
 - (a) *Hawks v. State*, 223 Ga. App. 890, 893 (1996) (expert permitted to testify that in the “honeymoon” or “remorse” stage of the cycle of domestic violence, a victim often will go into denial).
- 5. **Minimization of the abuse.**
 - (a) *Hawks v. State*, 223 Ga. App. 890, 893 (1996) (expert permitted to testify that in the “honeymoon” or “remorse” stage of the cycle of domestic violence, a victim often will minimize the violence which has occurred).
- 6. **Reluctance to leave the abuser.**
 - (a) *Jones v. State*, 276 Ga. 253, 255 (2003) (a common misconception about domestic violence is that if a person is hit once, the person will leave the relationship; the inability to leave an abusive relationship applies across the socioeconomic spectrum).
- 7. **Reluctance to prosecute the abuser.**
 - (a) *Jones v. State*, 276 Ga. 253, 255 (2003) (the victim feels tied to the abuser; that it is common for victims not to press charges; that the victim feels the responsibility to keep the family together).
 - (b) *Hawks v. State*, 223 Ga. App. 890, 893 (1996) (expert permitted to testify that in the “honeymoon” or “remorse” stage of the cycle of domestic violence, a victim often will become reluctant to prosecute her partner).
- 8. **Batterer or abuser profile.**
 - (a) *Jones v. State*, 276 Ga. 253, 255 (2003) (profile or syndrome evidence that suggests that a defendant shares the typical characteristics of a batterer or an abuser is

inadmissible unless the defendant has placed his character in issue or has raised some defense which the syndrome is relevant to rebut; relevant here to rebut defendant's claim of accident).

9. **Non-aggressor victim.**

- (a) *Pickle v. State*, 280 Ga. App. 821, 822-30 (2006) (expert testimony that defendant suffered from battered person syndrome was admissible to rebut mental state necessary to establish intent in trial for child abuse, battery, and aggravated assault.)

5.7 Miscellaneous Issues

5.7.1 **Indictments and Accusations.**

A. Surplusage / References to “Family Violence”.

1. *State v. Barnett*, 268 Ga. App. 900, 901-902 (2004) (an indictment for aggravated assault is not subject to special demurrer because it lists the parenthetical phrase “family violence” in its title).

B. Surplusage / References to “Felony”.

1. *State v. Barnett*, 268 Ga. App. 900, 902-903 (2004) (an indictment for aggravated assault is not subject to special demurrer because it lists the parenthetical phrase term “felony” in its title).

B. Insufficient evidence to prove family relationship.

1. *Gillespie v. State*, 280 Ga. App. 243, 245 (2006) (O.C.G.A. §16-5-23(f) does not appear to cover a relationship when defendant and victim apparently had sexual relations but the defendant did not know the victim was pregnant; further, a showing that the victim was at most a few weeks into pregnancy and later “lost” the child leads to reasonable conclusion that such a recently conceived fetus should not be considered a “child” under O.C.G.A. § 16-5-23(f)).

C. Materiality of date.

1. *State v. Swint*, 284 Ga. App. 343, 344 (2007) (accusation charging defendant with family violence battery and cruelty to children in the second degree did not allege that the date was material and the State could offer any evidence relevant to the crimes during the statutory period of limitations).

5.7.2 **Jury Selection.**

A. Scope of voir dire.

1. *Childers v. State*, 228 Ga. App. 214, 215 (1997) (State may explore jurors' personal beliefs

concerning domestic violence issues including: whether (1) some women want to be hit; (2) some women ask to be hit; (3) the only way to get the attention of some women is to hit them; (4) hitting, punching, or kicking someone is an acceptable way to vent anger or frustration; and (5) the State should not get involved in domestic and/or family violence situations).

B. Excuses for cause.

1. *Park v. State*, 260 Ga. App. 879 (2003) (court should have excused ex-officer who expressed strong opinions about domestic violence in the Asian community).

B. Peremptory challenge.

1. *Floyd v. State*, 281 Ga. App. 72 (2006) (prospective juror's divorced or childless state is racially-neutral reason for exercise of peremptory strike).
2. *McKenzie v. State*, 294 Ga. App. 376(4) (2008)(prospective juror's past experiences with domestic violence deemed gender neutral).

5.7.3. Closing Arguments.

A. Victim's lack of cooperation.

1. *Simpson v. State*, 214 Ga. App. 587, 588 (1994) (State may argue that domestic violence crimes are crimes against the state and that a victim's cooperation in the prosecution of such cases is not required).

5.7.4. Verdict.

A. Inconsistent jury verdict.

1. *Amis v. State*, 277 Ga. App. 223 (2006) (Georgia does not recognize an inconsistent verdict rule, so acquittal on underlying offense of family violence battery was not ground to reverse conviction for cruelty to children in the third degree).

5.7.5 Recusal of Trial Judge.

- A.** OCGA §15-1-8(a)(3) provides that “[n]o judge ... shall ... [s]it in any case or proceeding ... in which he has presided in any inferior judicature, when his ruling or decision is the subject of review, without the consent of all parties in interest.”

2. *Hargrove v. State*, 299 Ga. App. 27 (2009)(the fact that the trial judge had granted the victim's request for a temporary restraining order against the defendant was not alone sufficient to require his recusal at the defendant's subsequent trial for FV aggravated battery).

A. APPENDIX A - DYNAMICS OF DOMESTIC VIOLENCE

Table Of Contents

A.	The Blind Men And The Elephant.....	A:2
B.	What Is Domestic Violence?	A:2
C.	Who Perpetrates Domestic Violence?	A:2
D.	Are There Different Kinds Of Perpetrators?.....	A:3
E.	What Causes Domestic Violence?	A:4
F.	Are There Different Kinds Of Domestic Violence?	A:5
G.	What’s The Difference Between Episodic Or Situational Couple Violence And Intimate Terrorism?.....	A:5
H.	In An IT Or Battering Relationship, What Are The Different Forms Or Tactics Of Abuse?.....	A:5
1.	Control.	A:6
2.	Physical Abuse.....	A:6
3.	Sexual Abuse	A:7
4.	Emotional Abuse and Intimidation.	A:7
5.	Isolation.....	A:8
6.	Verbal Abuse: Coercion, Threats, and Blaming.	A:9
7.	Economic Abuse.	A:9
I.	Most Other Forms Of Abuse Aren’t Criminal Acts. As A Judge, Why Should I Be Concerned?	A:9
J.	So How Can I Discern Whether Violence Is Occurring Within A Context Of Control?	A:9
K.	What About When Victims Take The Perpetrator’s Side, Ask The Court To Dismiss A TPO Or Remove Conditions Of Bond?	A:10
L.	What Steps Can I Take To Increase The Safety Of The Victim And His Or Her Family?	A:11

A. The Blind Men And The Elephant...

The story of the blind men and the elephant originated in India. Several blind men are asked to describe an elephant by feeling different areas of its body. The man touching a leg describes a pillar while the one near the ear says it's a fan, and so on. The story illustrates that truth can be relative, and this is particularly applicable to a discussion of domestic violence. Efforts to develop "coordinated community responses" can be hampered by their relative perspective of the truth. Each system is designed to address or respond to a specific aspect of the domestic violence episode and thus people working in different systems see completely different aspects of domestic violence. Advocates working in shelters or answering hotlines see and hear about the most harrowing examples of abuse and torture. In contrast, police officers are often called to break up "domestic disputes" that seem mutually combative, and sometimes trivial. When people from different systems come together to discuss domestic violence, it can seem like they are speaking different languages altogether.

B. What Is Domestic Violence?

There is no single, universally accepted definition of domestic violence. Social service providers and community advocates usually take a broad view emphasizing a pattern of abusive behaviors including various forms of controlling tactics such as threats, manipulation and verbal abuse. In fact, researchers such as Johnson and Stark focus on intimidation and control as primary elements of domestic violence (Johnson 2006, Stark 2007). Many other researchers, in contrast, focus on a specific form of violence such as physical abuse. However such a limited focus on physical violence summarily dismisses other forms of control that can be detrimental. Similarly, with the exception of stalking, most statutory definitions of domestic violence emphasize acts of physical or sexual violence rather than emotional abuse (Mills), suggesting a somewhat gendered view of domestic violence where strength is correlated with the ability to control and harm physically and sexually.

Generally speaking, domestic violence can be broadly defined as maltreatment that takes place in any interpersonal relationship, whether heterosexual or homosexual. The violence may be emotional, psychological, physical, sexual, or economic abuse and is most often about one person in the relationship using any means to control the other. Stalking and cyber-stalking are also being recognized as forms of intimate partner abuse.

How domestic violence is defined influences our understanding of everything from causation to dynamics to prevalence to interventions. The variance in definitions, theories of etiology and resulting research have led to ongoing confusion and debate about the nature of domestic violence.

C. Who Perpetrates Domestic Violence?

This depends on how domestic violence is defined. Since the start of the shelter movement in the 1970s, the issue of domestic violence has been conceptualized as male initiated violence directed towards female intimate partners in an attempt to coerce or

control them. This conceptualization of violence has been incredibly important in terms of shaping public awareness and public policy regarding domestic violence, but many researchers believe it has led to a false framing of the issue. These researchers assert that domestic violence is a human problem, and the particular role of gender in the cause, perpetration and consequences of partner violence cannot be assumed.

When domestic violence is characterized as criminal behavior or a threat to physical safety, research suggests the perpetrators are overwhelmingly male. “Crime victimization” studies utilizing the *National Violence Against Women Survey*, *National Crime Survey*, and *National Crime Victimization Survey* focus on assaults that individuals either perceive or report as a crime. These studies reveal that domestic violence is “rare, serious, escalates over time, and is primarily perpetrated by men” (Kimmel, 2002). Most often thought of when the term domestic violence is utilized, this patterned use of physical abuse plus controlling and coercive behaviors represents the phenomenon seen in shelter populations and many criminal courts, where the violence represents a man’s attempt to dominate and control his partner. In this model, the violence is purposeful and is meant to intimidate and control the female partner. As such, it is not generally confined to physical violence and routinely involves severe emotional abuse, intimidation, and likely will result in severe injury for the woman (Johnson, 2000).

However, when domestic violence is narrowly defined as a discrete act of physical abuse between intimates, many studies reveal that women engage in these acts as frequently as men. “Family conflict” studies, which rely on self-reporting using the conflict tactics scale (CTS) developed in the 1970s by Straus, Gelles and Steinmetz, show the use of violence that is not coercive or controlling and is gender balanced. In this model, couples may engage in physical violence with one another in the context of a specific argument, but the violence is not meant to control the other person and is likely to be bi-directional or mutual (Johnson, 2000). Similarly, studies using the CTS show this form of domestic violence occurs more frequently, does not escalate in severity, and is gender symmetrical (Kimmel, 2002). In fact, some research shows rates of female initiated violence in intimate relationships are equivalent to or even exceed male rates (Stets and Straus 1992).

D. Are There Different Kinds Of Perpetrators?

The literature on male batterers has consistently supported the idea that they are not a homogenous group and can be classified into three distinct subtypes: (1) family-only (approximately 50% of batterers)- the least violent subgroup, these men engage in the least amount of marital violence, report the lowest levels of psychological and sexual abuse, are the least violent outside the home, and evidence little or no psychopathology; (2) dysphoric/borderline (approximately 25% of batterers)- these men engage in moderate to severe marital violence, their violence is primarily confined to their wife (although some outside violence may also be present), they are the most psychologically distressed and the most likely to evidence borderline personality characteristics; and, (3) generally violent/antisocial (approximately 25% of batterers)- these men are the most violent subtype, engaging in high levels of marital and extrafamilial violence, and they are the most likely to evidence characteristics of antisocial personality disorder (Holtzworth-

Munroe & Stuart, 1994 p. 481-482). The emerging literature on female batterers suggests that women may also be distinguished from one another on constructs similar to those of male batterers [e.g., women who were violent towards their partner only (PO) versus women who were generally violent (GV) (Babcock, Miller & Saird, 2003)].

Men's use of violence against women is long-established, serious and often life threatening, but ignoring the role of women as perpetrators in domestic violence or referring them to intervention programs designed for male offenders is short-sighted. It remains important to view the issue of domestic violence through the widest lens possible when considering who perpetrates domestic violence. Issues of frequency, severity, chronicity, and level of injury are critical to parse out, as are patterns of abusive behaviors. Gender aside, considering a criminal act of domestic violence without understanding its context in the relationship between victim and perpetrator can have dangerous consequences.

What's needed is an improved understanding of the etiology of both men's and women's aggression. Ultimately, despite decades of intervention efforts with battered women and more than a decade of intervention efforts with batterers, domestic violence remains the most common cause of non-fatal injury to women in the U.S. (Kyriacou et al., 1999). No matter how domestic violence is defined, women suffer more frequent and severe injury as a result of domestic violence than men (Straus).

E. What Causes Domestic Violence?

Multiple theories have emerged in the last several decades to explain the causes of domestic violence. For example, "social learning" theories focus on behavior witnessed in childhood. "Conflict theory" assumes that among groups of people, including families, conflict is inevitable and can sometimes rise to violent conflict. "Feminist theory" emphasizes patriarchy which supports men's efforts to get and keep control over their female partners. "Attachment theory" suggests the strength and type of attachment bond to be significantly associated with the use of violence in the home (Bond & Bond, 2004; Carney & Buttell, 2005; Carney & Buttell, 2006; Dutton, 1995). Each theory has its proponents, as well as detractors, and each can point to empirical evidence or research to support their view (Cunningham, et al 1998).

As Cunningham notes, the many theoretical paradigms of domestic violence should be considered "additive rather than competing" with each contributing something to our understanding of its prevention and intervention. For example, early theories which characterized domestic violence as a mental illness have been mostly discredited. However, newer research by both Kernberg and Dutton has found a high incidence of personality disorders among batterers, particularly repeat offenders. Typical intervention programs are unlikely to produce consistent behavioral changes among people with these disorders (Brown), which suggests a gap in program offering for domestic violence perpetrators who exhibit multiple issues (substance abuse, mental illness, etc.).

F. Are There Different Kinds Of Domestic Violence?

Some researchers assert that there are different types of domestic violence. The most helpful distinction in terms of understanding dynamics may be between sporadic or episodic violence, sometimes known as “common couple violence” or “situational couple violence” (Johnson, 1995), and an ongoing pattern of abusive behavior also known as “battering” “systemic abuse,” or “intimate terrorism.”

Johnson developed his typology of domestic violence based on the context and motive of the perpetrator. Specifically, Johnson (1995) developed an argument suggesting that domestic violence as the result of our patriarchal culture involving men using violence to subordinate women, and domestic violence as a form of conflict resolution used equally by men and women in intimate relationships are both conceptualizations of violence but are different phenomenon. Situational Couple Violence (SCV), as its name implies, occurs when someone engages in abusive behavior to gain control of a particular situation. Intimate Terrorism (IT) is when physical violence is used with other tactics to gain and keep control over the other person. Violent Resistance occurs when a victim of IT engages in abusive behavior against the perpetrator of IT. Mutual Violent Control (MVC) describes a relationship in which both parties engage in abusive behavior in an effort to control the other.

G. What’s The Difference Between Episodic Or Situational Couple Violence And Intimate Terrorism?

Some acts of physical abuse occur without an overall context of control in the relationship. Known as episodic violence or situational couple violence, this type of violence refers to the phenomenon captured in the national family violence surveys, where the violence is not coercive or controlling and is gender balanced. In this model, couples may engage in physical violence with one another in the context of a specific argument, but the violence is not meant to control the other person and is likely to be bi-directional or mutual (Johnson, 2000). This behavior tends to be more frequently witnessed, tends not to escalate in severity or frequency over time, and tends not to result in severe injury or death. (Johnson). This may be the type of domestic violence illustrated in family conflict studies using the CTS.

By contrast, domestic violence which is more chronic and severe frequently occurs within a context of power and control. Intimate terrorism, (also known as battering or systemic abuse) defined as physical abuse plus a broad range of tactics designed to exert general control over the victim, does tend to escalate in severity and frequency over the course of the relationship and represents a man’s attempt to dominate and control his partner.

H. In An IT Or Battering Relationship, What Are The Different Forms Or Tactics Of Abuse?

When the people think about domestic violence, it is usually in terms of physical assault that results in visible injuries to the victim. This is only one type of abuse. There are several categories of abusive behavior, each of which has its own devastating consequences. Lethality involved with physical abuse may place the victim at higher

risk, but the long-term destruction of personhood that accompanies other forms of abuse is significant and cannot be minimized.

1. **Control.** Controlling behavior is a way for the batterer to maintain his dominance over the victim. Controlling behavior, the belief that he is justified in the controlling behavior and the resultant abuse is the core issue in abuse of women. It is often subtle, almost always insidious, and pervasive. This may include, but is not limited to:
 - a) Checking the mileage on the odometer following her use of the car.
 - b) Monitoring phone calls, using caller ID or other number monitoring devices, not allowing her to make or receive phone calls.
 - c) Not allowing her freedom of choice in terms of clothing styles, makeup or hairstyle. This may include forcing her to dress more seductively or more conservatively than she is comfortable.
 - d) Calling or coming home unexpectedly to check up on her. This may initially start as what appears to be a loving gesture, but becomes a sign of jealousy or possessiveness.
 - e) Invading her privacy by not allowing her time and space of her own.
 - f) Forcing or encouraging her dependency by making her believe that she is incapable of surviving or performing simple tasks without the batterer or on her own.
 - g) Using the children as spies in order to control the mother as spies; threatening to kill, hurt or kidnap the children; abusing the children physically or sexually; and threatening to call Child Protective Services if the mother leaves the relationship.

2. **Physical Abuse.** According to the *AMEND Workbook for Ending Violent Behavior*, physical abuse is any physically aggressive behavior, withholding of physical needs, indirect physically harmful behavior, or threat of physical abuse. This may include, but is not limited to:
 - a) Hitting, kicking, biting, slapping, shaking, pushing, pulling, punching, choking, beating, scratching, pinching, pulling hair, stabbing, shooting, drowning, burning, hitting with an object, threatening with a weapon, or threatening to physically assault.
 - b) Withholding of physical needs, including interruption of sleep or meals, denying money, food, transportation, or help if sick or injured, locking victim in or out of the house, refusing to give, or rationing necessities.
 - c) Abusing, injuring, or threatening to injure others like children, pets, or special property.
 - d) Forcible physical restraint against her will, being trapped in a room, having her exit blocked, or being held down.

- e) Hitting or kicking walls, doors, or other inanimate objects during an argument, throwing things in anger, destruction of property.
 - f) Holding the victim hostage.
3. **Sexual Abuse.** New research has shed light on what those working with battered women have known for years: the high occurrence of rape in physically abusive relationships. Taylor et.al. (2007) reports that two-thirds of the women in their study who were physically assaulted, also were raped by their abuser(s). A study of dating violence also showed considerable overlap between physical and sexual abuse (White & Smith 2004). DeKeseredy (2006) indicates that leaving a marital or cohabitating relationship increases a woman's chance of being sexually assaulted. Sexual assault perpetrated by a current partner is more traumatic for the victim than sexual assault perpetrated by a former partner or non-intimate. (Temple et.al., 2007). Sexual abuse is using sex in an exploitative fashion or forcing sex on another person. Having consented to sexual activity in the past does not indicate current consent. Sexual abuse may involve both verbal and physical behavior. This may include, but is not limited to:
- a) Using force, coercion, guilt, or manipulation or not considering the victim's desire to have sex. This may include making her have sex with others, have unwanted sexual experiences, or be involuntarily involved in prostitution.
 - b) Exploiting a victim who is unable to make an informed decision about involvement in sexual activity because of being asleep, intoxicated, drugged, disabled, too young, too old, or dependent upon or afraid of the perpetrator.
 - c) Laughing or making fun of another's sexuality or body, making offensive statements, insulting, or name-calling in relation to this victim's sexual preferences/behavior.
 - d) Making contact with the victim in any nonconsensual way, including unwanted penetration (oral, anal or vaginal) or touching (stroking, kissing, licking, sucking or using objects) on any part of the victim's body.
 - e) Exhibiting excessive jealousy resulting in false accusations of infidelity and controlling behaviors to limit the victim's contact with the outside world.
 - f) Withholding sex from the victim as a control mechanism. Also, refusing to say, "I love you."
4. **Emotional Abuse and Intimidation.** According to the *AMEND Workbook for Ending Violent Behavior*, emotional abuse is any behavior that exploits another's vulnerability, insecurity, or character. Such behaviors include continuous degradation, intimidation, manipulation, brainwashing, or control of another to the detriment of the individual. This may include, but is not limited to:

- g) Insulting or criticizing to undermine the victim's self-confidence. This includes public humiliation as well as actual or threatened rejection.
 - h) Threatening or accusing, either directly or indirectly, with intention to cause emotional or physical harm or loss. For instance, threatening to kill the victim or himself, or both.
 - i) Using reality distorting statements or behaviors that create confusion and insecurity in the victim, such as saying one thing and doing another; stating untrue facts as truth; and neglecting to follow through on stated intentions. This can include denying the abuse occurred and/or telling the victim she is making up the abuse. It might also include what is "crazy making" behaviors such hiding the victim's keys and berating her for losing them.
 - j) Consistently disregarding, ignoring, or neglecting the victim's requests and needs.
 - k) Using actions, statements or gestures that attack the victim's self-esteem and self-worth with the intention to humiliate.
 - l) Telling the victim that she is mentally unstable or incompetent.
 - m) Forcing the victim to take drugs or alcohol.
 - n) Not allowing the victim to practice her religious beliefs, isolating her from the religious community, or using religion as an excuse for abuse.
 - o) Using any form of coercion or manipulation that is disempowering to the victim.
5. **Isolation.** Isolation is a form of abuse often closely connected to controlling behaviors. It is not an isolated behavior, but the outcome of many kinds of abusive behaviors. By keeping her from those she wants to see, doing what she wants to do, setting and meeting goals, and controlling how she thinks and feels, he is isolating her from the resources (personal and public) that may help her leave the relationship. By keeping the victim socially isolated he is cutting her off from those who might not reinforce his perceptions and beliefs. Isolation often begins as an expression of his love for her with statements such as: "If you really loved me you would want to spend time with me, not your family." As it progresses, the isolation expands, limiting or excluding her contact with anyone but the batterer. Eventually, she is left totally alone and without the internal and external resources to change her life.

Some victims isolate themselves from existing resources and support systems because of the shame of bruises or other injuries, his behavior in public, or his treatment of friends or family. Self-isolation may also develop from fear of public humiliation or from fear of harm to herself or others. The victim may also feel guilty for the abuser's behavior, the

condition of the relationship, or a myriad of other reasons, depending on the messages received from the abuser.

6. **Verbal Abuse: Coercion, Threats, and Blaming.** Verbal abuse is any abusive language used to denigrate, embarrass, or threaten the victim.

This may include, but is not limited to:

- a) Threatening to hurt or kill the victim or her children, family, pets, property or reputation.
- b) Name-calling (“ugly,” “bitch,” “whore,” or “stupid”).
- c) Telling victim she is unattractive or undesirable.
- d) Yelling, screaming, rampaging, terrorizing, or refusing to talk.

7. **Economic Abuse.** Financial abuse is a way to control the victim through manipulation of economic recourses. This may include, but is not limited to:

- a) Controlling the family income, and either not allowing the victim access to money or rigidly limiting her access to family funds. This may also include keeping financial secrets or hidden accounts, putting the victim on an allowance or allowing her no say in how money is spent, or making her turn her paycheck over to him.
- b) Causing the victim to lose a job or preventing her from taking a job. He can make her lose her job by making her late for work, refusing to provide transportation to work, or by calling/harassing her at work.
- c) Spending money for necessities (food, rent, utilities) on non-essential items (drugs, alcohol, stereo equipment, hobbies).

I. Most Other Forms Of Abuse Aren't Criminal Acts. As A Judge, Why Should I Be Concerned?

Emotional abuse, verbal abuse, isolation and economic abuse can be used in concert with occasional physical abuse or threats to force victim compliance with the abuser's wishes. Termed “coercive control” by Evan Stark, this has been found by researchers to be “a more accurate measure of conflict, distress and danger to victims than the presence of physical abuse” (Beck & Raghavan, 2010). Thus it is impossible to appreciate a victim's vulnerability or risk without sufficient information regarding the context of domestic violence. Decisions, ranging from bond conditions to temporary protective orders to custody and visitation, should be made with as much information regarding the type and extent of domestic violence at issue in the relationship.

J. So How Can I Discern Whether Violence Is Occurring Within A Context Of Control?

It may not always be possible to determine whether a particular case involves intimate terrorism and a context of control, but assessing for lethality factors is critical. Judges can ask law enforcement officers about the presence of lethality factors, and

encourage them to include these factors in police reports. Judges also can make an effort to gain access to the perpetrator's criminal history for use in fully evaluating the situation and potential danger. In certain settings, such as the *ex parte* TPO hearing, the judge can ask the victim questions about the violence or the context of the relationship; this type of questioning should not be done, and would not be productive, in a setting in which the perpetrator is present. Judges can also take a leadership role and ask for coordination between advocates and prosecutors' offices; domestic violence advocates are trained to work with and recognize lethality factors and contexts and types of domestic violence.

There are assessments for danger and lethality; they are not foolproof but can be helpful tools for assessing a victim's risk of being killed. (See [Appendix B](#) for a more detailed discussion of lethality factors). One such tool is Jacquelyn Campbell's danger assessment, which asks victims whether or not a number of factors, such as increase in frequency of violence, weapons, strangulation, drugs, alcohol, threats, controlling behaviors, jealousy, suicidal thoughts or attempts, were involved during violence incidents over the past year (Campbell et al, 2003). The best way to assess a domestic violence situation is by keeping in mind that context is key, that greater injuries do not necessarily indicate greater danger. Also, follow intuition; sometimes a particular combination of factors or details of factors leads you to feel that there is greater risk.

K. What About When Victims Take The Perpetrator's Side, Ask The Court To Dismiss A TPO Or Remove Conditions Of Bond?

There are a number of different reasons why victims and survivors may not "cooperate" with the court system. The best way to learn about a victim's motivation is to listen.

When situations can be classified as intimate terrorism, survivors may recant or voluntarily contact a perpetrator after receiving a TPO against him because of economic dependence on the perpetrator, or because they believe that being conciliatory will avert another assault. Denial and minimization can also be evidence of trauma. Some victims suffer from post-traumatic stress disorder (PTSD), which may make them less able to cooperate with law enforcement or to follow through with court orders or pressing criminal charges.

In other situations, such as situational couple violence, victims may not cooperate with law enforcement officers and prosecutors because they do not want the options given to them by those officials. When the domestic violence is not accompanied by a context of power and control or by a history of abuse, victims may not want to have the perpetrator arrested or press charges because they believe, and studies have shown, that such violence can be curbed by other means such as counseling, or because the incident was a one-time act. In other instances, even if there has been a history of violence, the victim may love his or her perpetrator and may want other options and a chance to make the relationship work.

It should be noted that there is an ideology of victimization that encourages the criminal justice system to treat people who have been hit or threatened by a partner—

regardless of context—as someone incapable of assessing the situation for themselves. It also believes those victimized need guidance and urging to make the “right” decision to end the relationship and criminally punish the perpetrator. Even though this answer uses the word “victim” to denote the person who was injured in the incident and “perpetrator” to denote the person who injured in the incident, it is important to remember that many actors are not “victims” or “perpetrators” in the traditional sense. The best way to assess a situation, to determine whether an injured party is uncooperative out of fear or out of frustration at being talked down to as a “victim,” is to listen. Be sure that a victim is questioned separately from the perpetrator, in case he or she and the perpetrator have an intimate terrorism relationship. Doing so would be stressful or dangerous for the victim. Pay attention to context (Mills, 2008).

L. What Steps Can I Take To Increase The Safety Of The Victim And His Or Her Family?

The most important step that a judge can take to increase the victim’s safety is to assess the context of the domestic violence incident by looking for lethality factors or other evidence of coercive control. Using that analysis, be aware that a lack of injury does not necessarily mean that a victim is safe since physical abuse can taper off when the abuser has achieved control over the victim. During custody or visitation hearings, the judge can also ensure that agreements are careful and precise. If a victim and a perpetrator need to meet in order to drop off or pick up children in common, the agreement should specify a safe location, such as a police or fire department. It should be specific, so as not to allow the perpetrator to place the victim or children in any danger, and so as not to allow the children to be used to place the victim in a dangerous situation. During bond hearings, the judge can order specific bond conditions, such as no contact, or the use of a monitoring device, in order to increase the victim’s safety and protection from the perpetrator.

To increase the victim’s safety at the courthouse, judges should consider the following:

- Connect a victim with a local domestic violence advocate who will help the victim engage in safety planning and attend the victim’s court hearings;
- Order a safety check if the victim does not show up for a hearing;
- Consider detaining the perpetrator in the courtroom until after the victim leaves a hearing;
- Provide victims with updated information on their cases to minimize appearances in court, thus reducing the chances of placing her in further danger.
- Encourage the court and the sheriff’s department to create safe places within the courthouse where there is private space to speak with advocates.
- Encourage training for sheriff departments on how to keep domestic violence victims and perpetrators apart during court hearings to keep victims safe (being available to walk or escort victims into and out of the courthouse for hearings, keeping perpetrators away from victims, etc.). (WomensLaw.org, *Safety in Court.*)

To increase victims' safety and perpetrators' accountability, broader steps can be taken through a coordinated community response . Such steps include:

- Participate in a local domestic violence task force by assessing criminal justice resources and practices, promoting consistency and collaboration among response systems, and creating formal and informal networks for communication and collaboration across systems (GCFV, 2008).
- Encourage prosecution, local domestic violence advocates, and law enforcement to form a collaborative group to assist with information sharing, cross-training, and transitioning of cases through the justice system (GA Fatality Review, 2007).
- As part of task forces, ensure that agencies have a brochure or informational packet that includes a list of victims' rights and legal remedies informing victims about domestic violence (GA Fatality Review, 2007).
- As part of task forces, provide assistance to local and state governing agencies to revise policies and procedures related to the agencies under their jurisdictions to ensure that response, outreach and education efforts include culturally sensitive, culturally relevant, and language accessible content (GA Fatality Review, 2007).

B. APPENDIX B - ASSESSING FOR LETHALITY

Table Of Contents

Introduction.....	B:2
A. Lethality Factor List.....	B:3
B. Lethality Factors	B:3
Quantitative Lethality Factors (timing, frequency and severity of violence).....	B:3
1. Attempted strangulation.....	B:3
2. Sexual assault.....	B:3
3. Increase in violent attacks	B:3
4. Threats to kill	B:4
5. Access to firearms.....	B:4
6. Animal or Pet Abuse.....	B:4
Qualitative Lethality Factors (behaviors related to abuser’s desire for power and to control victim).....	B:5
1. Controlling/jealous behavior.....	B:5
2. Victim’s efforts to leave/sever relationship	B:5
3. Depression/thoughts of suicide (on the part of the abuser).....	B:5
4. Victim’s terror.....	B:5
5. Harassment/stalking-type behavior.....	B:5
Environmental Lethality Factors.....	B:5
1. Unemployment.....	B:5
2. Substance abuse	B:5
3. Access to victim.....	B:6
4. Pregnancy.....	B:6
C. Practical Application of Lethality Factors	B:6
Police Reports	B:6
Temporary Protective Orders.....	B:6

Introduction

“Men of all ages and in all parts of the world are more violent than women...When it comes to violence, women can proudly relinquish recognition in the language, because here at least, politically correct would be statistically incorrect.”

--Author Gavin DeBecker on his use of male, gender-specific language in *The Gift of Fear*.

There are many efforts to determine which factors indicate an increased risk for homicide in domestic violence cases. The bottom line is that there is no single factor or set of factors that can be used as fail-proof indicators in assessing lethality. Yet several factors have emerged from research that can be considered significant in contributing to an increased risk for serious injury or homicide. The National Institute of Justice, in its November 2003 issue on the Assessment of Risk factors for intimate partner homicide, has found that among women who reported being subject to domestic violence, those who had been threatened or assaulted with a gun were 20 times more likely to be killed than other women, and those who were threatened with murder were 15 times more likely to be killed than other women. Research indicates that a combination of factors, instead of a single factor, increase the risk of intimate partner homicide. The research cited in this section refers specifically to intimate partner homicide, which does not include elder or child abuse. An “intimate partner” is defined as spouse, ex-spouse, boyfriend, girlfriend, ex-boyfriend or ex-girlfriend.

Margaret Zahn (2003) advises that although research has come a long way in determining the risk factors associated with intimate partner homicide, there is a disconnect between our social policies and our knowledge of these factors. She urges us to do a better job of linking the two if we are to resolve this social problem. Zahn believes intimate partner homicides and other homicides will decrease when the criminal justice system and victim service organizations focus on these risk factors.

Lethality factors can be useful courtroom tools. The best source of information for judges is the police report. If the police report doesn't specifically address lethality factors, judges can ask law enforcement about their presence or absence, which in turn would encourage police to put the factors into the police reports directly. Lethality factors can be helpful in determining bond conditions and issuing temporary protection orders. When using lethality factor analysis, it is important to consider context over the presence of physical violence; threats coupled with other non-physical lethality factors may indicate a more dangerous situation than one alone involving physical violence. A lethality factor analysis can assist judges in more thoroughly assessing the context in which domestic violence occurs, and in better anticipating danger and violence.

A. Lethality Factor List

Quantitative Lethality Factors (severity and amount of prior violence)

- Attempted strangulation
- Sexual assault
- Increase in violent attacks
- Threats to kill
- Access to firearms
- Animal or pet abuse

Qualitative Lethality Factors (behaviors related to abuser's desire for power and to control victim)

- Controlling/jealous behavior
- Victim's efforts to leave/sever relationship
- Depression/thoughts of suicide
- Victim's terror
- Harassment/stalking-type behavior

Environmental Lethality Factors

- Unemployment
- Substance abuse
- Access to victim
- Pregnancy

B. Lethality Factors

Quantitative Lethality Factors (timing, frequency and severity of violence)

1. Attempted strangulation

A 2003 National Institute of Justice report found that women who were subject to domestic violence, and who had been the victims of attempted strangulation, were 10 times more likely to be killed than other women (*NIJ Journal*, No. 250)

A 2008 *Journal of Emergency Medicine* study found that 43 percent of women who were murdered in domestic assaults and 45 percent who were victims of attempted murder had previously been choked by their male partners.

In 2010 Ohio and New York drafted legislation to join the majority of states in criminalizing strangulation or choking as a felony (Bello, 2010).

In Georgia, strangulation would fall under the simple assault statute, OCGA §16-5-20.

2. Sexual assault

3. Increase in violent attacks

When an abusive partner increases the frequency of his violent acts, this poses a high risk of violence to the victim and to the abuser.

No matter how severe the most recent act of violence, the occurrence of an incident within 30 days of that violence places the woman at high risk of being killed or of killing the abuser.

It is important to remember that there need not be a long history of violence; even the first incident of domestic violence can be fatal.

4. Threats to kill

A 2003 National Institute of Justice report found that women who were subject to domestic violence, and were threatened with murder, were 15 times more likely to be killed than other women (*NIJ Journal*, No. 250).

In more than half of the cases reviewed by the Georgia Domestic Violence Fatality Review Project, threats to kill the primary victim were documented before the homicide. These threats cannot be dismissed as mere words; they must be taken seriously by victims and service providers alike.

5. Access to firearms

A 2003 National Institute of Justice report found that women who were subject to domestic violence, and were threatened or assaulted with a gun, were 20 times more likely to be killed than other women (*NIJ Journal*, No. 250).

When a gun was in the home, women were six times more likely to be killed by their abuser than other women in abusive relationships. Research also suggests that abusers who possess guns “tend to inflict the most severe abuse.”

The Georgia Domestic Violence Fatality Review Project found that of all of the deaths studied from 2003 to 2009, the majority were committed with firearms (2009).

6. Animal or Pet Abuse

A 1997 study found that 71% of pet owners entering domestic violence shelters reported that the batterer had threatened, injured, or killed family pets (Ascione, F.R., Weber, C.V. & Wood, D.S. (1997). The abuse of animals and domestic violence: A national survey of shelters for women who are battered. *Society & Animals* 5.3: 205-218)

A 2007 study found that batterers who abuse pets use more forms of aggressive violence, such as sexual violence, marital rape, emotional violence, and stalking, and demonstrate a greater use of controlling behaviors (Simmons, C & Lehmann, P. Exploring the Link Between Pet Abuse and Controlling Behaviors in Violent Relationships. *Journal of Interpersonal Violence* 22.9 (2007):1211-1222

Pet abusers are more likely to be domestic violence abusers, to have been arrested for other violent crimes and drug related offenses, and engage in other delinquent behavior. Many abusers have a history of animal abuse

that precedes domestic violence towards their partner. (Ascione, F.R., Weber, C.V., Thompson, T.M., Heath, J., Maruyama, M., Hayashi, K. Battered Pets and Domestic Violence: Animal Abuse Reported by Women Experiencing Intimate Violence and Nonabused Women, *Violence Against Women* 13.4 (2007): 354-373 and Weber, C.V. A Descriptive Study of the Relationship Between Domestic Violence and Pet Abuse. *Dissertation Abstracts International. Section B: The Sciences and Engineering*. 59.80-B (1999).

Qualitative Lethality Factors (behaviors related to abuser's desire for power and to control victim)

1. Controlling/jealous behavior
2. Victim's efforts to leave/sever relationship
The Georgia Domestic Violence Fatality Review found that in almost all domestic violence cases reviewed from 2003 to 2007, victims had indicated a desire to separate from their abusers just before the homicide – whether filing for a protective order, moving out and getting an apartment, or talking with family about leaving (2007).
3. Depression/thoughts of suicide (on the part of the abuser)
The Georgia Domestic Violence Fatality Review found that in cases from 2004 and 2006, 38 percent of the perpetrators attempted or completed suicide at the homicide scene or soon after. In 29 percent of the cases, the perpetrator had a history of depression or was depressed.

In a majority of the cases from 2004 to 2009, friends and family were aware of the perpetrator's suicidal threats and attempts, but did not understand how the perpetrator's threats to hurt himself could impact the safety of the victim and others.

4. Victim's terror
5. Harassment/stalking-type behavior
Of the cases reviewed by the Georgia Domestic Violence Fatality Review Project from 2003 to 2009, 43 percent of homicide victims were stalked by their abusers before their murders. In many of these cases, stalking escalated after separation.

Environmental Lethality Factors

1. Unemployment
Jacquelyn C. Campbell (2003) found the abuser's lack of employment to be the strongest environmental risk factor for intimate partner homicide, increasing the risk fourfold.
2. Substance abuse
Sharps et al (2003) studied the connection between alcohol and drug use during, and in the year leading up to, an intimate partner homicide (or attempted murder), and found the following:
Very high levels of alcohol and drug use were seen in males who murdered or attempted to murder their partners;

In the year before the homicide or life-threatening abuse of their female partner, 80 percent of the male abusers were problem drinkers.

Homicide and attempted homicide abusers were described as drunk every day or as a problem drinker or drug user.

Two-thirds of the homicide and attempted homicide offenders used alcohol, drugs, or both during the incident.

The research shows that when a male abuser is a problem drinker or drug user, his female partner is in a particularly dangerous situation. It also indicates that serious alcohol use by abusers increases the risk for a deadly incident to occur.

3. Access to victim
4. Pregnancy

C. Practical Application of Lethality Factors

The majority of victims who are abused by their intimate partners use the criminal justice system as their first line of defense. Most often that is a call to the police, but for many it is through the civil courts when they file a petition for a civil protective order. This points to the court's power to intervene through their policies and practices and attitudes to prevent intimate partner homicides. The following is a list of suggestions:

Police Reports

The best source of information regarding lethality factors present in a violent situation is the police report. Judges can ask law enforcement about the presence or absence of lethality factors.

Work with law enforcement to encourage the development of a procedure for documenting lethality factors in police reports.

Temporary Protective Orders

Lethality factor analysis can be helpful in assessing the context in which domestic violence occurs, and in better anticipating danger and violence. Remember to consider the presence of lethality factors in addition to the severity of the act of violence when making decisions. Assaults or threats, coupled with other non-physical lethality factors, may indicate a more dangerous situation than one that includes more physical violence.

Be aware that by seeking a temporary protective order (TPO), a victim is signaling that his or her situation could be serious in spite of the lack of previous documentation.

When interviewing a TPO petitioner during the *ex parte* hearing know the indicators that signal an increased risk for homicide and ask the petitioner the appropriate questions to determine that risk.

In cases of very high risk (where a victim is planning to leave a very jealous and controlling partner with whom he or she lives) it is important to warn her not to confront her partner with that information and make an immediate referral to an advocate who can help her develop a safety plan.

In high risk situations, restrict the abuser's access to guns. A recent study (Bridges, Tatum and Kunselman, 2008) revealed that limiting firearm availability once a protective order has been served may help to reduce family homicide rates. The study found that in 47 states, there was an inverse correlation between family homicide rates and states mandating firearm restrictions during a protective order.

Either through the prosecutor's office or the local shelter, have an advocate who is immediately accessible to victims of intimate partner violence. It may be the only opportunity to provide them with resources for their safety.

Provide a list of local resources for anyone seeking seeks to file a temporary protective order.

C. APPENDIX C - SCREENING FOR DOMESTIC VIOLENCE

Many domestic relations cases involve violence. That these cases involve domestic violence is often unknown to the court or to the attorneys representing the parties. This lack of knowledge can result in court decisions that are at worst, life-threatening, and at best continue to allow the abuser control over the victim.

For that reason it is important for attorneys and the court to screen domestic relations cases carefully and take the appropriate safety precautions if violence is suspected.

This appendix offers simple questions to screen for the presence of domestic violence, general issues to consider in any order where violence is suspected.

A. Determining if Domestic Violence is an Issue.

The following questions have been condensed from *Screening for Domestic Violence: Meeting the Challenge of Identifying Domestic Relations Cases Involving Domestic Violence And Developing Strategies for Those Cases* (Court Review, Special Section on Domestic Violence, Vol. 39, Issue 2, Summer 2002).

B. Screening for Common Domestic Violence Patterns.

5. Does your partner criticize you or your children often?
6. Has your partner ever tried to keep you from getting medical help; kept you from sleeping at night?
7. Has your partner ever hurt or threatened to hurt your pets or destroyed your things? Does your partner throw or break things during arguments?
8. Is it hard for you to have relationships with friends or relatives because your partner disapproves of, argues with or criticizes them?
9. Does your partner make it hard for you to keep a job or to go to school?
10. Has your partner ever put his hands on you against your wishes, or forced you to do something you didn't want to do?
11. When was the first time this happened? The last time it happened? The worst time?

D. APPENDIX D - CHECKLIST FOR EX PARTE APPLICANTS

The following questions are intended to assist the court in addressing issues that may exist in any ex parte application. More reliable information is obtained if the court personally asks these or other questions. Obviously, questions not relevant to the issues in a petition should be excluded.

1. Are there past or pending court actions in any court involving any of the parties, children or other issues presented in this case? Examples:
 - a) Criminal charges
 - b) Divorce
 - c) Child custody (between these or other parties)
 - d) Juvenile Court
 - e) Paternity
 - f) Legitimation
 - g) Adoption
 - h) Child support
 - i) Landlord – Tenant
 - j) Other
2. Are there present or past investigations involving any of the parties or children involved in this case? Examples:
 - a) Police or other law enforcement investigation
 - b) Probation
 - c) Pretrial Diversion
 - d) Safety Plans
 - e) Department of Family and Children Services
3. Are there present or past Family Violence Protective Orders, Stalking Orders, or Bond Orders limiting contact or applications for any such orders that involve parties or children involved in this petition?
4. Does the respondent have access to weapons?
5. Does an attorney represent either party at this time, in this, or any related matter?
6. Who currently has physical possession of the children at issue?
7. Has there been a change in the party who has physical possession of the children in the last 12 months?
8. Have criminal warrants been taken by either party or by law enforcement that include either party to this petition?
9. Have police reports been made of incidents recited in this petition?
10. Who owns real property, which is at issue in the petition?
11. Who has had possession of that real property during the last 12 months?
12. Who owns automobiles, which are at issue in this petition?
13. Who has had possession of such automobiles during the last 12 months?
14. Are there unnamed third parties who have or claim an interest in any child or property address in the petition? Examples:
 - a) Grandparents

- b) Biological Parents
 - c) Guardians or Guardians ad litem
 - d) Foster Parents
15. Has either party to the petition been diagnosed with a psychological or psychiatric disorder?
16. What medication does that party take?
17. Who recommended that you file this petition? Examples:
- a) Attorney
 - b) Law enforcement officer
 - c) District Attorney
 - d) Social service caseworker
 - e) Family member
18. Was either party consuming alcohol or drugs before or during the incidents recited in the petition?
19. Has either party been accused of drug abuse, violation of drug laws, or DUI during the past 24 months?
20. If yes: what drug or drugs are involved?
21. What is the employment status of all parties to the petition?
22. Does the petitioner have the support and assistance of an advocate? If not, consider making that referral.

In 2004, over 20,000 orders of protection were filed in Georgia. Given how many orders are filed and how chronically-abused parties are exceptionally keen at reading unconscious and nonverbal communication (Herman, 1992), it may prove helpful to the court to review a unique study on the power of judicial demeanor and how it encourages or discourages parties from claiming their rights under the law (Ptacek, 1999).

For comprehensive information on previous orders filed by either party, see [Section 3.5.4, B., 3.](#) and [Appendix M – Georgia Protective Order Registry](#)

E. APPENDIX E - FIREARMS

Table Of Contents

A.	Firearms And Temporary Protective Orders.....	E:3
1.	Gun restrictions can be ordered in ex parte orders.	E:4
2.	Twelve Month Family Violence Protective Orders issued in Georgia trigger the federal firearms restrictions.	E:5
3.	Some stalking orders trigger the federal firearms restrictions.	E:5
4.	The firearms restriction is in effect for the term of the TPO.	E:6
5.	There are statutory exemptions for military and law enforcement.....	E:6
6.	Federal law preempts any state order regarding firearms.	E:6
7.	The Federal Protections Can Be Entered Through Other Types of Orders.	E:6
8.	Judges Should Put Respondents On Notice About the Federal Firearms Restrictions.	E:7
9.	Reporting TPO Orders	E:7
10.	Constitutional Challenges To These Restrictions Have Failed.....	E:8
11.	Important Safety Considerations:	E:8
B.	Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions	E:9
1.	Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV).....	E:9
2.	The misdemeanor does not have to be identified as a “domestic violence misdemeanor” to trigger the restriction.....	E:10
3.	Georgia’s battery statute meets the requirements for a misdemeanor crime of domestic violence.....	E:10
4.	A <i>nolo contendere</i> plea does not trigger the federal firearms restrictions.....	E:10
5.	First Offender status does not trigger the federal firearms restrictions.....	E:10
6.	The length of the restriction.....	E:11
7.	There is no exception for use of a gun by military or law enforcement personnel.	E:11

8.	Gun restrictions can be included in conditions of bond.....	E:11
9.	It is recommended that the court address the issue of firearms in a misdemeanor case involving domestic violence.....	E:11
10.	To ensure that the federal safety provisions re firearms apply in a specific criminal case:	E:12
11.	To ensure the victim's safety:	E:12
12.	Firearm Statistics:	E:13
13.	Forms Attached:	E:13

A. Firearms And Temporary Protective Orders

A person¹ who is subject to a qualifying protection order under federal law is generally prohibited from possessing any firearm or ammunition (18 U.S.C. § 922(g)(8)). Violation of this prohibition while the order is in effect is a federal offense punishable by up to ten years in prison (18 U.S.C. § 924(a)(2)).

Generally, a respondent, subject to a protective order that includes one element (indicated by a diamond) from each section listed below, is covered by the federal firearms prohibition.

<p>I. HEARING</p> <ul style="list-style-type: none">◆ Defendant/Respondent received actual notice and had an opportunity to participate.
<p>II. INTIMATE PARTNER</p> <p>Plaintiff/Petitioner is an intimate partner of the Respondent, (18 U.S.C. § 921(a)(32)); that is:</p> <ul style="list-style-type: none">◆ a spouse of Respondent;◆ a former spouse of Respondent;◆ an individual who is a parent of a child of Respondent; or◆ an individual who cohabitates or has cohabited with Respondent.
<p>III. RESTRAINS FUTURE CONDUCT</p> <ul style="list-style-type: none">◆ The order restrains Defendant/Respondent from harassing, stalking, or threatening the intimate partner, child of the Respondent, or child of the Respondent's intimate partner; or◆ The order restrains Respondent from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child.
<p>IV. CREDIBLE THREAT OR PHYSICAL FORCE</p> <ul style="list-style-type: none">◆ The order includes a finding that Respondent is a credible threat to the physical safety of the intimate partner or child; or◆ The order, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

¹ See law enforcement and military exceptions, subsection 5 below.

1. **Gun restrictions can be ordered in ex parte orders.**

The Georgia Family Violence Act, O.C.G.A. § 19-13-1 through 19-13-6, gives a judge the discretion to order firearms restrictions in ex parte protective orders to ensure that the domestic violence will not re-occur. O.C. G.A. § 19-13-3(b) states: “Upon filing of a verified petition in which 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 minor of the household from violence.*” [Emphasis added.] Federal firearms restrictions do not apply to ex parte orders because the respondent has not had notice or an opportunity to be heard.

A recent study (Bridges, Tatum and Kunselman, 2008) revealed that limiting firearm availability once a protective order has been served may help to reduce family homicide rates. Across 47 States, they found that family homicide rates went down in States mandating firearm restrictions during a temporary protective order.

Recommended Practice: Order a respondent to turn over all firearms and weapons to the deputy or police officer at the time of service.

Example #1: (Used in Athens-Clarke County)

“It is further ordered that law enforcement (sheriff or police department) shall take and maintain possession of firearm(s) that are in the possession of the Respondent until the expiration of this Order. Detailed description of firearm(s) and location:_____”

Example #2 (Used in Lumpkin County)

"Further: The Respondent is to immediately surrender to law enforcement any weapons owned by Respondent or in the actual or constructive possession of the Respondent regardless of ownership of the same. Failure of the Respondent to surrender such weapons will authorize law enforcement to arrest and incarcerate without bond the Respondent until further order of the court. Based upon the evidence presented to the court, this term and condition of this Order authorizes law enforcement to search the Respondent or any area under the control of the Respondent for the sole purpose of locating and taking custody of weapons.

Upon seizing and taking custody of weapons, law enforcement is ordered to surrender said weapons to the property and evidence officer of the Lumpkin County Sheriff Department whereupon it is ordered that said weapons be held and stored under the above-captioned and numbered case until further order of this court."

Recommended Practice: Include language in Ex-Parte Orders stating that the respondent shall not possess or own firearms or ammunition while the Order is in effect.

Example: "It is further ordered that because the Respondent presents a credible threat to the physical safety of the Petitioner and/or her children, the Respondent shall not possess any firearm or ammunition during the effective period of this order."

2. **Twelve Month Family Violence Protective Orders issued in Georgia trigger the federal firearms restrictions.**

Almost all second hearing TPOs in Georgia make the respondents subject to the federal firearms restrictions.¹

Recommended Practice: To insure that a TPO order qualifies, be sure to:

- a) use the standardized forms, which include PCO numbers for easy entry into the TPO registry;
- b) initial paragraph 26 of the standard Twelve Month Order form (2008) to confirm that the parties have the relationship required for federal law to apply (18 U.S.C. 922(g)).² Refusal to sign this language does not mean that the federal restrictions don't apply; however, it creates more work for screening authorities to determine whether the order meets the federal standards.

3. **Some stalking orders trigger the federal firearms restrictions.**

Only stalking cases where the parties are spouses, ex-spouses, have a common child, or live or have lived together in an intimate relationship, meet the federal requirements for a protective order that imposes federal firearms restrictions. These cases are an exception to the Rawcliffe v. Rawcliffe decision, 283 Ga. App. 264 (2007), which involved unrelated parties.

Recommended Practice: When issuing a Stalking Order where the parties are spouses, ex-spouses, have a common child, or live or have lived together in an intimate relationship, and there is concern about the petitioner's safety, be sure that the relationship is spelled out in the order and include language finding a threat to physical safety. This will insure that the federal firearms restrictions apply to the stalker. To empower

¹ Except a respondent who carries a duty-issued weapon as military or law enforcement personnel. See subsection 5.

² Standard form paragraph 25 states: "Petitioner/protected party is either a spouse, former spouse, parent of a common child, Petitioner's child, child of Respondent, cohabitates or has cohabitated with Respondent and qualifies for 18 U.S.C. 922(g). It is further ordered that the Respondent shall not possess or purchase a firearm or ammunition as restricted by federal law under 18 U.S.C. 922(g)((8))."

local law enforcement to enforce the firearms restrictions, order the stalker not to have possession of a firearm or ammunition. This is basically a restatement of the federal restrictions, but the fact that it is in a state order will enable local law enforcement to enforce the federal restriction without needing to get federal enforcement agents involved.

4. **The firearms restriction is in effect for the term of the TPO.**

5. **There are statutory exemptions for military and law enforcement.**

18 U.S.C. § 925(a) provides that the restrictions on firearms possession by respondents shall not apply to government-issued firearms that are used by military or police officers in the line of duty. Only official duty firearms are covered.

Recommended Practice: Order an abuser in the military or law enforcement to notify his/her superior officer of the TPO. This will insure that supervision and restrictions on firearms use are implemented by the government entity.

6. **Federal law preempts any state order regarding firearms.**

If the four qualifications are met, the restriction automatically applies and overrides any state order to the contrary. In those cases, a state order carving out exceptions will not protect the respondent from prosecution for violating federal law.

7. **The Federal Protections Can Be Entered Through Other Types of Orders.**

Any order that meets the four pronged test for a qualified protective order will subject a respondent to firearms restrictions. The name of the order is not important.

Recommended Practice: Include language in bail/bond orders, first offender probation requirements, divorces, custody cases or other orders in which the respondent/defendant has notice and the safety of a party or minor children is an issue. Consider the following language:

“Respondent/Defendant shall not harass, stalk, threaten, or injure the protected party or put the protected party in fear of bodily injury. It is further ordered that because the Respondent/Defendant presents a credible threat to the physical safety of the protected party, the Respondent/Defendant shall not possess any firearm or ammunition. The Respondent/Defendant’s relationship to the protected party is _____.”

If this provision is included in the order, be sure to notify the FBI so that the order will be catalogued in the national registry to prohibit firearm sales. (*See Section 9 below*).

8. **Judges Should Put Respondents On Notice About the Federal Firearms Restrictions.**

Federal regulations require any state receiving grant money for certain domestic violence work (“STOP Grants”) to have judicial policies and practices in place to notify abusers of the federal firearms restrictions. Georgia receives this grant money. Therefore, a standardized system of notifying respondents/defendants of this restriction is necessary.

Recommended Practice:

- a) Asking about firearms possession from the bench ensures that the answer is given under oath. It will also alleviate any misconception that the petitioner has caused the restriction from possessing firearms to be imposed.
- b) When entering a twelve month TPO or any order meeting federal requirement for firearms restrictions, inform the respondent of this restriction from the bench. Also be sure that the notice is in the written order. (Notice is already included in standard TPO forms (2008).)

9. **Reporting TPO Orders**

One of the main purposes of the firearms restrictions is to stop abusers from obtaining firearms to use against family members. To be sure that gun sellers know about the TPO, it needs to be filed in the Georgia Registry, which passes the information to NICS (National Instant Criminal Background Check System). The court can facilitate this process by:

- a) Using the standard TPO forms, which include the mandatory language and include PCO numbers that facilitate entry into the TPO Registry;
- b) Signing paragraph 26 to confirm that the relationship between the parties meets the federal guidelines;
- c) Insuring that the Superior Court Clerk is entering the TPO into the Georgia Registry expediently (within 24 hours);
- d) Contacting NICS directly if the court has a non-TPO order or if there is difficulty registering the TPO with the Georgia Registry.

Phone: 1-877-444-NICS (6427)

By fax: 1-888-550-6427

Electronically:

NICS website: <http://www.fbi.gov/hq/cjisd/nics.htm>.

NICS e-check: <http://www.nicsezcheckfbi.gov/>

NICS email: a_nics@leo.gov

10. **Constitutional Challenges To These Restrictions Have Failed.**

The federal firearm prohibitions against abusers have been universally upheld, despite challenges based upon:

- a) The Second Amendment
- b) Due Process (5th and 14th Amendments) (notice)
- c) Vagueness/Overbreadth
- d) Ex Post Facto Clause (pre-1996 convictions)
- e) Commerce Clause (jurisdictional element)
- f) Tenth Amendment (no interference with state rights)

11. **Important Safety Considerations:**

- a) “When a gun [is] in the house, an abused woman [is] 6 times more likely than other abused women to be killed.” (Campbell 2003) ³
- b) In each year from 1980 to 2000, 60% to 70% of batterers who killed their intimate partners used firearms (Rothman 2005).⁴
- c) When domestic violence abuse involves a firearm, the victim is 12 times more likely to die than in incidents not involving a firearm (Frattaroli 2006).⁵
- d) These national firearm statistics hold true for Georgia. “Of all the deaths studied over the past four years, the majority have been committed with firearms.” (Georgia Domestic Violence Fatality Review Project, 2007).

³ Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, NIJ Journal, Nov. 2003, at 15,16, 18.

⁴ Emily F. Rothman, et.al., *Batterers’ Use of Guns to Threaten Intimate Partners*, 60 J. Am. Med. Women’s Ass’n 62 (2005).

⁵ Shannon Frattaroli & Jon S. Vernick, *Separating Batterers and Guns*, 30 Evaluation Rev. 296,297 (2006)

B. Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions

1. **Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV).**

Generally are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 178.11, 178.32.

A qualifying MCDV is an offense that meets the following tests:

- ◆ Is a misdemeanor under federal or state law;
- ◆ Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon;
- ◆ At the time the MCDV was committed, the defendant was:
 - ◆ A current or former spouse, parent, or guardian of the victim; or
 - ◆ A person with whom the victim shared a child in common; or
 - ◆ A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or
 - ◆ A person who was or had been similarly situated to a spouse, parent, or guardian of the victim; and
- ◆ Meets the following Due Process requirements:
 - ◆ Either defendant was represented by counsel or knowingly and intelligently waived the right to counsel; and
 - ◆ IF the person was entitled to a jury trial under Georgia law, the case was either tried by jury or the defendant knowingly and intelligently waived the right to jury trial.

EXCEPTIONS:

These restrictions DO NOT apply if the conviction was set aside or expunged; the person was pardoned; or, the person's civil rights – the right to vote, sit on a jury, and hold elected office – were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) UNLESS:

- ◆ The expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or
- ◆ The person is otherwise prohibited by Georgia or local law from receiving or possessing any firearms.

For further information about Section 922(g)(9) or Federal Firearms Prohibitions generally, contact your local Field Division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855.

2. **The misdemeanor does not have to be identified as a “domestic violence misdemeanor” to trigger the restriction.**

Any misdemeanor that has as an element the use or attempted use of force or the attempted use of a deadly weapon will qualify if the defendant and the victim are related as required by the statute (18 U.S.C. § 921(a)(33)(A)).⁶ The misdemeanor does not need to have “domestic violence” in the title or in the description of the crime, and an intimate partner relationship does not have to be an element of the crime (*United States v. Hayes*).⁷

3. **Georgia’s battery statute meets the requirements for a misdemeanor crime of domestic violence.**

In *U.S. v. Griffith*, 455 F. 3d 1339 (2006), cert. den. 127 S. Ct. 2028 (2007), the Eleventh Circuit determined that the Georgia battery statute satisfied the “physical force” requirement of 18 U.S.C. § 921(a)(33)(A)(ii) [defining the requirements for a misdemeanor crime of domestic violence for the purpose of the firearms restrictions in 18 U.S.C. § 922(g)(9).]

4. **A *nolo contendere* plea does not trigger the federal firearms restrictions.**

See 1998 Op. Att’y Gen. 98-2. Because a *nolo contendere* plea is not a guilty plea for the purpose of affecting civil disqualifications (such as voting, holding public office, or acting as a juror), it also does not disqualify a defendant from possessing a firearm.

Recommended Practice: When considering whether to accept a *nolo contendere* plea, consider whether the protections of the federal firearms statutes would make the victim safer. If so, consider refusing to accept such a plea, or adding language to the terms of probation which restrict the defendant’s access to firearms.

5. **First Offender status does not trigger the federal firearms restrictions.**

Under O.C.G.A. §42-8-60, a court may defer a judgment of guilt and place a defendant on first offender status. If the defendant successfully completes the terms of the probation, the defendant is discharged without

⁶ A spouse, former spouse, parent of a common child, a person who cohabited with the victim as a spouse, parent or guardian, or has been similarly situated to a spouse, parent or guardian of the victim. 18 U.S.C. §921(a)(33)(A).

⁷ *United States v. Hayes*, 129 S. Ct. 1079 (2009).

an adjudication of guilt. O.C.G.A. §42-8-62. With no adjudication of guilt, the first requirement to qualify as a misdemeanor crime of domestic violence is not met.

Recommended Practice: Order that the defendant not possess firearms or ammunition during the term of the first offender probation. If the victim’s safety is in jeopardy, consider not accepting a first offender plea.

6. **The length of the restriction.**

The restriction on possessing, purchasing, shipping, transporting, or receiving firearms or ammunition lasts until such time as the defendant’s civil rights are restored, or s/he is pardoned or the record is expunged.

7. **There is no exception for use of a gun by military or law enforcement personnel.**

The exception for these professions is only for those who are subject to TPOs, not for criminal convictions involving domestic violence.

8. **Gun restrictions can be included in conditions of bond.**

However, because the defendant does not yet have a criminal conviction, the bail/bond order needs to follow the requirements for a protective order:

“Defendant shall not harass, stalk, threaten, or injure the protected party or put the protected party in fear of bodily injury. It is further ordered that because the Defendant presents a credible threat to the physical safety of the protected party, the Defendant shall not possess any firearm or ammunition. The Respondent/Defendant’s relationship to the protected party is _____.”

Recommended Practice: Include this language in standardized bond forms. In every bond hearing involving parties who know each other, consider the advisability of ordering that the defendant not have access to firearms or ammunition while on bond. Research shows that the most dangerous time for a victim of domestic violence is when she attempts to leave the relationship (U.S. Dept of Justice, 1995).⁸ Adding this language to standardized forms will ensure that the issue is addressed at all bail/bond hearings. See Form B at the end of this section

9. **It is recommended that the court address the issue of firearms in a misdemeanor case involving domestic violence.**

⁸ National Crime victimization survey by the U.S. Department of Justice showed that the rate of women killed by their husbands was 25 times higher when women were separated than when they were living together. Bureau of Justice Statistics Special Report: *Violence Against Women: Estimates from the Redesigned Survey*, NCJ-154348 (1995).

Federal regulations require that states receiving STOP grant money must certify that its “judicial policies and procedures include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9).” To meet these qualifications, the Georgia Criminal Justice Coordinating Counsel urges the court to:

- a) Notify the defendant by a verbal statement on the record; and/or
- b) Notify the defendant in writing on the sentencing sheet; and/or
- c) Include the restrictions as a standardized check box on all documents.
- d) Raise the issue at every stage of hearing:
 - Pre-trial hearings
 - Entry of pleas
 - Sentencing
 - Probation and/or parole hearings

Recommended special language for written notices:

The Department of Justice suggests the following:

“If you are convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 U.S.C. 922(g)(9).”

10. To ensure that the federal safety provisions re firearms apply in a specific criminal case:

Be sure the sentencing sheet:

- a) Clearly identifies the relationship between the defendant and the victim.
- b) Specifies that use or attempted use of physical force or threatened use of a deadly weapon has been proven.
- c) Addresses representation by counsel and trial by jury.

11. To ensure the victim’s safety:

- a) Verbally advise the defendant of firearms restrictions
- b) Discuss how the defendant will meet that requirement.
- c) Have defendant sign an acknowledgement of firearms restrictions. This is useful in the event of a violation.
- d) Include identifying information on sentencing sheet.
- e) Consider ordering surrender of firearms, licenses and permits.
- f) Have third party sign Acknowledgement of Responsibility if firearms are being transferred to family or friends.

- g) Order firearms to be relinquished as condition of probation or parole.
- h) Employ a compliance mechanism to ensure firearms are surrendered.
- i) Notify firearms licensing authorities of disqualifying convictions. (*See [Section A.9](#) above*).

12. Firearm Statistics:

- a) “In Georgia, firearms were the cause of death in 76% of the domestic violence fatalities in both 2009 and 2010.” (GCFV 2011)⁹
- b) Women are twice as likely to be shot and killed by intimate partners as they are to be murdered by strangers using any type of weapon. (Rothman 2005).¹⁰
- c) When domestic violence abuse involves a firearm, the victim is 12 times more likely to die than in incidents not involving a firearm (Frattaroli 2006).¹¹
- d) These national firearm statistics hold true for Georgia. “Firearms continue to be the leading cause of death for victims in reviewed cases, greater than all other methods combined.” (Georgia Domestic Violence Fatality Review Project, 2010)

13. Forms Attached:

- a) Form A: Defendant’s Written Acknowledgement of Firearms Prohibition
- b) Form B: Bond Conditions Form, Including Firearms Restriction Language (2(c) and (d))
- c) Form C: Plea Agreement, including acknowledgement of Firearm Restriction (para. 9)
- d) Form D: Sentencing Sheet, including specific firearms restriction (paragraph 11)
- e) Form E: Acknowledgement of Receipt of Firearm By Third Party

⁹ Georgia Commission on Family Violence, Georgia Coalition Against Domestic Violence (2011). 2010 Georgia Domestic Violence Fatality Review Annual Report and fatality counts.

¹⁰ Rothman E. F., Hemenway D, Miller M, and Azael D. Batterers' Use of Guns to Threaten Intimate Partners. *Journal of the American Medical Women's Association*, 2005. 60 (1): p. 62- 68.

¹¹ Shannon Frattaroli & Jon S. Vernick, *Separating Batterers and Guns*, 30 *Evaluation Rev.* 296,297 (2006)

Acknowledgement of Prohibition
Against Receiving, Shipping, Possessing, Transporting, or
Attempting to Purchase a Firearm or Ammunition

I _____, Date of Birth _____,
Full name (please print)

(Social Security number)

Acknowledge that I have read, or had read to me, the following and understand that:

- ____ I have been **convicted of a felony offense**, or
- ____ I have received First Offender Treatment for a felony offense, or
- ____ I have been **convicted of a misdemeanor crime of domestic violence**.

As a result of this action, I am prohibited by Georgia Law (O.C.G.A. §16-11-131 and §42-8-60 through 65) and Federal Law (18 U.S.C. 921 through 925) from receiving, shipping, possessing, transporting or attempting to purchase a firearm. This includes any handgun, rifle, shotgun or other weapon, which will or can be converted to expel a projectile by the action of an explosion or electrical charge. I also acknowledge that if I am a convicted felon or have been convicted of a misdemeanor crime of domestic violence, federal law prohibits me from receiving, shipping, possessing, transporting, or attempting to purchase ammunition. (18 U.S.C. §922(g)(9))

Possession of a firearm or ammunition means that I may not have a firearm or ammunition in my actual, physical control (i.e. in my pants pocket) or within my area of access and control (i.e. in the glove box of my car). I may not possess a firearm or ammunition either by myself or jointly with another person.

If I receive, ship, possess, transport, or attempt to purchase a firearm or ammunition, I will be guilty of a state and/or federal felony crime.

I understand that this document can be used as evidence in a court of law during probation revocation or criminal proceedings.

Signature

Witness

Date

Title of witness

IN THE MAGISTRATE COURT OF _____ COUNTY

STATE OF GEORGIA

State of Georgia

v.

Warrant or Warrantless
Arrest or Citation

Defendant

No. _____

SPECIAL CONDITIONS OF BOND

The above case having come before me and evidence having been heard and considered with regard to granting of bond, IT IS HEREBY ORDERED that said Defendant be admitted to bond under the following conditions:

- 1. That bond in the amount of \$_____ be allowed.
- 2. That as a condition of granting and continuance of said bond, the Defendant:

(a) Shall stay away, absolutely, directly and indirectly, by person and telephone, from the person, home, school and job of

subject to the following exceptions:

_____ [If none write "None."]

The relationship between the Defendant and the protected person(s) is:

___ spouse ___ ex-spouse ___ parents of same child
___ living together ___ lived together in past ___ child/ren

(b) Shall not harass, stalk, threaten, injure, put in fear of bodily harm, or otherwise contact in public or private places any of those person(s) named in (a) above.

(c) Because the Defendant represents a credible threat to the physical safety of the person(s) named in (a) above, the Defendant shall not possess any firearm or ammunition while free on bail and shall surrender any and all firearms now in Defendant's domicile or possession to the arresting agency within 24 hours from the time of release on bond.

(d) Shall not exercise the privileges afforded by a Georgia Firearms License (concealed weapons carry permit) at any time while free on bail.

(e) Shall obey the laws of this state. Defendant shall in no case behave violently toward nor offer to do harm to any person whatsoever.

That upon probative evidence of violation of the above terms and conditions of bond on the part of the Defendant, said bond shall stand REVOKED.

SO ORDERED this ____ day of _____, 200__.

Judge, Magistrate Court of _____ County

I acknowledge notice of the above condition of bond and realize that, upon breach of any of the conditions, my bond may be revoked, and that I do not have a legal right to a second bond after such revocation. I may also be subject to sanctions under the contempt power of the Court.

Date: _____

Defendant: _____

Form B

IN THE STATE COURT OF _____ COUNTY
STATE OF GEORGIA

State of Georgia

Case No: _____

v.

Defendant

RECORD OF DEFENDANT PRIOR TO ENTERING A PLEA

Under the penalty of perjury, the Defendant swears or affirms:

A. I am not under the influence of alcohol or drugs and I am not suffering from any mental or physical disabilities.

B. I acknowledge (waive) the receipt of a copy of the accusation and I understand the charge(s) stated in the accusation.

C. I understand:

1. Each misdemeanor offense carries a maximum penalty of 12 months in jail which may be spent on probation, reporting or non-reporting, with additional conditions including the performance of community service and payment of a fine up to \$1,000 (\$5,000 for misdemeanors of a high and aggravated nature) and the court may order the sentence of each such offense to run consecutively, that is one following the other;

2. If I violate any criminal laws of any governmental unit or any terms and conditions of probation, the Court may revoke all or part of the balance of the probation period and sentence me to serve that time in jail.

3. I have the right to be represented by an attorney and if I cannot afford an attorney, the court may appoint an attorney to represent me at no cost if I meet certain income guidelines;

4. A lawyer may be able to provide defense(s) to the charge(s) and/or assist in mitigating the sentence;

5. A not-guilty plea will be entered for me if I remain silent and I will be scheduled for a jury trial;

6. My guilty plea may result in deportation if I am not a citizen of the United States;

7. The judge is not required to follow the recommendations of the solicitor in imposing the sentence;

8. If the court intends to reject the plea agreement, the disposition of the case may be less favorable to me than contemplated by the plea agreement;

9. I am prohibited from possessing, receiving, shipping and transporting a firearm under federal law if I enter a guilty plea to a charge involving domestic violence;

10. All habeas corpus proceedings challenging a conviction must be filed one year from the date on which the conviction becomes final except in traffic cases where the time limitation is six months. See O.C.G.A. §9-14-42; §40-13-33.

D. I understand by entering a plea of guilty or nolo contendere, I waive:

1. The right to a speedy and public trial by jury;

2. The right to have State prove my guilt beyond a reasonable doubt;

3. The presumption of innocence.

4. The right to confront witnesses against me;

5. The right to subpoena witnesses;

6. The right to testify and to offer other evidence;

7. The right to assistance of counsel at all stages of trial; and

8. The right not to incriminate or testify or produce evidence against myself.

I freely and voluntarily enter my plea of _____ to the charge(s) against me. No promises, threats or inducements have been made to me by anyone.

_____ I am not represented by a lawyer. I understand the nature of the charges against me and the consequences of my plea. I freely and voluntarily waive the benefit of counsel and choose to represent myself in this plea proceeding.

Defendant Date

Solicitor Attorney Date

Print Name: Print Name and phone:

The Court finds the Defendant understands the nature and consequence of Defendant's action and the Defendant is freely and voluntarily entering into this plea. The Court is satisfied there has been a sufficient factual basis for the acceptance of this plea. As to *pro se* defendants, the Court has determined the Defendant understands Defendant's right to counsel and has knowingly, voluntarily and intelligently waived that right. IT IS HEREBY ORDERED the Defendant's plea be accepted.

This ____ day of _____, 20__.

Judge, State Court of _____ County

Form C

IN THE STATE COURT OF _____ COUNTY
STATE OF GEORGIA

State of Georgia
v.

Criminal Action No. _____

Defendant _____

PLEA

VERDICT

OTHER DISPOSITION

NEGOTIATED

GUILTY ON COUNT(S) _____

NOLO CONTENDERE ON
COUNT(S) _____

JURY

NON-JURY

GUILTY ON
COUNT(S) _____

NOT GUILTY ON
COUNT(S) _____

NOLLE PROSEQUI ORDER
ON COUNT(S) _____

DEAD DOCKET ORDER ON
COUNT(S) _____

Fine Amount _____

POPIDF: _____

Plus 10% _____

Jail Staffing: _____

Victims Assistance: _____

Mandatory assessment on all fines.

Photo Cost: _____

Joshua's Law: _____

Victim's Fund: _____

Brain & Spinal _____

Injury Trust Fund: _____

Total Amount Due: _____

Drug Assessment: _____

Crime Lab Fee: _____

Restitution: _____

Public Defender Fee: _____

Probation User Fee: _____

IT IS CONSIDERED, ORDERED AND ADJUDGED BY THE COURT:

Defendant is to serve a sentence of ____ hours/days/months, consisting of ____ hours/days/months of confinement, credit for ____ hours/days/months already served and the remainder on probation.

PROVIDED THAT:

() 1. The Defendant, having been granted the privilege of serving all or part of the above stated sentence on probation, hereby is sentenced to the following general conditions of probation: (A) not violate the criminal laws of any governmental unit; (B) avoid injurious and vicious habits-especially alcohol intoxication and narcotics and other dangerous drugs unless prescribed lawfully; (C) avoid persons or places of disreputable or harmful character; (D) report to the Probation Officer as directed and permit each Officer to visit him/her at home or elsewhere; (E) work faithfully at suitable employment insofar as may be possible; (F) not change his/her present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor; (G) support his/her legal dependants to the best of his/her ability.

() 2. Payment by defendant of the fine and costs in the amount of \$_____, and restitution in the stipulated amount of \$_____, shall be a condition of probation.

() 3. The Defendant shall perform ____ hours of community service at times and places specified by the Probation Office.

() 4. The Defendant shall report to the _____ County Jail on _____ at _____ a.m./p.m.

() 5. Defendant is to attend a Risk Reduction Program and/or undergo alcohol and/or drug evaluation and treatment as directed by the Probation Office, and/or attend AA/NA ____ times a week for _____ months, and show proof of same to the Probation Office.

- () 6. Defendant is to pay \$_____ per month supervision fee.
- () 7. Defendant may work off fine and fees by performing community service at the rate of \$_____ per hour.
- () 8. Defendant is to submit to random screening of blood, breath, urine or other bodily substances, at Defendant's cost.
- () 9. Defendant to complete approved Domestic Violence Intervention Program and to return to court on _____ at _____ a.m./p.m. to show compliance.
- () 10. Non-Reporting Probation once all conditions are met. However, Defendant shall report for no less than ____ months.
- () 11. Because the Defendant committed a misdemeanor of domestic violence, defendant shall not possess, receive, transport firearm(s) or ammunition as prohibited by federal law. The relationship between the Defendant and the victim is either spouse, ex-spouse, parents of a child in common, child and parent or guardian, cohabiting now or in the past as a spouse, parent, or guardian, or similarly situated to a spouse, parent, or guardian.
- () 12. Other: _____

SO ORDERED this ____ day of _____, 20_____.

 Judge, State Court of _____ County

NOTICE

I have read or have had read to me the above conditions of probation and the Court's General Conditions of Probation. I understand that my probation is an alternative to a jail sentence. I also understand that my probation may be revoke, I may be immediately arrested, and the balance of my probation served in jail if I fail to abide by these conditions.

 Defendant

Form D

IN THE _____ COURT OF _____ COUNTY
STATE OF GEORGIA

v.

No. _____

AFFIDAVIT OF RECEIPT OF THIRD PARTY TRANSFER

Before me, the undersigned personally appeared and after being duly sworn, deposes and says:

1. I, _____, residing at _____
_____.

whose date of birth is _____, hereby agree to receive by sale and/or transfer from the Defendant the following described firearms and/or ammunition (set forth make, model and serial number): _____.

2. I do not reside with the Defendant. My relationship to the Defendant is _____.

3. I agree not to return, loan, or sell the firearms and or ammunition listed in paragraph one or any other firearms or ammunition to the Defendant under any circumstances, without a court order allowing same. I understand that violation of this oath may result in contempt of court charges against me.

4. I further understand that it is a violation of federal law to transfer firearms or ammunition to the defendant. 18 U.S.C. 922 (d)(9) states:

“It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person... (9) has been convicted in any court of a misdemeanor crime of domestic violence.”

I understand that violation of this federal law could subject me fines or imprisonment for to up to 10 years.

I also affirm that I am not prohibited from owning firearms under either State or Federal law. Further Affiant Sayeth Naught.

Signature

Print Name

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20_____.

Notary Public
My commission expires: _____
Form E

F. APPENDIX F - PROTECTION ORDER INFORMATION SHEET

A. Information For Petitioners

About Your Temporary Protective Order

- Keep a copy of your order with you at all times.
- Call 911 if the person you took the order out against disobeys the order.
- For your protection, do not contact the person you took the order out against. It is very important to remember that this order cannot guarantee your safety.
- This is a court order and only a judge has the authority to dismiss it. This order, cannot be dismissed by you or the person you took it out against without going back before a judge.
- A violation of this order is a criminal offense. If the person you took this order out against violates it, he/she can be arrested and prosecuted.

About Your Safety

Leaving someone who is controlling, threatening and abusive is a very dangerous time for you and your children. It is important to talk to someone who has experience in helping individuals separate from abusive partners. They can help develop a safety plan for leaving that takes your unique situation into account. The judge can refer you to someone with that experience.

G. APPENDIX G - FAMILY VIOLENCE INTERVENTION PROGRAMS (FVIP)

Table Of Contents

A.	Differences Between Anger Management And Family Violence Intervention Programs (FVIPs).....	G:2
B.	General Information on Monitoring And Enforcing TPO Conditions....	G:3
1.	Overview.....	G:4
2.	Monitoring – General.....	G:4
3.	Monitoring by Law Enforcement.....	G:4
C.	Monitoring by the Court - See Appendix S- Judicial Compliance Hearings	G:5
	GCFV Contact Information	G:5
	State Certified Family Violence Intervention Programs.....	G:6

A. Differences Between Anger Management And Family Violence Intervention Programs (FVIPs)

The distinction between anger management programs and certified family violence intervention programs lies in differing philosophical tenets and is linked to our beliefs about what causes domestic violence. Proponents of anger management suggest the root of the problem lies in the perpetrator’s inability to control their anger. This program model contends that domestic violence occurs because the abuser is out of control, often responding to “triggers” in their environment. This places the therapeutic solution on controlling the anger to eliminate the abusiveness, and over-simplifies the complex nature of interpersonal violence and abusive outbursts. This approach is risky as a response to domestic violence because the victim becomes complicit in the abuse as a potential “trigger” source and the perpetrator lacks responsibility for their actions because they could not control their behavior. Alternatively, family violence intervention programs are designed to address issues of power and control because the proponents of this approach see the use of domestic violence by the perpetrator as a means of intimidation and coercion designed to control and gain power over the victim. This program model agrees that anger is present in domestic abuse situations, but simply controlling anger will not eliminate domestic violence, and violence may in fact be present in the absence of anger.

	Anger Management	Certified FVIPs
Who is served by the programs?	Perpetrators of stranger or non-intimate violence.	Family violence defendants and protective order respondents.
Relevant statutes		O.C.G.A. § 19-13-16(a) O.C.G.A. § 19-13-10 et. al. O.C.G.A. § 19-13-1
Are programs certified and monitored by a state agency?	No	<i>Yes. Certification is administered by the Georgia Commission on Family Violence (GCFV) and the Georgia Department of Corrections (GDC.)</i>
What is the emphasis of the intervention?	Anger management programs focus on anger as the impetus for violence (Gottlieb, 1999.) Violence is primarily seen as a reactionary behavior and as a result of a triggering factor.	<i>FVIPs are specifically designed to intervene with perpetrators of intimate partner violence. Violence is viewed as learned behavior that is primarily motivated by a desire, whether conscious or unconscious, by the abuser to control the victim (Adams, 2003). Violence is seen as one of many forms of abusive behaviors chosen by abusers to control their intimate partners and family members, including physical, sexual, emotional and economic abuse.</i>
How long are programs?	Usually 8 to 20 classes, with the average being 12 classes.	24 classes. The national average duration is 24 to 26 classes (Adams, 2003).

How much do programs cost?	Unknown	<i>\$28 is the average cost per class and the most common cost per class is \$20 in Georgia. FVIPs are required to have a sliding fee scale for defendants declared indigent by the court.</i>
Do programs contact victims?	No	Yes. FVIPs contract with DHR-certified or GCFV-approved domestic violence organizations to contact victims to provide referrals and safety planning.
Are group facilitators trained about domestic violence?	Subject to agency discretion.	Certification requires facilitators to have 80 hours of domestic violence training and 84 hours experience facilitating or co-facilitating family violence intervention classes.
How would I address grievances with this type of program?	Talk to the director of the program.	1) Talk to the director of the program. 2) Call GCFV.
What type of data collection occurs?	No statewide system.	GCFV and GDC have developed a statewide collection system.

Are Family Violence Intervention Programs appropriate for women perpetrators?

Preliminary research suggests women who might best be categorized as primarily victims of partner abuse can be distinguished from women who are more appropriately categorized as primarily perpetrators. Furthermore, female domestic violence offenders share many of the same characteristics as male offenders, including similar motives and psycho-social characteristics (prior aggression, substance use, personality disturbance, etc.). Perhaps most importantly, early research suggests that the issues addressed in FVIPs may have relevance for both male and female domestic violence offenders.

B. General Information on Monitoring And Enforcing TPO Conditions

“Courts can promote safety for battered women by issuing protection orders; contrary to popular opinion that they are ‘just a piece of paper,’ protective orders have been found to be effective, particularly when the court and the law enforcement systems enforce them.”

Julie Kunce Field, *Screening for Domestic Violence: Meeting the Challenge of Identifying Domestic Violence and Developing Strategies for those Cases*, Court Review, Summer 2002, at 10.

“Comprehensive provisions of restraining orders are only as good as their enforcement. To improve their enforcement, courts should develop, publicize, and monitor a clear, formal policy regarding violations. This might include follow-up hearings, promoting the arrest of violators, incremental sanctions for violators, treating violations as criminal contempt, and establishment of procedures for modification of orders.”

National Council of Juvenile and Family Court Judges (NCJFCJ), *Family Violence: Improving Court Practice*, 1990, pg. 21-22.

1. **Overview.**

O.C.G.A. § 19-13-16(a) is stimulating a lot of good discussion in Georgia about how TPO conditions may be monitored and enforced. Local Circuits and courts are developing innovative strategies to deal with monitoring and enforcing TPO conditions. These local solutions work because they mobilize the individual strengths of each system and community. Not all of the ideas below will work everywhere, but they are examples of the kinds of ideas and solutions that are emerging.

2. **Monitoring – General.**

- a) Both superior courts and law enforcement are charged with enforcing protective orders. *See* O.C.G.A. § 19-13-4(d). “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.”
- b) Make protection orders as clear, specific and detailed as possible to minimize doubt about respondent’s proscribed behavior ([See Appendix N – Paragraph A. - Issues for Consideration in Cases Involving Domestic Violence](#)). Include built-in consequences for noncompliance.
- c) Ensure that copies of protection orders are sent to the local sheriff by the Clerk of Superior Court as required by O.C.G.A. § 19-13-4(b).
- d) Ensure that protection orders are being sent to GCIC’s Georgia Protective Order Registry as required by O.C.G.A. § 19-13-52.
- e) Request that State probation and local law enforcement agencies develop training and policies to regularly use the Georgia Protective Order Registry.
- f) Ensure that law enforcement officers know that prompt service of TPOs on respondents is a top priority.
- g) Enforce valid orders from other states. VAWA’s Full Faith and Credit Provision. 18 USC 2265(a). A protection order from another State or tribe must be enforced “as if it were the order of the enforcing State or tribe” 18 USC 2265(a) if it meets the jurisdictional and notice requirements.

3. **Monitoring by Law Enforcement.**

- a) Law enforcement must arrest a TPO respondent for a contact violation. The respondent may be charged with the misdemeanor charge of violating a TPO (O.C.G.A. § 16-5-95) or with the felony charge of aggravated stalking (O.C.G.A. § 16-5-91.)

- b) To be charged as a misdemeanor, the TPO contact violation must be nonviolent.
- c) O.C.G.A. § 16-5-90(c). Upon the second conviction, and all subsequent convictions, for stalking, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one year or more than ten years.

C. Monitoring by the Court - See [Appendix S-Judicial Compliance Hearings](#)

D. GCFV Contact Information
Contact: Greg Loughlin, Executive Director, Georgia Commission on Family Violence at 404-463-6230 or www.gcfv.org for program staff information.

The Institute of Continuing Judicial Education's library has copies of Judicial Review Hearings in Domestic Violence Cases in video and DVD for loan.

State Certified Family Violence Intervention Programs

For current certified programs listed by county and circuit please log on to

http://www.gcfv.org/index.php?option=com_content&view=article&id=81&Itemid=13

H. APPENDIX H - IMMIGRANTS AND REFUGEES

Table Of Contents

A.	Introduction.....	H:3
B.	Basic immigration terminology & documentation	H:3
C.	Work authorization eligibility.....	H:7
D.	Grounds of deportability	H:7
1.	Commission of crime involving moral turpitude (CIMT)	H:8
2.	Multiple criminal convictions	H:8
3.	Commission of aggravated felony	H:8
4.	Controlled substance convictions	H:9
5.	Firearms convictions.....	H:9
6.	Domestic violence.....	H:9
E.	Sentencing considerations.....	H:9
F.	Immigration relief for battered women.....	H:9
1.	Violence Against Women Act (VAWA)	H:9
2.	T (Trafficking) visas	H:9
3.	U status.....	H:10
4.	Special immigrant juvenile status	H:11
5.	Refugees & political asylees.....	H:12
G.	Illegal Immigration Reform and Enforcement Act.....	H:13
H.	Hague Convention: international kidnapping	H:14
I.	Language access to interpreters in domestic violence cases.....	H:16
J.	Additional safeguards for protective orders & bond orders.....	H:16
K.	Georgia Security & Immigration Compliance Act	H:18

L.	VAWA confidentiality.....	H:18
M.	Resources for battered refugee & immigrant women.....	H:20
	1. Refugee & immigrant battered women programs in Georgia.....	H:20
	2. National programs.....	H:22

A. INTRODUCTION TO IMMIGRANTS AND REFUGEES

Foreign nationals are not immune from domestic violence, and their non-citizen status often makes domestic violence victims even more vulnerable. Yet, there are several important factors that courts can consider to ensure their rights and safety. The courts can be aware that immigration status, or lack thereof, is often used as a tool of family violence. Abusive U.S. citizens or lawfully present non-citizens frequently threaten domestic violence victims that if they call the police, they will be report them to the immigration authorities to have them deported or divorce them to render them out of status (where their status is marriage-based). Moreover, foreign nationals involved in domestic violence cases may not have access to their documents or may have been falsely accused. Language and communication difficulties can compound this problem. Further, the violence may occur between intimate partners, parents, in-laws or other family members.

Please find below some basic immigration information. Immigration law is complex, and the information below does not cover all possible scenarios. However, this information should provide some basic guidance to help avoid the abuser's using a court's lack of knowledge about immigration as a method to perpetuate abuse. It is also extremely important that foreign nationals are advised to consult an attorney experienced in immigration law, as this area of law is complex and changes frequently.

B. BASIC IMMIGRATION TERMINOLOGY AND DOCUMENTATION

1. **Immigrants and Non-Immigrants.** There are two types of non-citizens in the U.S: immigrants and non-immigrants. Immigrants are here on a permanent basis and non-immigrants are here on a temporary basis.
 - a) **Immigrants** Many immigrants are lawful permanent residents (also called LPR's or greencard holders). A person can become an LPR through: a family relationship; their employer's sponsorship; the diversity lottery; certain substantial business investments in the U.S.; extraordinary/ exceptional ability in certain fields; or a grant of asylum status, refugee status, or relief in immigration Court. LPR's may reside in the United States permanently, may work for any employer or themselves, and may travel in and out of the United States, as long as they do not abandon their U.S. domicile. LPR's may be subject to removal (or deportation) if they become subject to grounds of inadmissibility or deportability.
 - b) **Non-immigrants** are in the U.S. on a temporary basis. They include visitors, students, employees, certain crime victims. A derivative spouse of an employment-based nonimmigrant or a foreign student would fall out of status if their spouse divorced them.

2. **Obtaining LPR status through marriage**

- a) A common misconception is that if someone marries a U.S. citizen, they automatically become a U.S. citizen. This is far from the truth. Only some spouses of U.S. citizens are eligible to become LPR's. Moreover, those who do qualify must be sponsored by their spouse through numerous applications to US CIS. Generally, a U.S. citizen can file for LPR status for their spouse if they entered the U.S. lawfully. Others must apply with the U.S. consulate abroad, but may be subject to lengthy bars to approval (e.g. 10 years) if they have been in the U.S. unlawfully. For example, if the foreign spouse entered the U.S. by walking across the border or otherwise entered without inspection, they cannot generally obtain LPR status in the U.S. despite marrying a U.S. citizen or having U.S. citizen children. They would be required to leave the U.S. and would potentially be barred from returning for three to ten years.
 - b) **Conditional permanent residence:** Foreign nationals married to their U.S. citizen spouses for less than two years at the time their greencard application is approved receive two-year conditional permanent resident status. Conditional LPR's are required to affirmatively petition US CIS to remove this condition during the 90 day window before their conditional residence expires. This petition must be signed by both parties and requires proof that the couple remains together in a *bona fide* marriage. If the couple is no longer living in a *bona fide* marital relationship, the petition may be denied. There are waiver provisions permitting a foreign national to file this application without a signature from the U.S. citizen (e.g. where there is proof of domestic violence, extreme hardship, or divorce but a *bona fide* marriage was intended at the time of marriage).
 - c) Some foreign nationals enter the U.S. on a fiancé visa and get married to their U.S. citizen spouses in the U.S. Others marry abroad and enter the U.S. as LPR's after obtaining immigrant visas at the U.S. consulate abroad.
3. **Asylee/Refugee** – One granted status in the U.S. based upon their fear of returning to their home country because of past persecution and/or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Most are eventually eligible to file for permanent residence.
 4. **Temporary Protected Status (TPS)** - A status allowing temporary residence and employment authorization to nationals of foreign countries

that have been appropriately designated by the government based upon extraordinary and temporary political or physical conditions. TPS applicants must meet the specific criteria established for TPS for their particular country.

5. **Visa Waiver Program** - A program under which nationals of certain countries may enter the United States for up to 90 days (as visitors for business or pleasure) without first obtaining a visa from a U.S. embassy or consulate. Generally, persons who enter under this program cannot extend or change to another status once entered the United States.
6. **Employment Authorization Document (“EAD”)**– A US CIS issued Form I-688B document, provided to some (but not all) foreign nationals authorized to work in the United States. EAD’s can be issued to individuals with a specific visa status and to other designated groups (e.g. students authorized to work, individuals with specific immigration applications pending, Temporary Protected Status grantees, Deferred Action or DACA grantees, asylees/refugees). It is important to note that this is only one form of documentation to establish work authorization.
7. **Visa** - A visa is an official endorsement, issued by a U.S. consulate, certifying that the bearer has been examined and is permitted to seek admission to the United States at a designated port of entry during the visa’s validity. A visa does not grant the bearer the right to enter the United States; it merely gives one the eligibility to seek admission at a port of entry. Visas can be issued for extensive periods of time to be used for multiple entries. There are immigrant visas and non-immigrant visas. **An expiration of a visa does not reflect the expiration of status in the U.S.** For example, many visitor visas are valid for 10 years, but that does not mean that the visa holder may enter and remain in the U.S. for ten years.
8. **I-94** – This white card issued by US Customs and Border Patrol upon entry into the U.S. indicates when one’s status expires. It is typically stapled to the passport. If a foreign national changed their status in the U.S., their I-94’s may be a light green color and may be attached to an approval notice. **The period authorized for stay is stamped on the I-94 and may be less than the period of validity of the visa, or may be longer than the period during which the visa itself is valid. It is important to understand that it is the I-94, and not the visa in the passport, that determines status and its validity as to time and purpose.** An alien is not out of status if he or she was properly admitted pursuant to a valid visa and the visa has expired, provided the person is still within the authorized period of stay indicated on Form I-94. Moreover, where “D/S” is indicated instead of a date on the I-94, it means that the foreign national is in status for the duration of their program (and is a common annotation provided for foreign students). Finally, some

lawfully present foreign nationals are not issued I-94's (e.g. some Canadians, lawful permanent residents).

10. **FOIA** – The Freedom of Information Act allows one to file a “FOIA” request for copies of documents filed with USCIS or other immigration offices. Unfortunately, obtaining a response to a FOIA request can take a very long time (several months to over a year). Some information may be redacted from the FOIA response (including information pertaining to family members of the requestor).
11. **Undocumented Immigrants** – an immigrant who does not have legal status to be in the United States. Some undocumented immigrants, however, may have claim to an immigration status through pending or potential applications. Undocumented immigrants do not generally include those who lack a specific visa status if they remain in a period of stay authorized by the U.S. Attorney General. Also, being visa-exempt does not make one undocumented. Canadians for example, are simply admitted to the U.S. by showing their Canadian passports without a visa, and they often don't have an I-94.
12. **Deferred Action**
 - a. Deferred Action refers to an administrative decision by the Department of Homeland Security (DHS) to defer any removal (deportation) proceedings for an individual. It does not mean that the individual has acquired a specific visa status. Rather, it is a determination by DHS the individual is low priority for removal. This is typically done for humanitarian purposes and renders the recipient eligible for work authorization upon demonstration of a need to work.
 - b. **Deferred Action for Child Arrivals (DACA)**

In June 2012, President Obama and the Secretary of DHS implemented a program referred to as DACA. The program's purpose was to formalize the process to request deferred action for a special class of young people who came to the U.S. as minors. A DACA approval does not grant any specific status. The DACA decision simply formalizes a decision not to remove the individual and provides them with authorization to work, attend school, obtain a social security number, and to obtain a driver's license. DACA applicants must meet the following requirements:

 - (i) Under the age of 31 as of June 15, 2012 (those born June 16, 1981 or later);
 - (ii) Came to the United States before reaching 16th birthday;
 - (iii) Continuously resided in the United States since June 15, 2007, up to the present time;

- (iv) Physically present in the United States on June 15, 2012, and at the time of making your request;
- (v) Entered without inspection before June 15, 2012, or lawful immigration status expired as of June 15, 2012;
- (vi) Currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
- (vii) Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

C. WORK AUTHORIZATION ELIGIBILITY

1. There is no single document constituting a “work permit.” Some forms of lawful status allow for work authorization and others don’t. Some who are authorized to work are provided an employment authorization card (“EAD”) and others are not. There are various documents that foreign nationals may present to evidence work authorization.
2. Virtually all EAD’s are limited as to time.
3. Some individuals with EAD’s may have pending removal (deportation) proceedings or even a removal order.
4. The majority employment authorization for non-immigrants is limited as to employer or nature of employment. For example, if they lose their job, they may be out of status that day. Changing their job or job location may even constitute a violation of status. Most non-immigrants authorized to work have an approval notice or visa and I-94 as evidence of employment authorization, but others do have EAD’s.
5. Some non-immigrant derivative spouses are not eligible for work authorization, which creates additional hardships for domestic violence victims. For example, if they leave their abuser, they may not be able to earn a living to support themselves or their children. However, the **Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005)** Tit. VII, Pub. L. No. 109-162 **includes a provision that provides eligibility for certain abused non-immigrants to file special requests for employment-authorization. Proposed regulations on this rule were issued in December 2012, but US CIS has still not set up a formal procedure for these applications to be accepted.**

D. GROUNDS OF DEPORTABILITY

Certain arrests, charges, violations of protective orders or convictions can render a foreign national deportable or ineligible for various immigration status. Arrests and convictions, in the context of domestic violence, may even lead to victims being deported (even when they have a green card or other legal immigrant status). This may result in deportation to countries where the victim will have little or no access to counseling, support, or court/police protection. Moreover, some countries do not honor U.S. orders. Deportation of a batterer may also have a detrimental affect on the victim, especially if the victim does not have strong language capabilities, needs child support or does not have work authorization.

Please find below a sampling of grounds that may be used to remove or deport someone from the U.S. and/or deny their immigration application or visa. This is not an exhaustive list:

1. **Commission of “Crime Involving Moral Turpitude” (CIMT)**
 - a) Crimes where conduct is “inherently base, vile and contrary to the accepted rules of morality”, moral turpitude often involves evil intent. Interpretation of CIMT’s are largely derived from case law and crimes constituting CIMT’s are quite broad. The entire record of conviction may be examined in a CIMT determination.
 - b) Examples:
 - (i) Assault with intent
 - (ii) Aggravated Assault
 - (iii) Child Abuse
 - (iv) DUI when license already suspended
 - (v) Robbery & Theft Crimes
 - (vi) Prostitution
 - (vii) Crimes Involving Fraud
 - (viii) Shoplifting
 - (ix) Domestic Violence
2. **Commission of Multiple Criminal Convictions (2 or more CIMTs)**
 - a) Any two crimes involving moral turpitude not arising out of single scheme of criminal misconduct
3. **Commission of Aggravated Felony**
 - a) Actual felony conviction not necessary and jail time not necessarily involved
 - b) Misdemeanors can be aggravated felonies
 - c) Examples:
 - (i) Controlled Substance Offenses
 - (ii) Crime of Violence for which term of imprisonment is at least 1 year in the original sentence (not what was actually served)
 - (iii) Theft Offense for which term of imprisonment at least 1 year in the original sentence (not what was actually served)

(iv) Fraud Offense where loss to victim exceeds \$10,000.

4. **Controlled Substance Convictions**

5. **Firearms Convictions**

6. **Crimes related to Domestic Violence**

- a) Crime of Domestic Violence
- b) Crime of Stalking
- c) Crimes of Child Abuse, Child Neglect or Child Abandonment
- d) Violation of Protective Orders

E. **Sentencing Considerations**

- 1. A sentence to confinement is considered confinement for immigration purposes, even if probated or suspended.
- 2. For some crimes, a twelve-month confinement sentence (even if probated) can make a misdemeanor crime an aggravated felony (even if no time is actually served in jail).
- 3. Crimes can become “crimes of domestic violence” if committed against a person who is a former or current spouse, an individual with whom the person shares a child in common, or by an individual similarly situated to the person’s spouse under the domestic or family violence laws of the jurisdiction. For example, a simple battery is not a CIMT, but if committed against a spouse, will be considered a crime of domestic violence. Also, while simple battery may not be a CIMT it could be an aggravated felony in some circumstances.

F. **Immigration Relief for some Domestic Violence Victims**

1. **Violence Against Women Act (VAWA)**

- a) Applies to males and females
- b) Allows certain qualified abused spouses, children and parents of United States citizens and legal permanent residents to self-petition for legal permanent residence.
- c) Requires proof of abuse, such as protective orders, indictments, accusations after indictments, police reports, arrest records, shelter records, counselor’s statements.
- d) Must file within 2 years of the divorce.
- e) Allows abused conditional residents to extend their two-year conditional status without participation from abusive spouse.

2. **T (Trafficking) Visas**

- a) Allows persons who can show in the application for a visa that they
 - (i) have been victims of trafficking, debt bondage or slavery
 - (ii) Are physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking;

- (iii) agree to assist in the investigation or prosecution of the traffickers; and
 - (iv) would suffer unusual and severe harm if removed from the United States.
- b) After three years, victim may apply for permanent residence if s/he has had T visa for three years, has complied with reasonable requests for assistance by law enforcement, and possesses good moral character.

3. **U status**

- a) This visa status provides temporary status for victims of certain crimes enumerated in the statute, where the crime resulted in physical injury or emotional trauma to the victim, and where the victim is, was or could be helpful to the investigation or prosecution of an enumerated crime.
- b) The accused does not need to be prosecuted or convicted for the victim to qualify.
- c) The U visa was intended to help law enforcement investigate and prosecute certain crimes, such as domestic violence, sexual assault, and trafficking.
- d) After three years in U status, the applicant may be eligible to file for a green card.
- e) Certain spouses, children and some siblings and parents may be eligible for derivative status.
- f) Requirements:
 - (i) Applicant is the victim of either: a crime enumerated in the U visa statute/regulations; an attempt/conspiracy/solicitation to commit such a crime; or an activity similar to an enumerated crime. Qualifying crimes include: rape, torture, prostitution, sexual exploitation, incest, trafficking, domestic violence, sexual assault, abusive sexual contact, sexual exploitation, female genital mutilation, being held hostage, peonage, slave trade, involuntary servitude, kidnapping, abduction, manslaughter, murder, blackmail, witness tampering, obstruction of justice, unlawful criminal restraint, false imprisonment, felonious assault).
 - (ii) Applicant has information about the relevant criminal activity.
 - (iii) Applicant has suffered substantial physical or mental abuse as a result of the crime(s).
 - (iv) Applicant is, was **or** could be helpful to the investigation or prosecution of the crime(s).
 - (v) The relevant crime occurred in the US or violated US law.
 - (vi) Applicant must obtain “certification” with the assistance of “a certifying agency”, which includes judges,

federal/state/local law enforcement officers, probation officers, district attorneys, or other officials who might have an investigative role in the criminal justice system. The certification must verify that the applicant is, was or could be helpful to the investigation or prosecution of the crime. There is a U visa certification form created for this purpose: Supplement B to Form I-918, available at <http://www.uscis.gov>., which must be signed by the person designated to this task by the head of a “certifying agency.” It is important to keep in mind that the certification alone will not guarantee U visa approval, but it is a **required** step in the process.

- (vii) The U visa status covers some indirect victims (e.g. certain family members of murder/manslaughter victims or incapacitated/incompetent victims).
- (viii) Excludes one who is culpable for the criminal activity specifically at issue in the U visa application. Those who may have engaged in separate unlawful activity, however, may nevertheless qualify. For example, a woman who agrees to be smuggled into the US but is later held in involuntary servitude will not be excluded from U visa protection as a victim of involuntary servitude, even where she may have some culpability by participating willingly in the smuggling crime or by entering illegally into the US.

4. **Special Immigrant Juvenile Status (SIJS)**

- a) An avenue for providing legal status to children who are undocumented and have been abused, abandoned and neglected by their parents.
- b) Based upon changes made under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) an eligible SIJ alien now includes an alien: (1) who has been declared dependent on a juvenile court; (2) whom a juvenile or State court has legally committed to, or placed under the custody of, an agency or department of a State; or (3) who has been placed under the custody of *an individual or entity appointed by a State or juvenile court*.
- c) Thus, petitions filed by the juvenile that include juvenile court orders legally committing a juvenile to or placing a juvenile under the custody of an individual or entity appointed by a juvenile court are now eligible. For example, a petition filed by an alien on whose behalf a juvenile court appointed a guardian may be eligible. Note that if a state or an individual appointed by the state is acting *in loco parentis*, such a state or individual is not considered a legal guardian for purposes of SIJ eligibility.

- d) Previously, the juvenile court needed to deem a juvenile eligible for long term foster care due to abuse, neglect or abandonment. Under the TVPRA 2008 modifications, the juvenile court must find that the juvenile's *reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law*. In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care and replaced it with a requirement that the juvenile court find reunification with one or both parents not viable. If a juvenile court order includes a finding that reunification with one or both parents is not viable due to *a similar basis found under State law*, the petitioner must establish that such a basis is similar to a finding of abuse, neglect, or abandonment.
- e) Applicant must remain a "child" on the date the SIJS application is filed with US CIS.
- f) A petitioner is still required to demonstrate that he or she has been the subject of a determination in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.

5. **Refugees and Political Asylees**

- a) Refugees and asylees are people who have a well-founded fear of persecution due to their race, religion, nationality, membership in a particular social group, or political opinion.
- b) Poverty, alone, is not considered persecution, therefore people coming to the United States solely to escape poverty are not refugees or asylees.
- c) The fear of persecution must be both objective and subjective. The social and political conditions must exist in the person's home country so that fear of persecution is possible and reasonable, and the applicant, him or herself, must have a personal, reasonable fear of persecution.
- d) The fear may be based on past persecution, or because of a fear of future persecution.
- e) Refugees' fear of persecution is evaluated before they enter the United States. If they succeed in proving such "fear", they are invited to come to the US by our government. They are given housing vouchers and some social welfare assistance during their first three months in the US.
- f) Asylees find their own way to the United States, and ask the US government for protection once they are here. They can either apply affirmatively for asylum with U.S. Citizenship and

- Immigration Services, or file their application before an immigration judge in removal proceedings.
- g) Once status is granted, both asylees and refugees are given immediate permission to work in the United States. They may apply for legal permanent residence after they have had their refugee or asylee status for a year.
 - h) This form of relief is often difficult to obtain for domestic violence victims, depending on the circumstances and home country.

G. THE ILLEGAL IMMIGRATION REFORM AND ENFORCEMENT ACT OF 2011 (HB87)

1. There are two sections of this law that concern victims of domestic violence. They have both been challenged in the 11th Circuit, where one was upheld and the other struck down. *Georgia Latino Alliance for Human Rights, et al v Nathan Deal et al*, No. 11-13044 (11th Cir.,8/20/2012).

a) Section 8, which was upheld, authorizes Georgia law enforcement officers, when they have probable cause that someone has committed a crime, to check that person's immigration status if they are unable to produce adequate identification to prove citizenship, O.C.G.A. § 17-5-100(b). The law includes an exception that could apply to victims of domestic violence who are seeking help from law enforcement:

(f) No person who in good faith contacts or has contact with a state or local peace officer or prosecuting attorney or member of the staff of a prosecuting attorney for the purpose of acting as a witness to a crime, to report criminal activity, or to seek assistance as a victim to a crime shall have his or her immigration status investigated based on such contact or based on information arising from such contact. O.C.G.A. § 17-5-100(f).

b) Section 7, which codifies three separate crimes for interactions with an “illegal alien,” was struck down by the 11th Circuit on preemption grounds. The law would have made it a criminal offense to “transport or move an illegal alien ..while committing another criminal offense”, conceal, harbor or shield an illegal alien from detection, or induce an illegal alien to enter Georgia, O.C.G.A. §§16-11-200(b), 16-11-201(b), and 16-11-202(b).

- 2. There is nothing in HB 87 that authorizes law enforcement to check the immigration status of a person filing a civil legal action or attending a civil hearing. Law enforcement may verify a person's immigration status only if they are being investigated for a criminal offense. As long as a victim is only involved with a civil legal action, there should be no basis for law enforcement to check their immigration status.
- 3. Likewise, undocumented immigrants remain eligible to seek protective orders related to family violence and stalking order

H. HAGUE CONVENTION: INTERNATIONAL KIDNAPPING

This provides an important means of relief for a victim of domestic violence who fears that the abusing parent will kidnap the child on the pretext of taking the child out of the country on visits. Although more than 70 countries have signed on to the Hague Convention at this time, there are still a number of countries that have not.

Outline of custody issues incident to domestic violence under Hague Convention:

1. **Custody battles incident to domestic violence:**
 - a) Relevant law:
 - (i) Hague Convention-U.S. party
 - (ii) U.S. version: International Child Abduction Remedies Act (“ICARA”)
2. **Policy of Hague Convention:**
 - a) Prompt return of children wrongfully removed to a foreign state; and
 - b) securing that the rights of custody and access afforded to one parent are respected by the other.
3. **Central legal issue affecting breadth of Hague Convention in a custody dispute:** a party’s removal of a child is considered “wrongful” under the Hague Convention only if both countries at issue are contracting states as of the date of the child’s removal.
 - a) The child must also be under sixteen years of age.
4. **Caveat:** a court presiding over a Hague Convention issue has no subject matter jurisdiction to decide merits of a custody dispute.
 - a) Sole issue before court is whether removal of a child from one country to another is wrongful.
 - (i) Advantages to parent victim of domestic violence who suffers removal of child to another country: removing parent cannot litigate custody issue in foreign state’s court, and take advantage of any favorable law in the foreign state on questions of custody;
 - (ii) Disadvantage: victim parent cannot avail him/herself of a forum with potentially beneficial custody law by simply fleeing from abuser in the original state to another state and taking the child with him or her.
5. Once the prerequisites of “wrongfulness” are established, i.e., the presence of two contracting States and a child who is under sixteen years of age, then the removal is evaluated under the definition of “wrongfulness.” A removal is “wrongful” if:
 - a) it is done in breach of custody rights of a parent, under the law of the State in which child was “habitually resident” immediately before the removal or retention; and
 - b) At time of removal or retention, those rights were actually exercised, or would have been so exercised but for the removal or retention.

6. **“Habitual residence”**: place where a child has been physically present for an amount of time sufficient for acclimatization and which has a degree of settled purpose from the child’s perspective. *Feder v. Evans-Feder*, 63 F.3d 217 (1995).
 - a) Focus on the child and analysis consists of child’s circumstances in particular place, plus parents’ present, shared intentions regarding the child’s presence there.
7. But, federal appeals decision adopted by 11th Circuit: *Mozes v. Mozes*, 329 F.3d 1067 (9th Cir. 2001). Focuses more on the intention of the parents. Relevant areas of analysis under *Mozes*:
 - a) Family jointly taking all steps associated with abandoning habitual residence in one country to take it up in another.
 - b) Child’s relocation to another country is initially “clearly intended to be of a specific, delimited period,” then one parent changes his or her mind and decides to make the move permanent.
 - c) Parents have agreed to allow a child to stay in a new country for an indefinite period.
 - d) If parental intent is unclear, level of child’s acclimatization in new country may be evaluated by court to determine whether shift in habitual residence should be undisturbed or changed.
8. If American court finds that petitioner in Hague Convention case fails to show by a preponderance of the evidence that a child has been removed from his or her habitual residence, Hague Convention is inapplicable and no return order of child is set. (Could be detrimental to victim of domestic violence losing child.)
9. **Custody rights under Hague**:
 - a) Petitioner has burden to show that removal of child from one country to another is in breach of his or her custody rights:
 - (i) Under the law of State in which the child was habitually resident immediately before the removal or retention.
 - b) Rights of custody not limited to court ordered custody; but pre-order scenarios as well. Example: deteriorating marriage may lead one party to consider leaving country and take child with him or her.
10. **Administrative vehicles by which to bring Hague Convention petition**:
 - a) Each contracting state must establish a Central Authority with power to accept Hague Convention applications requesting return of a child:
 - (i) Must apply to Central Authority of child’s habitual residence or Central Authority of any other Contracting State for assistance.
 - b) U.S. has designated the National Center for Missing and Exploited Children as Central Authority.
 - c) If child has been wrongfully removed from the U.S. to a foreign country, the U.S. State Department acts as Central Authority.
11. Petitioner may file Hague Convention petition in either state or federal court in the place where the child is located at the time the petition is filed.

I. LANGUAGE ACCESS TO INTERPRETERS IN DOMESTIC VIOLENCE CASES

There are both federal and state guidelines that require access to interpreters for foreign language speakers.

1. Title VI of the Civil Rights Act requires any agency receiving federal funds to provide meaningful access to foreign language speakers.
2. The precise requirement - i.e., what reasonable steps are needed to provide that meaningful access - is determined by a four-factor balancing test:
 - a) Number of Limited English Proficiency (LEP) persons eligible to be served or encountered;
 - b) Frequency of contact with LEP persons;
 - c) Nature and importance of the program to the LEP individuals; and
 - d) Resources available, including costs of providing LEP services.
3. The relevant statute provides:
 - a) Interpreters should be provided at no cost to the victim in protective order hearings. 15-6-77(4)
 - b) No fee or cost shall be assessed for any service rendered by the clerk of superior court through entry of judgment in family violence cases under Chapter 13 of Title 19 or in connection with the filing, issuance, registration, or service of a protection order or a petition for a protection order to protect a victim of domestic violence, stalking, or sexual assault. A petitioner seeking a temporary protective order (TPO) or a respondent involved in a temporary protective order hearing under the provisions of Code Section 19-13-3 or 19-13-4 shall be provided with a foreign language or sign language interpreter when necessary for the hearing on the petition. The reasonable cost of the interpreter shall be paid by the local victim assistance funds as provided by Article 8 of Chapter 21 of this title. The provisions of this paragraph shall have control over any other conflicting provisions of law and shall specifically have control over the provisions of Code Sections 15-6-77.1, 15-6-77.2, and 15-6-77.3.
4. According to Supreme Court of Georgia court proceeding must be tape recorded if a certified interpreter is not being used.

J. ADDITIONAL SAFEGUARDS FOR PROTECTIVE ORDERS AND BOND ORDERS

Here are some examples of items that can be added to the temporary protective order (TPO) to help protect foreign national domestic violence victims but also to obtain what is necessary to prove their status. Many of these provisions are already available as an additional Appendix B of Bond Orders throughout the State of Georgia.

You can ask that the abuser:

1. Give victims access to, or copies of, any documents supporting their application. Have victims consult an immigration attorney to find out which documents should be requested and how to find out his or her immigration status.

2. Not withdraw the application for temporary or permanent residency, which had been filed on the victim's behalf.
3. Take any and all actions necessary to ensure that the victim's application for temporary or permanent residency or conditional permanent residency is approved.
4. Not contact Department of Homeland Security (DHS), the Consulate, or the Embassy about the victim's status. This is useful when abusers try to prevent victims from obtaining legal residency or legal status.
5. Immediately turn over victim's personal property. If the court orders this, it is advised that a law enforcement escort be dispatched immediately with the victim to get the documents and items. If the court waits, the batterer may destroy documents needed for the victim to obtain immigration status.
6. Sign a form to obtain the abuser's birth certificate or provide a copy of his or her green card or U.S. passport. Oftentimes proof of the abuser's citizenship or permanent resident status is needed.
7. Not remove the children from the court's jurisdiction and/or United States. Obtain a court order that the abuser turn over the children's passports to the victim or the court. Send a copy of the court order to the U.S. Dept of State Office of Passport Services. This should keep the abuser from kidnapping the children.
8. Sign a statement that will also be signed by the victim and the judge to inform the relevant embassy or consulate that they should not issue a visitor's visa or any other visas to the child of the parties.
9. Pay any fees associated with the petitioner's and/or children's immigration cases.
10. Send copies to respective consulates, embassies, passport office, and airlines to prevent issuance of a visa.
11. Sign a prepared Freedom of Information Act (FOIA) form with the result of this form being sent to the victim's attorney. This helps when the abuser has been keeping information from the victim about the status that may have been filed on the victim's behalf.
12. State information about previous marriages and divorces and whether the abuser has the copies of the decrees. If the abuser has the copies, ask that they be turned over to the battered spouse. Proof of termination of previous marriages is often required.
13. There is always the possibility of abuser's taking victims and their children out of the country to avoid their cooperation with law enforcement or the courts, please consider language in protective orders and bond orders to prevent such action. This is something you might want to screen for when writing up orders. The abuser may also leave the country so they don't have to face the charges or consequences.

K. GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT (SB529)
AND HOW IT IMPACTS IMMIGRANT VICTIMS OF DOMESTIC VIOLENCE.

This state law was passed in June 2006 in order to regulate and restrict immigrants in the state of Georgia. Many aspects of this law have unintended consequences for battered immigrants because such persons will be afraid to go to police for assistance out of fear that their immigration status will be verified and they will be removed/deported.

1. Police must verify immigration status for every person who is confined on a felony or DUI charge.
2. Prohibits unauthorized people (ex. Notarios) from providing immigration services. Many “notarios” take advantage of vulnerable immigrants by charging them for services that they are not authorized to provide. As a result, a battered immigrant might think that the appropriate paperwork had been filed only to find out that the paperwork was not filed properly or not filed at all.
3. A person convicted of human trafficking shall be guilty of a felony crime.
4. By July 2009, all public employers and contractors must verify status of newly hired employees.
5. State agencies must verify immigration status of any applicant for benefits over the age of 18. This has been adversely affecting children who have been filing for SIJS status because of the way different jurisdictions have been interpreting the word “benefits”. A broad application of this term may prevent many battered immigrants or children from coming forward to apply for support for which they are eligible. We believe that the word “benefits” applies to State funded benefits that most immigrants have not been granted or for which they are not eligible. It is important to note that certain federally funded services such as shelter, victim compensation, Violence Against Women funded services, interpretation and others are exempt from this requirement.

L. VAWA CONFIDENTIALITY

VAWA confidentiality protects immigrant victims from being picked up by immigration, or law enforcement who have immigration duties, if they are relying on information provided by the abuser. 8 U.S.C. § 1367 (commonly referred to as the §384 confidentiality provision) prohibits disclosure of ANY information relating to an foreign national who is a VAWA self petitioner, VAWA cancellation, T or U visa applicant. The prohibition remains in effect until “the application for relief is denied and all opportunities for appeal of the denial have been exhausted.”

1. VAWA Confidentiality provides three types of protection to immigrant victims of violence, including battered immigrants and immigrant victims of sexual assault, trafficking and other U-visa-listed crimes. Specifically, VAWA:
 - a) Protects the confidentiality of information provided to the Department of Homeland Security, the Department of Justice or the Department of State by an immigrant victim in order to prevent abusers, traffickers and other perpetrators from using the

information to harm the victim.

- b) Prohibits immigration enforcement agencies from using information provided solely by an abuser, trafficker U visa crime perpetrator, a relative, or a member of their family, to take an adverse action regarding admissibility or deportability against an immigrant victim, without regard to whether a victim has ever filed for VAWA related immigration relief or even qualifies to file for it.
 - c) Prohibits enforcement actions at any of the following locations: domestic violence shelter; victim services program; family justice center; supervised visitation center; or courthouse where the victim makes an appearance in connection with a protection order case, a child custody case or other civil or criminal case related to domestic violence, sexual assault, trafficking, or stalking where the alien has been battered or subject to extreme cruelty. If any part of an enforcement action takes place at any of these locations, DHS must disclose this fact in the Notice to Appear and in immigration court proceedings, and must certify that such action did not violate section 384 of IIRAIRA.
2. In addition to Department of Homeland Security (DHS), VAWA confidentiality provisions apply to family court officers, criminal court judges, and law enforcement officers.
 3. VAWA's confidentiality provisions require certification that the confidentiality provisions have been complied with when enforcement actions are taken at specified locations, such as domestic violence shelters, rape crisis centers, or courthouses.
 4. VAWA's confidentiality provisions prohibit DHS from using information from particular individuals as the sole basis for arresting and charging an alien with removability.
 5. VAWA's confidentiality provisions generally prohibit third-party disclosure of any information relating to an alien who is an applicant for relief under VAWA.
 6. VAWA's confidentiality protections prohibit an abuser from inquiring into the existence or substance of any VAWA, T-Visa and U-Visa application for relief. VAWA confidentiality is a protection to be asserted by an immigrant victim, not just a prohibition on governmental action. Absent voluntary disclosure by a victim or limited exceptions set forth in the statute, information protected by VAWA should remain confidential, regardless of whether it resides with the government or the victim. To hold otherwise would defeat one of the paramount purposes of VAWA confidentiality, "to prohibit disclosure of confidential application materials

to the accused batterer”. *Hawke v. United States Dep’t of Homeland Sec.*, No. C-07-03456 RMW, 2008 U.S. Dist. LEXIS 87603 (N.D. Cal. Sept. 29, 2008). The limited exceptions to VAWA mandated confidentiality of VAWA protected information do not extend to discovery or use in civil litigation between the victim and her abuser, or to criminal litigation in which the victim testifies against her abuser.

7. Absent limited exceptions, VAWA’s broad confidentiality provisions expressly prohibit the release of protected information by the government to third parties. Although VAWA does not explicit address attempts by an abuser to discover the same VAWA protected information from his victim in civil or criminal proceedings, Congress’s intent to prevent the use by or disclosure of any information related to confidential VAWA applications to third parties is unambiguous. Permitting abusers to discover or use protected information from their victims could render VAWA’s confidentiality provisions meaningless and subject victims to the further abuse that VAWA intended to prevent.
8. Violation of VAWA confidentiality can result in:
 - a) Disciplinary action and/or
 - b) \$5,000 fine for the individual and
 - c) Dismissal of the immigration proceeding against the non-citizen.
 - d) Violations also include making false certifications in a Notice to Appear.

Useful links for this:

<http://www.legalmomentum.org/assets/pdfs/icememo.pdf>

http://www.legalmomentum.org/assets/pdfs/vawa_notice_pdf.pdf

<http://www.legalmomentum.org/assets/pdfs/hawke.pdf>

http://iwp.legalmomentum.org/vawa-confidentiality/tools/VAWA-CONF_Factsheet_2009.pdf

M. Resources For Battered Refugee And Immigrant Women In Georgia

1. Refugee and Immigrant Battered Women Programs: All caseworkers and advocates from below listed projects are bilingual, bicultural and trained in domestic violence issues. They are all members of TAPESTRI, Immigrant and Refugee Coalition Challenging Gender Based Oppression.

AGENCY/PROJECT	LANGUAGES	SERVICES
<p><i>Tapestri</i> Phone: (404) 299-2185 Fax: (770) 270-4184 www.tapestri.org</p>	<p>Amharic, Bosnian, Hindi, Farsi, Spanish, Polish, Russian, Vietnamese Korean, Spanish, English</p>	<p>➤ Information about and referrals to services available to battered immigrant women in metro Atlanta area</p> <p>➤ Multicultural Training in DV</p>

AGENCY/PROJECT	LANGUAGES	SERVICES
<p><i>Tapestri Men's Program</i> Phone: (678) 698-3612</p>		<ul style="list-style-type: none"> ➤ Legal advocacy ➤ Services to victims of human trafficking ➤ 24 weeks violence intervention program ➤ Community education
<p><i>International Women's House</i> Hotline: (770) 413-5557 Fax: (678) 476-6804</p>	<p>Arabic, French, Greek, German, Hebrew, Spanish, Russian, English</p>	<ul style="list-style-type: none"> ➤ Shelter for battered refugee and immigrant women and children (max. stay time for residents: 1-3 months)
<p><i>Caminar Latino, Inc.</i> Phone: 404-413-6348 Fax 404-413-8662 www.caminarlatino.org</p>	<p>Spanish</p>	<ul style="list-style-type: none"> ➤ Counseling ➤ Legal advocacy ➤ Support groups for women and children; *Batterers intervention groups for Latino men
<p><i>RAKSHA, Inc.</i> Helpline: (404) 842-0725 Phone: (404) 876-0670 Toll free: (866) 725-7423 Fax: (404) 876-4525 www.raksha.org</p>	<p>English, Bengali, Hindi, Gujarati and other South Asian languages, English</p>	<ul style="list-style-type: none"> ➤ Crisis counseling ➤ Legal advocacy/referrals ➤ Support groups and counseling ➤ Community education ➤ Youth services
<p><i>Refugee Family Services</i> Phone: (404) 299-6217 Fax: (404) 299-6218 www.refugeefamilyservices.org</p>	<p>English, Arabic, Bosnian, Kurdish, Farsi, Russian, Spanish, Somali, Sudanese, Vietnamese, English</p>	<ul style="list-style-type: none"> ➤ Crisis counseling ➤ Legal advocacy/referrals ➤ Employment assistance ➤ Community education ➤ ESL classes ➤ Driver License Education
<p><i>Jewish Family and Career Services</i> Phone: (770) 677-9322 Fax: (770) 677-9400</p>	<p>Hebrew, Yiddish, English</p>	<ul style="list-style-type: none"> ➤ Crisis counseling ➤ Support groups for women ➤ Community education ➤ Referrals
<p><i>Center for Pan Asian Community Services</i> Phone: 770-936-0969 Fax: (770) 458-9377 E-Mail: cpacs@cpacs.org</p>	<p>Korean, Chinese, Thai, and other Asian Languages</p>	<ul style="list-style-type: none"> ➤ Social Service Assistance ➤ Translation and Interpretation ➤ Food Pantry Servicing ➤ Family Violence Intervention Program ➤ Shelter
<p><i>Catholic Charities</i> Phone: (404) 885-7454 Fax: (404) 885-7210 www.catholiccharitiesatlanta.org</p>	<p>Spanish, French, English They have access to many other languages through volunteers</p>	<ul style="list-style-type: none"> ➤ Pro-bono Legal assistance in filing VAWA Applications

AGENCY/PROJECT	LANGUAGES	SERVICES
Georgia Asylum and Immigration Network (GAIN) Phone: (404) 308-9119 Fax: (404) 885-7210 http://www.georgiaasylum.org/	Hindi, Spanish, English They have access to many other languages through volunteers	➤ Pro-bono Legal representation for asylum and special immigrant juvenile status cases.
Latin American Association Phone: (404)-471-1889	Spanish	➤ Immigration Services

2. National Resources:

AGENCY/PROJECT	SERVICES
National Center for Missing and Exploited Children Hotline: 1800THELOST (1-800-843-5678)	➤ For international kidnapping cases.
ASSISTA http://www.asistahelp.org/	➤ For immigration technical assistance
Legal Momentum Immigrant Women Program: (202) 326-0040 http://www.legalmomentum.org/legalmomentum/programs/iwp/	➤ Technical assistance referrals

Original Authors: Aparna Bhattacharyya, Vidal Cordova, Nisha Karnani, Monica Modi Khant

2008 Updates: Aparna Bhattacharyya, Monica Modi Khant, Nisha Karnani, Sunita Iyer. *2009 Updates:* Aparna Bhattacharyya, Nisha Karnani. *2013 Updates:* Aparna Bhattacharyya, Kate Gaffney, Nisha Karnani, Kerry McGrath, Joseph Rosen.

I. APPENDIX I - MENTAL ILLNESS AND THE COURT

Table Of Contents

A.	Introduction.....	I:3
1.	Court Evaluations.....	I:3
2.	Important Points Concerning Family Violence, the Courts, and Mental Health Professionals	I:3
B.	Diagnoses - DSM-IV Lite*	I:4
1.	Mood Disorders.	I:4
	a) Depression.....	I:5
	b) Bipolar Disorder.....	I:7
2.	Anxiety Disorders	I:8
	a) Panic Disorder.....	I:9
	b) Obsessive-Compulsive Disorder.....	I:11
3.	Schizophrenia.....	I:13
	a) Symptoms	I:13
	b) Hospitalization	I:15
4.	Dementia.....	I:15
	a) Symptoms	I:15
	b) Causes	I:16
	c) Treatment	I:16
5.	Substance Abuse	I:17
	a) Symptoms	I:18
	b) Causes	I:18
	c) Treatment	I:18
6.	Other Common Problems and Disorders	I:19
	a) Eating Disorders.....	I:19
	b) Sleep Disorders	I:21
	c) Sexual Disorders	I:22
C.	Medications Used In Psychiatry*	I:25
	Antianxiety Medications.....	I:25
	Antidepressants	I:25
	Hypnotics	I:26

Mood Stabilizers	I:27
Conventional Antipsychotic Medications.....	I:27
Atypical Antipsychotics.....	I:28
Anticholinergic Medications.....	I:28
Cholinergic Enhancers	I:28
Medications Used To Treat Alcoholism And Substance Abuse Disorders.....	I:29
Stimulants Used To Treat Attention-Deficit/Hyperactivity Disorder.....	I:29
Antiparkinsonian Agents	I:29
Other Medications.....	I:29
D. Mental Health Professionals*	I:30

A. Introduction

1. **Court Evaluations**

The court often finds itself in a position to order psychiatric evaluations and/or determine sanctions that affect the lives of individuals with mental illness. This section provides general information about:

- diagnoses whose clinical course of symptoms may bring the individuals suffering such symptoms in contact with the criminal justice system. (DSM-IV Lite, The Georgia Mental Health Sourcebook, Published by Care Solutions, 1994)
- psychiatric medications based on the symptoms they treat (Reprinted with permission from American Psychiatric Glossary [Copyright 2003]. American Psychiatric Association.) and,
- the different types of mental health professionals. (Adapted from the Georgia Mental Health Sourcebook, Published by Care Solutions, 1994)

The DSM-IV Lite presents a lay summary of the most common psychiatric diagnoses. This is by no means an exhaustive list and should not be used in any diagnostic capacity. The diagnosis of any mental disorder is complicated and best left to Mental Health Professionals. A list of psychiatric medications provides information on the symptoms generally treated by that medication. There may be instances where a certain medication is prescribed for problems that are not listed.

The final section presents a chart differentiating the various types of Mental Health professionals.

2. **Important Points Concerning Family Violence, the Courts, and Mental Health Professionals**

It should never be assumed that an individual with a mental health diagnosis does not know right from wrong. Determining whether someone is a 'batterer' is not a clinical decision. It is not a diagnosis of a psychological disorder, but a determination based on reviewing information provided by collateral sources (such as social service reports and criminal, mental health, and medical records) and by the alleged abusers and victims, and by observing and documenting abusive or coercive conduct that appears in meetings with practitioners, clinicians, and other relevant personnel. (Aldarondo & Mederos, 2002)

When domestic violence is not mentioned by the parties involved, and goes unrecognized by the court ([See Appendix C](#)), the nonviolent party is often at a disadvantage. "The Report of the American Psychological Association Presidential Task Force on Violence and the Family (1996) notes that "evaluators not trained in domestic violence may contribute to this process by ignoring or minimizing the violence and by giving inappropriate pathological labels to women's responses to chronic

victimization. Terms such as ‘parental alienation’ may be used to blame the women for the children's reasonable fear or anger toward their violent father."

For an evaluation that truly assists the court in these difficult cases and provides for the safety of victims of domestic violence, attorneys and the court should check the credentials of all Mental Health professionals they utilize. Where domestic violence training was received, the focus, length and dates of each training should be determined. Local domestic violence shelters can often provide names of area professionals with the requisite training or assist the court in assessing a professional's credentials.

“A psychological evaluation is not credible if it ignores a documented and consistent pattern of coercive control and physical abuse that is corroborated by sources such as a criminal record, police arrest reports and information provided by the partners or children. At worst, it may echo the abuser's victim blaming and denial of violent behavior. At best, it will be based on incomplete information” (Aldarondo & Mederos, 2002).

B. Diagnoses - DSM-IV Lite*

Emotional issues have plagued men and women since the dawn of existence, yet it has only been in the last 60 to 70 years that psychiatry and behavioral sciences can claim a truly scientific explanation of mental illness. Mental health professionals have made vast strides in identifying mental disorders, understanding their natural course, and developing treatments for them.

In this section we briefly describe some more common mental difficulties and disorders (as defined in the DSM-IV) that adults and children experience today. Symptoms, causes, and possible treatment plans are also discussed. First, we look at mood disorders, describing both depression and bipolar disorder. Second, we review anxiety disorders including panic disorder and obsessive-compulsive disorder. Next is an overview of schizophrenia, followed by dementia and substance abuse. Finally, we end the section by describing other common problems and disorders including eating, sleeping, and sexual disorders.

1. **Mood Disorders.**

Mood governs motivation, energy, emotional experience and attitude toward life. Moods, even bad ones, are normal and necessary. In fact, a person who does not react with sadness to the loss of a job or a loved one – or with joy to winning the Georgia lottery – would not be normal. A clinical mood disorder represents disruptions of normal emotional regulation. The central feature is a persistent, recurrent low or high mood, or sometimes both at different times.

The two basic mood disorders are unipolar depression and bipolar disorder (formerly called manic depressive illness). During the active phase of unipolar disorder, mood is depressed. In bipolar disorder, moods are

marked by periods of greatly elated moods or excited states as well as by periods of depression. Unipolar depression is far more common than bipolar illness. Both disorders are discussed below.

a) Depression

Everybody has periods of feeling “down” or depressed, often called “the blues.” But for some people, these feelings are extreme or persistent. They suffer from an illness called *depression*. These depressed feelings can occur sporadically, or continue for long periods.

Depression affects between 10 and 11 million Americans each year. One out of every four women and one out of every eight men will suffer some form of depression in their lifetimes. It affects people of all ages.

To understand depression, it helps to understand what it is not. For example, it is not about feeling sad, even intensely sad, after the loss of a loved one. Sadness and grief are normal and temporary reactions to life’s stresses, and they eventually pass. Depression, the illness, does not. Depression is characterized by long-term, unremitting feelings of hopelessness and helplessness.

There are two principal types of depression: major depression and dysthymia.

Major depression is characterized by a depressed mood or loss of interest and pleasure in most activities for an extended period. In extreme cases, the depression is so intense and severe that a person risks death from malnutrition and dehydration or from suicide.

Dysthymia, the second principal type of depression, is a chronic state of mild depression that lasts for years and affects about 3 percent of the population at any time. With dysthymia, the mood never seems to go away for more than a day or two, draining all pleasure from life. The depressed feeling becomes a part of life. Because symptoms are not as severe as with major depression, people with dysthymia are better able to function in the short run. However, eventually relationships and work may suffer, due to the chronic symptoms.

(i) Symptoms

Depression is a serious illness. Besides feelings, it can change a person’s behavior, physical health, appearance, and the ability to handle decisions and tasks. Depression is often linked to poor school performance, alcohol and drug abuse, and feelings of worthlessness and hopelessness.

Look for the following symptoms of depression:

- Feelings of sadness and/or irritability
- Loss of interest or pleasure in activities once enjoyed
- Changes in weight or appetite
- Changes in sleeping patterns
- Feeling guilty, hopeless, or worthless
- Inability to concentrate, remember things, or make decisions
- Fatigue or loss of energy
- Restlessness or decreased activity
- Thoughts of suicide or death

If two or more symptoms persist for two weeks, you should suspect depression and seek help.

(ii) **Causes**

While all of the causes of depression are not known, we do know it occurs when hormones and chemicals in the brain interact in ways that influence a person's energy level, feelings, and habits. These interactions are caused by biological and emotional factors, ranging from a person's family history of depression to a traumatic life crisis. Not uncommon, a series of stresses will trigger an episode of depression. A history of major losses during childhood is also strongly related to depression in adults. The genetic, biological, and environmental causes of depression are difficult to separate; a combination of them most likely causes the disorder.

In addition, many people receive more than one diagnosis, because depression is often associated with other disorders such as alcoholism, anorexia, anxiety, and obsessive-compulsive disorders.

(iii) **Treatment**

Many people who suffer from depression do not seek help or treatment. This is unfortunate, because depression is among the most treatable of all mental illness. In fact, more than 80 percent of all depressions can be successfully treated. Treatment of depression depends on the severity and type of illness. Perhaps the most important thing family and friends can do is encourage the depressed person to get treatment.

The two most common types of treatment – medications and psychotherapy – may be used singly or together. Current research suggests that a combination of medications and psychotherapy offer the best results. Many medications are available to treat depression. Cognitive therapy and interpersonal therapy also have been

proven effective. Exercise therapy seems to help some people. Bright light therapy is often effective for *seasonal affective disorders*. For some individuals who are severely depressed or who suffer from delusions, electroconvulsive therapy, (ECT) is highly effective. However, ECT is used rarely and only when the individual has not responded well to other methods.

Left untreated, the symptoms of depression may continue for months or even years. They can also lead to the most serious complication of a depressive illness: suicide. A special kind of psychic pain adds to feelings of despair and guilt, eventually overwhelming an individual so that he or she feels unable or unfit to live. The National Institute of Mental Health estimates that 15 percent of untreated clinical depressions end in suicide. Most people who kill themselves are clinically depressed. However, it is important to recognize that not all those who suffer from depression attempt suicide.

b) Bipolar Disorder

Sometimes individuals experience severe mood swings from periods of extreme depression to periods of exaggerated happiness. This is known as *bipolar disorder* or *manic-depressive illness*, an illness that involves episodes of serious mania and depression. The individual's mood usually swings from overly "high" and irritable (mania), to sad and hopeless (depression) and then, back again, with periods of normal moods interspersed.

Almost two million Americans suffer from this illness, which was formerly called manic-depressive illness. Unlike depression, which is more common in women, bipolar disorder is seen equally in men and women. The disease usually starts in adolescence or early adulthood and continues throughout life.

(i) Symptoms

Sometimes bipolar disorder is not recognized as an illness. People who have it may suffer unnecessarily for years. Look for these symptoms of mania and depression:

Mania:

- Increased energy, decreased need for sleep
- Racing thoughts, rapid talking
- Excessive "high" or euphoric feelings
- Behavior that is different from usual
- Inability to concentrate
- Irritability
- Obnoxious, provocative, or intrusive behavior
- Denial that anything is wrong

- Heightened sexuality
- Rash spending behaviors

Depression:

- Persistent feeling of sadness, anxiety, or emptiness
- Hopeless or pessimistic outlook
- Feelings of guilt, worthlessness, or helplessness
- Appetite loss, weight loss
- Inability to sleep
- Difficulty concentrating, remembering, and making decisions
- Restlessness or decreased activity

(ii) **Causes**

Bipolar disorder tends to run in families, and is believed to be genetic. Researchers are trying to identify a specific genetic defect associated with the disease. Biological and environmental factors such as stress have also been linked with the illness.

(iii) **Treatment**

Bipolar disorders are treatable. Unfortunately, people with the illness often fail to recognize the symptoms, or they believe their problems are caused by something else. It is important to recognize the disorder to receive effective treatment.

Psychotherapy and medication are the basic treatments for bipolar disorder. The type of treatment depends on the severity and nature of the disease. Several medications can treat both manic and depressive symptoms. *Lithium* is the most widely prescribed medication for people with bipolar disorder because it is very effective in treating mania and may help treat depression as well. If it is effective, most individuals will take lithium for the rest of their lives. Both carbamazepine and valproate, two drugs usually used to treat epilepsy, are also effective in treating mania. In cases where lithium or other medications do not work, electroconvulsive therapy (electroshock) has been effective in treating severe depression.

Often individuals with the illness need help getting help. The most important thing friends and family can do to help is to encourage the person to get treatment. Help can be found at private psychiatric offices and clinics, health maintenance organizations, hospital departments of psychiatry, or the family physician's office.

2. **Anxiety Disorders**

More than 13 million Americans suffer from anxiety disorders, the most common form of psychiatric illness. *Anxiety disorders* are a group of clinically specific illnesses, each with its own characteristics, causes, and treatments. They include generalized anxiety disorder (GAD), panic disorder, phobias, obsessive-compulsive disorder (OCD), adjustment disorder with anxious mood, and posttraumatic stress disorder.

Despite their frequency, anxiety disorders often go unrecognized and untreated. Because anxiety has many physical symptoms that can be severe, people suffering from anxiety disorders commonly think that they are physically ill and seek medical diagnoses and treatments. While their physicians may recognize that there is nothing organically wrong, they may overlook the appropriate diagnosis and treatment.

For people who receive the correct diagnosis, developments in pharmacologic and psychotherapeutic treatments have vastly improved the outlook for these illnesses. Over 80 percent of people with anxiety disorders can be helped with psychotherapy, medication, or a combination of both. Those with milder forms of anxiety, phobias, and compulsions can even learn to control their own responses.

In this section, we discuss two of the more prevalent anxiety disorders: panic disorder and obsessive-compulsive disorder.

a) Panic Disorder

A person with *panic disorder* experiences sudden and unexpected episodes of intense fear, marked by physical symptoms such as, heart palpitations or dizziness. These are called panic attacks. The attacks usually last between 5 and 20 minutes, rarely as long as an hour. Although nothing seems to specifically trigger these first attacks, they are often experienced during a time of transition or crisis: during a divorce or at the loss of a relationship, or when leaving home to go to college.

Panic attacks typically begin in young adulthood, but they can affect older people and children as well. More than three million people in the U.S. will have at least one attack during their life. However, if the attacks become frequent – at least four in a four-week period – or if they cause a person to worry about recurrences or to avoid necessary or enjoyable activities, they constitute panic disorder.

(i) Symptoms

A person's first panic attack often seems to come from "out of the blue," occurring when a person is engaged in some ordinary activity, such as driving a car or walking to work. A barrage of frightening or uncomfortable symptoms, including the following, may occur:

- Terror – a sense that something horrible is about to happen
- Racing or pounding heartbeat
- Chest pains
- Flushes or chills
- Dizziness or nausea
- Tingling or numbness in the hands
- Sense of unreality
- Fear of losing control or doing something embarrassing

The symptoms usually last from several seconds to several minutes. They are likely to fade gradually within an hour or so. Initial panic attacks may occur when people are under considerable stress from an overload of work, for example, or from the loss of a family member or close friend. Excessive amounts of caffeine and the use of cocaine or stimulant drugs (such as those used to treat asthma) can also trigger panic attacks.

Some people who have one panic attack or an occasional attack never develop a problem serious enough to affect their lives. For others, however, persistent attacks cause much suffering. The attacks are usually unpredictable, making their effects even more devastating.

Panic attacks may advance to the point where a person becomes afraid of being in any place or situation where immediate escape is difficult. This condition is called agoraphobia. It affects one-third of all people with panic disorders. Typically, people with agoraphobia fear being in crowds, standing in line, or riding in cars or public transportation. The fear is of having a panic attack. Persons with panic disorder can become very dependent on a significant other to be a security object, causing much stress in the relationship. In addition, they are likely to restrict themselves to a “zone of safety,” an area that includes only the home or the immediate neighborhood. Even when they restrict themselves to safe situations, people with agoraphobia who do not receive treatment continue to have panic attacks at least several times a month. Most people with agoraphobia are women who are married and unemployed, and therefore perhaps more susceptible to becoming housebound.

(ii) **Causes**

Several factors are believed to cause panic disorders. Research shows the illness runs in families, suggesting a genetic link. Brain and biochemical abnormalities and

cognitive factors are also linked to the cause. Scientists believe panic attacks begin as an inappropriate triggering of the body's "fight or flight" response. Environmental factors, such as a history of abuse or neglect can also play a role.

(iii) **Treatment**

Of those who suffer from a panic disorder, 70 to 90 percent can benefit from treatment. Early treatment can keep the disorder from progressing to the later stages, when agoraphobia can develop. Before undergoing any treatment for panic disorder, a person should receive a thorough medical examination to rule out other possible causes for the symptoms. Other conditions, types of epilepsy, high levels of thyroid hormones, or disturbances in the heartbeat, for instance, can cause symptoms similar to those of panic disorder.

Agoraphobia and panic disorder are treated by cognitive-behavioral therapy, medication, or a combination of both. Cognitive-behavioral therapy seeks to change thought patterns or behaviors that appear to contribute to panic attacks. This kind of therapy is effective in reducing panic attacks or eliminating them altogether. Medication can also be used to prevent or reduce panic attacks and to alleviate the anxiety that causes them. Often, the medication helps the affected person venture into situations that were previously frightening. Once confronted, the situations may no longer be as threatening.

(iv) **Getting Help**

People with panic disorders often undertake a strenuous search to find a mental health professional who is familiar with the best available treatments. Self-help and support groups may help manage a panic disorder; a group of five to ten people meet regularly to share their experiences and encourage each other to venture into feared situations. Other avenues of help include family physicians, community mental health centers, hospital outpatient clinics, and family service/social agencies.

Family members are also affected. They may become increasingly frustrated in their attempts to help. It may be good for family members to attend an occasional treatment or self-help session or to seek the guidance of a counselor or mental health professional to help them deal with their feelings about the disorder.

b) **Obsessive-Compulsive Disorder**

Obsessive-compulsive disorder, as the name implies, involves certain obsessions and compulsions that cause a person distress, take up a lot of time, and/or significantly interfere with an individual's normal routine, work, and personal relationships. *Obsessions* involve persistent, recurrent thoughts and ideas. The most common obsessions are repetitive thoughts of violence or contamination.

A *compulsion* is a repetitive behavior done in stereotyped fashion that serves no useful function, is not necessarily pleasurable, and is generally experienced as senseless. The behavior is designed to neutralize or prevent discomfort or to avert some dreaded event or situation. The most common compulsions involve hand-washing, counting, checking, and touching. The person experiencing obsessions and/or compulsions knows that they are irrational, but is unable to control the symptoms. These persons usually experience a tremendous amount of distress (and often shame) about these problems.

Current research suggests the disorder is more common than once believed. About 1% of Americans will suffer from obsessive-compulsive disorder at some point in their lives. The disorder usually begins in adolescence or early adulthood (most experience it before the age of 30) and affects men and women equally. It can also occur in children. It causes moderate to severe impairment; for some, acting out the compulsions can become the major life activity.

(i) **Symptoms**

An individual suffering from obsessive-compulsive disorder may have trouble getting to work on time because he spends time opening and closing drawers, takes hours to clean himself, and/or must have his clothes arranged in a certain way before he gets dressed. Other examples include a parent repeatedly having impulses to kill a loved child (not acted upon), or a religious person having recurrent blasphemous thoughts.

The following symptoms may indicate an obsessive-compulsive disorder:

- Performance of repetitive, stereotyping behaviors
- Recurrent and persistent ideas, thoughts, and impulses that are intrusive and may not make sense.

(ii) **Causes**

While doctors once believed that compulsions were an unconscious attempt to control unacceptable sexual and aggressive impulses, research is now implicating brain

function and chemistry. Scientists have linked the overproduction of serotonin, a neurotransmitter that mediates many thoughts and processes, to those who suffer from the disease. Environmental factors including family history can also play a role.

(iii) **Treatment**

If untreated, about one-third of those with obsessive-compulsive disorder will have episodes intermittently throughout their lives. Therapies, which encourage risk taking and focusing on the present, have proven helpful as well as *response prevention therapies*, which work toward preventing performance of compulsion and *behavioral therapies* which involve facing personal fears. Researchers are also finding tricyclic antidepressants and other drugs, such as Prozac, effective.

3. **Schizophrenia**

Schizophrenia is one of the most misunderstood mental illnesses. Many people believe incorrectly that schizophrenia means “split personality.” Schizophrenia is actually a psychosis, a term encompassing several severe mental disorders that result in a loss of contact with reality along with major personality derangements. People with schizophrenia may have hallucinations, delusions, or bizarre thoughts. Without treatment they may have difficulty dealing with the most minor everyday stresses and insignificant changes in their surroundings. They may avoid social contact, ignore personal hygiene, and behave oddly or menacingly.

Beyond the disease itself, individuals and their families must struggle with the social stigma attached to schizophrenia. Many people with schizophrenia have no homes or no access to adequate medical services because of deinstitutionalization policies and a subsequent lack of care in many communities.

At any give time, some 600,000 people are being actively treated for schizophrenia; many more have the disease. Each year, an estimated 100,000 people are newly diagnosed.

Three-quarters of all people with schizophrenia develop the disease between the ages of 16 and 25. It affects men and women in equal numbers, although it touches more men in the 16 to 20 year-old group and more women in the 25 to 30-year old age group. Schizophrenia rarely develops after the age of 40.

a) **Symptoms**

The illness can best be described as a collection of particular symptoms that will vary, depending on the nature of the illness.

To diagnose schizophrenia, symptoms 1, 2 and 3 listed below must be present. The other symptoms listed may or may not be present.

- Hallucinations – commonly auditory (hearing voices or sounds) or somatic (e.g. feeling like body is disintegrating).
- Delusions – false ideas that the schizophrenic believes to be true. The delusions can be either paranoid or grandiose.
- Disorganized thinking – difficulty keeping things straight in the individual’s mind, often hindering relationships with other people.
- Altered senses – enhanced feelings in the early states or blunted sensations in later stages. Thoughts or sensory stimuli may flood the individual’s mind.
- Altered sense of “self” – confusion about where the individual’s body begins or ends. This stems from the person’s difficulty making sense of the outside world.
- Changes in emotions – fluctuating or exaggerated emotions are most common in the early states. Emotions are often inappropriate, such as laughing at something tragic.
- Changes in behavior – withdrawal, ritualistic behavior, repetitious movements, such as tics, tremors or tongue movements. Also, catatonic behavior; an individual might hold a position for hours, unable to talk or eat.

(i) **Causes**

Research confirms that the brains of people with schizophrenia have structural, functional, and chemical abnormalities. There is strong evidence that the origins of schizophrenia in the brain can be traced to irregularities in neurotransmitters, the biochemicals that transmit nerve impulses in the brain. Schizophrenia also appears to run in families, although genetic transmission has not been proved.

(ii) **Treatment**

Schizophrenia cannot be cured. It can be treated. Predictors for good treatment outcomes are normal adjustment before the onset of the disease and little or no family history of schizophrenia, confusion, paranoia, depression, or catatonic behavior. Some predictors for a poor outcome are: earlier age of onset, a family history of the illness, withdrawal, apathy, and prior history of a thought disorder.

Recent advances in the development of antipsychotic drugs offer hope for people with schizophrenia. Use of these prescription medications can be likened to using insulin to treat diabetes. They can reduce symptoms of the disease (such as delusions and hallucinations) and reduce the length

of hospital stays and the chances of rehospitalization. The relapse rate for schizophrenia can be reduced to 9% with appropriate treatment. With such a full range of treatment options, many people with schizophrenia attend school and live and work in the community.

One recent advance in treating schizophrenia is the drug Clozapine (Clozaril). Clozapine is sometimes effective in dulling symptoms and appears to have fewer side effects than other antipsychotic drugs. However, a major drawback to its use is that it can dangerously lower the number of white blood cells (the cells that help fight infection) in a small percentage of people. Everyone who uses the drug must have a weekly blood count. Another drawback is that the drug and weekly blood counts are very expensive.

In addition to antipsychotic drugs, partial hospitalizations and day treatment programs, as well as vocational rehabilitation, are important resources for reintegration into society.

b) Hospitalization

Hospitalization for clients with schizophrenia is now necessary only for initial diagnosis, treatment of relapses, and for crisis episodes when symptoms intensify. Hospitalization should last only as long as it takes to get symptoms under control.

It is critical for anyone who knows of a person suffering from schizophrenia to help that person get treatment. The onset of schizophrenia is a frightening experience. Through patience, understanding, and persistence, friends and family members can help those who suffer from schizophrenia obtain appropriate treatment.

4. Dementia

We all know of older people who tend to forget things or get confused from time to time. But for some people, the symptoms are serious. They lose their memory, reasoning, judgment, and higher mental processes. Their personality and the way they interact with others change dramatically. These individuals have a condition known as *dementia*.

The main feature of dementia is impairment in short-and long-term memory and problems with abstract thinking, judgment, and other higher cortical functions (language, motor activities and the ability to recognize common objects).

a) Symptoms

Loss of memory is usually the first and most prominent symptom of dementia. In mild dementia, there is moderate memory loss of recent events, such as forgetting names, telephone numbers, directions, conversations, and events of the day. In more severe cases, only highly learned material is retained, and new information is rapidly forgotten. Other symptoms include:

- (i) Disorganized thinking: rambling, irrelevant or incoherent speech
- (ii) Reduced level of consciousness
- (iii) Frequent misperceptions, misinterpretations, hallucinations, or illusions
- (iv) Daytime sleepiness or insomnia
- (v) Disorientation to time, place or people
- (vi) Memory impairment
- (vii) Personality change

Dementia is diagnosed when the loss of intellectual function is severe enough to interfere with social or occupational functioning, although the degree of impairment may vary.

b) Causes

Dementia is not typical of the aging process. Most people who grow older do not develop dementia. The disease is considered an *organic mental disorder* because it is caused by physical abnormalities in the brain.

Dementia can also be caused by other illnesses, such as Acquired Immune Deficiency Syndrome (AIDS), multiple sclerosis, encephalitis, and brain tumors. Subdural hematoma and other head traumas can result in dementia as well.

c) Treatment

Some organic brain disorders, such as Alzheimer's disease, cause widespread death to brain cells and have no known cure. But many others stem from physical illnesses that can be treated and often totally cured. The progression of some diseases can be slowed or halted before notable damage occurs. Symptoms can be alleviated or even eliminated.

Medical treatment is usually required for people with dementia. Psychiatric and psychological treatments can help relieve some symptoms and help individuals and their families cope with the condition, but they are not the primary treatment of the physical conditions of dementia.

(i) Alzheimer's Disease

The most common of all primary dementias, *Alzheimer's disease* is thought to affect from 2.5 to 4 million people in the U.S. alone. The disease usually targets the elderly,

although some cases have been reported in people in their 30s.

Alzheimer's begins gradually, affecting all the cognitive mental processes. Memory loss progresses steadily; in advanced stages of the disease, an enormous body of basic knowledge disappears. Victims forget such things as how to make a bed, and must be reminded to eat, drink, and bathe. As memory fades, analytical skills also disappear. After a few years of disease progression, a person typically loses control over basic body functions.

The disease can continue for five to 15 years, or more. Most individuals eventually die of infections, because their immune systems are overtaxed.

No cure for Alzheimer's disease currently exists, although several promising drugs are being tested. Therapy consists of medication to make daily life easier. These medications might include antidepressants to combat the depression often associated with the disease and sedatives for insomnia.

5. **Substance Abuse**

In today's society and throughout history, smoking cigarettes, having an occasional drink, self-medicating with prescription drugs, or even getting "high" on illegal drugs is not uncommon. The pleasurable effects from usage include mood changes, relaxation, and altered perception. However, because these substances bring pleasure, they also carry a risk for dependency and abuse.

Substance abuse can affect anyone from adolescents to adults and is more common in men than in women. Broadly defined, substance abuse is the regular, habitual use of any substance to the degree that it causes self-detrimental behaviors. Substances may include psychoactive drugs, alcohol, and tobacco.

Almost 90% of Americans drink – and 10 to 13 percent of those develop problems with alcohol. Further, it is estimated that 15 to 18 percent of Americans will have a dependency problem with alcohol or other drugs at some time during life. Alcohol abuse or dependence usually appears between the ages of 20 and 50, whereas dependency on narcotics more commonly begins in the late teens or early 20s.

Alcoholism is a chronic and progressive disease characterized by addiction to or dependence on alcohol. It can be fatal or cause medial problems

such as brain atrophy, liver disease, cancer, and birth defects. Alcohol abuse also has been linked to car accidents, violence, and suicide. People who cannot control their compulsion to drink are alcoholics.

Other commonly abused drugs include: heroin, cocaine, sedative hypnotics, tranquilizers, marijuana, phencyclidine (PCP), hallucinogens, inhalants and the new designer drugs (made by amateur chemists). The adverse effects of these drugs vary from upper respiratory problems with marijuana to death from cocaine or heroin overdoses.

a) Symptoms

People who meet at least three of these criteria are diagnosed with a substance abuse disorder:

- (i) Using a substance in larger amounts or for longer periods than originally intended
- (ii) Inability to reduce or control use of a substance, even after recognizing its harmful effects
- (iii) Spending a great deal of time acquiring, using, or recovering from a substance
- (iv) Failing to fulfill obligations due to substance effects
- (v) Reducing or eliminating activities at work or play because of using a substance
- (vi) Suffering from a variety of social, psychological, or physical problems due to continued use
- (vii) An increasing tolerance of the substance used
- (viii) Experiencing withdrawal symptoms after reducing or eliminating substance use
- (ix) Taking a substance after experiencing withdrawal symptoms

b) Causes

Age, sex, heredity, religion and culture, peer influence, personality, coping style, mental health, availability, and expense of the substance itself are all factors that contribute to the development of substance abuse. For example, since alcohol can be bought at any liquor store and such drugs as cocaine and heroin are found readily on the street, an abuser can obtain these substances easily and quickly when needed. In addition, people may abuse the use of sedative hypnotics and tranquilizers prescribed by physicians for therapeutic use.

In the case of alcohol abuse, there is growing proof that the condition is hereditary. Studies show that children of alcoholics are more likely to become alcoholics themselves than children of non-alcoholic parents.

c) Treatment

It is very difficult for a person to overcome substance abuse alone. In fact, studies have shown that the relapse rate is higher among

those who try to “cure” substance abuse without professional help or group support. In some circumstances, people with substance abuse problems may also be contending with an emotional or behavioral disorder or physical disability, called a *dual diagnosis*.

However, the first step in any treatment plan is to completely stop the use of the substance, and in some cases, go through detoxification. As with any addiction, stopping the use could lead to severe withdrawal symptoms. These symptoms vary depending on the substance, but could include melancholy, profuse sweating, hypertension, shaking or tremors, anxiety, irritability, delirium, hot and cold flashes, and flu-like symptoms, to name a few.

The type of treatment depends on the nature of the substance and the severity of abuse. Treatment can be found through inpatient care in hospitals or rehabilitation centers, individual therapy or counseling, halfway houses, support groups, outpatient treatment programs, and 12-step programs such as Alcoholics Anonymous, Narcotics Anonymous, and Cocaine Anonymous.

6. **Other Common Problems and Disorders**

In this section we review eating, sleeping, and sexual disorders. We look at the symptoms and issues that coincide with each disorder and briefly describe the treatments available. Most of the people who suffer from the disorders discussed in this section can be helped in a variety of ways. Their suffering, and that of their families, can be alleviated and their lives made more comfortable and productive.

a) **Eating Disorders**

Most people – especially women – would be hard-pressed to name a time when they did not go on a diet or think about their weight. In fact, at any given moment, some 50 million Americans are on a weight-loss program. But there are times when this pastime can become a dangerous obsession, turning into eating disorders such as anorexia nervosa, bulimia, or obesity.

(i) **Anorexia Nervosa**

Anorexia nervosa occurs when a person goes beyond dieting and literally stops eating. This serious eating disorder is estimated to affect as many as one out of every 100 to 200 adolescent girls and young women and about one-tenth as many boys and young men.

Experts believe that anorexia nervosa begins with the usual dieting common in young adolescents. However, when people become obsessed with being thin and view their bodies in a distorted way (i.e., an emaciated girl thinks she’s “fat”), this dieting takes a potentially dangerous turn.

There is no single known cause for the disease. Doctors attribute its emergence to certain physical, personal, familial, or societal pressures. The susceptibility may come from low self-esteem, a genetic predisposition, or particular metabolic and biochemical makeup.

The major problem with receiving treatment is that the affected individuals do not want help. They feel a sense of accomplishment associated with their weight loss and deny that they have a problem. Hospitalization is usually required when the weight loss reaches a dangerous level (25% or more below the normal body weight). Usually, weight can be regained by combinations of psychotherapy and learning new eating behaviors. Outpatient treatment is also effective.

(ii) **Bulimia**

People with bulimia usually gorge themselves with huge quantities of food (bingeing), then get rid of it by inducing vomiting, exercising excessively, or using laxatives (purging). Often, bulimia stems from anorexia, when a person can no longer handle the deprivation and starvation, but still wants to lose weight.

Bulimia usually begins later in adolescence than anorexia, although people with bulimia can range in age from early teens to mid-30s. Like anorexia, most of the victims are women, and the disorder begins in association with dieting. Unlike anorexia, the damage caused by bulimia is not related to weight loss but to the purging behavior and use of laxatives.

While people with anorexia cannot easily hide their illness, and actually take pride in their “accomplishment”, people with bulimia are highly secretive and will do everything in their power to keep their secret from family and friends.

Treatment for bulimia focuses on both the eating behavior and the underlying emotional problems causing the behavior. Group therapy or group support activities also benefit those with this eating disorder.

(iii) **Obesity**

Mental health professionals today are realizing that whatever the causes of obesity – genetics, behavior patterns, physical and metabolic characteristics, and social

influences – the condition itself and even repeated attempts to lose weight can have serious emotional consequences.

As a result, a primary goal of mental health professionals in treating an obese individual is to help relieve the demoralizing effects of the social stigma. Psychotherapy may help the obese person learn new patterns of living and eating, and also overcome the guilt and embarrassment of being overweight.

b) Sleep Disorders

While we all have occasional trouble sleeping, some people experience sleep problems for longer periods. When this occurs, it may be a symptom of a deeper physical or mental problem, or a *sleep disorder*.

When diagnosing a sleep disorder, physicians should conduct a full examination to eliminate other possibilities of illness. For example, sleep disturbances are a common symptom of depressive disorders and physical conditions causing pain or other discomfort, and they can also be associated with use of certain medications. When accurately diagnosed, most sleep disorders can be cured with proper treatment.

There are four major types of sleeping disorders described below: insomnia, hypersomnia, biological clock problems, and parasomnia.

(i) Insomnia

Insomnia is a term that describes difficulty falling asleep, trouble staying asleep for long periods, or not feeling rested after sleep. This condition usually occurs several times a week and can go on for months. Insomnia can be severe enough to result in significant daytime fatigue or other problems stemming from lack of sleep.

There are two major categories of insomnia. *Transient psycho-physiological insomnia* is caused by stress and fades after a few weeks (or when the stressful period is over). *Persistent psycho-physiological insomnia* is the type that persists for more than three weeks. This condition usually stems from a short-term problem snowballing into recurring thoughts that cause sleeplessness.

Both forms of stress-related insomnia can be treated with behavioral therapy that promotes good sleep habits. Doctors often prescribe medications for short-term use to help form these new habits and to combat daytime fatigue.

(ii) **Hypersomnia**

While insomnia is the inability to sleep, *hypersomnia* is described as needing too much sleep, experiencing uncontrollable sleepiness, or sleeping at inappropriate times. While uncontrollable sleepiness can be caused by many things – including diabetes, hypothyroidism, depression, and drug use – two conditions are considered distinct illnesses.

Sleep apnea, in which breathing stops briefly (usually due to a slight blockage in the airways), can occur up to 100 times a night. While people with this condition can wake up gasping for air, usually they sleep through the night unaware of any problem. However, because of disruptive sleep patterns, they are generally very tired during the day. Overweight people commonly suffer from this disorder, as do people who use alcohol and other depressant drugs. The cure for sleep apnea usually includes learning new sleeping positions.

Narcolepsy causes people to have uncontrollable urges to fall asleep or to fall asleep at inappropriate times. There is no cure for narcolepsy, but symptoms can be relieved through various stimulant drugs.

(iii) **Biological Clock Disorders**

When the body's regular sleep-wake cycle is disrupted, a person can suffer from *biological clock disorders*. These include jet lag, when a person travels across several time zones or must adjust to a new time zone; irregular sleep-wake schedule, when a person's sleeping schedule is altered dramatically so that they constantly feel tired or uncomfortable; and delayed sleep phase syndrome, where people cannot or would not go to sleep until well past conventional bedtime hours.

(iv) **Parasomnias**

In these sleep disorders, sleep is interrupted by such things as sleepwalking or intense nightmares. Sleepwalking can be limited to simple activities like sitting up in bed, reaching for a glass of water, or turning on a lamp. Infrequently, a sleepwalker will yell, scream, or thrash around energetically. In any case, sleepwalkers do not usually remember the event. They walk around with their eyes open, do not usually talk, and can avoid bumping into anything. Usually, parasomnias are treated with tranquilizers, anticonvulsants, or antidepressants.

c) **Sexual Disorders**

Sexuality is essential in human life. Not only for procreation, but as a way we define ourselves and give ourselves pleasure. Sexual disorders are diagnosed when a person is unable to function or respond sexually, or cannot conform to normal standards of sexual behavior. We have defined two of the major sexual disorders below: sexual dysfunctions and paraphilia.

(i) **Sexual Dysfunctions**

Sexual dysfunctions occur when the normal sexual cycle is blocked, causing a variety of problems such as loss of sexual desire or ability to become aroused, orgasm difficulties, painful sex, or aversion to sex. The dysfunction can be caused by many organic and/or psychological factors.

Illnesses involving the nervous, endocrine or circulatory system can decrease sexual function. Trauma to the lumbar or sacral spinal cord, a herniated disc, or prostate surgery may also damage penile nerves. Further, many prescription and nonprescription drugs affect sexual response, including antihistamines, diuretics, blood pressure medications, and antidepressants.

There are also several psychological causes for sexual dysfunction. Those with mood disorders (such as depression and bipolar illness) and schizophrenia often report below-or above-normal sexual response. Other psychological causes of sexual problems include unconscious guilt or anxiety about sex, performance anxiety, repressive inhibitions, sexual trauma, and problematic relationships.

The most effective treatments combine appropriate elements of cognitive, behavioral, and couple therapy, and any necessary medical treatments. For example, sensate focus exercises encourage intimate contact and emotional warmth rather than focusing on the mechanics of intercourse.

(ii) **Paraphilia**

Paraphilia includes a wide range of sexual behaviors that do not conform to acceptable social standards. Examples include having sex with (or sexual fantasies about) a nonhuman object, children, or other non-consenting persons. People with these disorders do not usually consider themselves ill or do not come to the attention of mental health professionals until their behavior brings them into conflict with their partners or society.

Several paraphiliac disorders have been recognized: exhibitionism, frotteurism, fetishism, sexual masochism, sexual sadism, pedophilia, and voyeurism.

Exhibitionists expose their genitals to unsuspecting subjects and/or may masturbate in public. *Frotteurism* involves touching and rubbing against a non-consenting person. *Fetishism* is an intense sexual stimulation by a specific object – often a woman’s clothing or a body part. Individuals experiencing *sexual masochism* are sexually aroused by being beaten, bound, humiliated, or otherwise made to suffer. *Sexual sadism* is a powerful sexual attraction to inflicting suffering on someone else, either physically or psychologically. *Pedophiliacs* have an intense sexual attraction to children. *Voyeurism* is a strong sexual urge to observe unsuspecting people who are getting undressed, are naked, or are engaged in sexual activity.

It is not clear why someone develops a paraphilia. Some researchers believe it is physiological, others suspect a chemical imbalance, and still others date the problem to early childhood fears and events. Research continues to seek answers.

When diagnosing paraphilia, the individual’s sexual history is evaluated to determine the frequency of any unusual behavior and the intensity of sexual fantasies. The mental health professional must rule out other possible causes of the paraphilia, such as psychosis or dementia.

Treatments vary and include altering hormone levels with medications that reduce sexual drive. This method is best used in combination with psychotherapy. Behavior therapies have also been successful in some cases.

* DSM-IV Lite is reprinted with permission from the *Georgia Mental Health Sourcebook*, Published by Care Solutions, 1994.

C. Medications Used In Psychiatry*

Trade Name	Generic Name
<i>Antianxiety Medications</i>	
Antihistamines	
Atarax	hydroxyzine
Benadryl	diphenhydramine
Vistaril	hydroxyzine
Benzodiazepines	
Ativan	lorazepam
Klonopin	clonazepam
Librium	chlordiazepoxide
Serax	oxazepam
Tranxene, Tranxene-SD, Tranxene-SD half strength	clorazepate dipotassium
Valium	diazepam
Xanax	alprazolam
Azapirone	
BuSpar	bupirone
<i>Antidepressants</i>	
Monoamine oxidase inhibitors	
Eldepryl	selegiline
Nardil	phenelzine
Parnate	tranylcypromine sulfate
Tricyclics and tetracyclics	
Adapin	doxepin
Anafranil	clomipramine
Asendin	amoxapine
Aventyl	nortriptyline
Elavil	amitriptyline
Endep	amitriptyline
Etrafon	perphenazine and
Ludiomil	amitriptyline
Ludiomil	maprotiline
Norpramin	desipramine
Pamelor	nortriptyline
Sinequan	doxepin
Surmontif	trimipramine

Trade Name	Generic Name
Tricyclics and tetracyclics (<i>continued</i>)	
Tofranil, Tofranil-PM	imipramine
Triavil	perphenazine and protriptyline
Vivactil	
Selective serotonin reuptake inhibitors	
Celexa	citalopram
Lexapro	escitalopram oxalate
Luvox	fluvoxamine
Paxil	paroxetine
Prozac	fluoxetine
Zoloft	sertraline
Serotonin-norepinephrine reuptake inhibitors	
Effexor, Effexor XR	venlafaxine
Other agents	
Desyrel	trazodone
Remeron	mirtazapine
Serzone	nefazodone
Wellbutrin, Wellbutrin SR	bupropion
Zyban	bupropion
<i>Hypnotics</i>	
Sedative-hypnotic benzodiazepines	
Dalmane	flurazepam
Halcion	triazolam
ProSom	estazolam
Restoril	temazepam
Sedative-hypnotic nonbenzodiazepines	
Ambien	zolpidem
Equanil	meprobamate
Miltown	meprobamate
Sonata	zaleplon

Trade Name	Generic Name
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Mood Stabilizers

Depacon	valproate
Depakene	valproic acid
Depakote	divalproex sodium
Dilantin	phenytoin/diphenylhydantoin
Eskalith, Eskalith CR	lithium carbonate
Lamictal	lamotrigine
Lithobid	lithium carbonate
Lithonate	lithium carbonate
Lithotabs	lithium carbonate
Neurontin	gabapentin
Tegretol, Tegretol-XR	carbamazepine
Topamax	topiramate
Trileptal	oxcarbazepine

Conventional Antipsychotic Medications

Butyrophenones

Haldol	haloperidol
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Dibenzoxazepines

Clozaril	clozapine
Lexitane	loxapine

Dihydroindolones

Moban	molindone
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Diphenylbutylpiperidine

Orap	pimozide
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Phenothiazines

Aliphatic

Thorazine	chlorpromazine
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Piperazine

Prolixin	fluphenazine
Stelazine	trifluoperazine
Trilafon	perphenazine

Trade Name	Generic Name
Phenothiazines (continued)	
<i>Piperidine</i>	
Mellaril	thioridazine
Serentil	mesoridazine
Thioxanthenes	
Navane	thiothixene
<i>Atypical Antipsychotics</i>	
Abilify	aripiprazole
Clozaril	clozapine
Geodon	ziprasidone
Risperdal	risperidone
Seroquel	quetiapine
Zyprexa	olanzapine
<i>Anticholinergic Medications</i>	
Akineton	biperiden
Artane	trihexyphenidyl
Cogenin	benztropine
Kemadrin	procyclidine
Symmetrel	amantadine
<i>Cholinergic Enhancers</i>	
Acetylcholinesterase inhibitors	
Aricept	donepezil
Cognex	tacrine
Exelon	rivastigmine
Reminyl	galanthamine

Trade Name**Generic Name**

Medications Used To Treat Alcoholism And Substance Abuse Disorders

Antabuse	disulfiram
Buprenex	buprenorphine
Depade	naltrexone
Narcan	naloxone
ReVia	naltrexone

Stimulants Used To Treat Attention-Deficit/Hyperactivity Disorder

Adderall, Adderall XR	dextroamphetamine
Concerta	methylphenidate
Cylert	pemoline
Desoxyn	methamphetamine
Dexedrine	dextroamphetamine
Focalin	dexmethylphenidate
Metadate-CD	methylphenidate
Ritalin	methylphenidate

Antiparkinsonian Agents

Eldepryl	selegiline; L-deprenyl
Levopa	levodopa; L-dopa
Sinemet	carbidopa-levodopa

Other Medications

Cytomel	liothyronine
Imitrex	sumatriptan
Inderal	propranolol
Meridia	sibutramine
Provigil	modafinil
Stadol NS	butorphanol tartrate
Talwin	pentazocine
Viagra	sildenafil

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D. Mental Health Professionals*

Discipline	➤ Training	Comments
Psychiatrist (MD)	<ul style="list-style-type: none"> ➤ Bachelor's Degree ➤ 4-years Medical School ➤ 1-year Medical Internship ➤ 3-years Adult Psychiatry Residency ➤ Board Certified ➤ 1-2 years Specialized Fellowship (Optional) 	<ul style="list-style-type: none"> ➤ Can prescribe medication ➤ Can admit patients to hospitals ➤ Can evaluate medical causes and treatments
Licensed Psychologist (Ph.D.)	<ul style="list-style-type: none"> ➤ Bachelor's Degree ➤ Master's Degree ➤ Ph.D. (5-8 years) ➤ 1 year internship ➤ 1 year post doctoral supervision 	<ul style="list-style-type: none"> ➤ Skilled in administering and interpreting psychological tests ➤ Individual, Group & Family Psychotherapy ➤ Can admit patients to hospital
Licensed Master's of Social Work (LMSW)	<ul style="list-style-type: none"> ➤ Bachelor's Degree ➤ Master's Degree in Social Work ➤ 2 years post-graduate training and internship 	<ul style="list-style-type: none"> ➤ Interfaces with community programs ➤ Often uses short-term therapies
Licensed Clinical Social Worker (LCSW)	<ul style="list-style-type: none"> ➤ Same as Master's of Social Work, plus: ➤ 4 years post master's experience ➤ 120 hours of supervision 	<ul style="list-style-type: none"> ➤ Same as a Licensed Master's of Social Work, plus: ➤ Psychosocial evaluation, in-depth analysis of the nature and status of emotional, cognitive, mental, behavioral and interpersonal problems or conditions ➤ Uses counseling and psychotherapy techniques
Licensed Marriage & Family Therapist (LMFT)	<ul style="list-style-type: none"> ➤ Bachelor's Degree ➤ Master's Degree (in counseling-related field) ➤ 4 years post master's experience ➤ 200 hours of supervision 	<ul style="list-style-type: none"> ➤ Trained in family and group therapy ➤ Uses counseling and psychotherapy techniques
Licensed Professional Counselor (LPC)	<ul style="list-style-type: none"> ➤ Bachelor's Degree ➤ Master's Degree (in counseling-related field) ➤ 4 years post master's experience ➤ 120 hours of supervision 	<ul style="list-style-type: none"> ➤ Trained in family and group therapy ➤ Uses counseling and psychotherapy techniques
Psychiatric Nurse (CNS)	<ul style="list-style-type: none"> ➤ Bachelor's Degree (usually R.N. Training) ➤ 2 years General Nursing Training (if not obtained in college) ➤ Master's of Science or Master's of Nursing 	<ul style="list-style-type: none"> ➤ Typically experienced with treating psychiatric inpatients and groups ➤ Acts as liaison between family and health systems ➤ Usually affiliated with and/or supervised by psychiatrist
Pastoral Counselor	<ul style="list-style-type: none"> ➤ Bachelor's Degree ➤ Master's of Divinity ➤ Post Graduate Work for Doctor of Sacred Theology in Pastoral Counseling (optional) 	<ul style="list-style-type: none"> ➤ Training and accreditation varies widely

* Mental Health Professionals chart is adapted with permission from the *Georgia Mental Health Sourcebook*, published by CareSolutions, 1994.

J. APPENDIX J - GUARDIANS AD LITEM IN FAMILY VIOLENCE CASES

Table Of Contents

A. Value of Guardians Ad Litem in Family Violence Cases.....J:2
Among other things, the GAL’s report should address:J:3

B. Uniform Superior Court Rule 24.9 -- Appointment, Qualification and Role of a Guardian ad Litem.J:3

1. AppointmentJ:3

2. QualificationsJ:3

3. Role and Responsibilities.....J:4

4. DutiesJ:4

5. Release to GAL of a Party’s Confidential Information from Non-PartiesJ:5

6. Written ReportJ:5

7. Role at Hearing and Trial.....J:6

8. General and Miscellaneous ProvisionsJ:6

C. Distinguishing the Roles of Guardian ad Litem and Child’s Attorney.....J:7

A. Value of Guardians Ad Litem in Family Violence Cases

Protecting the interests of children affected by domestic violence poses special challenges for the court. In a domestic violence case, both parents are typically caught up in a control dynamic that may distort their judgment or compromise their ability to discern their children's needs and best interests. Furthermore, batterers frequently employ their "parental rights" to manipulate and maintain control over their victims following separation. Given this dynamic, it is particularly appropriate for a court to utilize guardians ad litem to assist it in protecting the interests of children affected by family violence.

Children who are subjected to violence or witness violence by one parent against the other suffer serious and often long-term consequences. These children frequently have behavioral, social, and emotional problems, including: higher levels of aggression, anger, hostility, oppositional behavior, and disobedience; fear, anxiety, withdrawal, and depression; poor peer, sibling, and social relationships; and low self-esteem. They also may develop cognitive and attitudinal problems such as: lower cognitive functioning; poor school performance; limited conflict resolution and problem solving skills; pro-violence attitudes; and belief in rigid gender stereotypes and male privilege. Long-term, survivors of violent childhood homes may manifest higher levels of adult depression and trauma symptoms, and increased tolerance for and use of violence in adult relationships.

A GAL can offer information, insight and recommendations to assist the court in tailoring its orders to protect children from a violent parent, to assist children in overcoming the effects of domestic violence, and to reduce the opportunities for children to continue to be used as tools of a batterer's efforts to control his victim.

A GAL can ensure that domestic violence issues are addressed. In many high-conflict custody cases, domestic violence may be a silent issue. It may not be mentioned in the pleadings and the victim may not have disclosed the issue to anyone. A case may be permeated with domestic violence issues, but there may be no Temporary Protective Order, police report or medical records. Appointment of a GAL provides independent eyes and ears to assist the court in determining whether domestic violence is a factor and in evaluating its scope and impact in a case.

A GAL can make the parties and the Court aware of the availability and advisability Protective Orders, batterer's intervention, survivor support and other protective or assistive services in a given case. Since children's primary caretakers are more often victims than perpetrators of domestic violence, advocating safety measures often falls within the GAL's duty to represent the children's best interests. Furthermore, a properly trained GAL can evaluate the particular circumstances of a family and assist the parties and the court in identifying appropriate services for the parents and the children.

The GAL can recommend specific measures to shield children from the violent dynamics of their parents' relationship. The GAL can assist the court in achieving adequate specificity in orders involving on-going contact among the parents and children. When violence has been present in the home, neither the Court nor the GAL can assume the parties will be able to reasonably resolve any issue on which they disagree. Moreover, in a relationship tainted by domestic violence, parental decision-making is often driven by the control dynamic between the adults, rather than by the needs of the children. Consequently, orders governing on-going interaction among family members must be especially clear and specific—nothing may be left to interpretation or chance.

Among other things, the GAL's report should address:

1. The advisability of prohibiting visitation until completion of a batterer's intervention program, restricting visitation to a therapeutic setting for some period, or requiring supervision of visits by an individual or agency capable of controlling the interactions between the batterer and the children to prevent further violence or manipulation.
2. Appropriate visitation procedures such as where the exchange of the children will take place (For safety, the exchange may need to be at a neutral, public location, specified by the court), how long the custodial parent will be required to wait before the visit is deemed cancelled, and what circumstances or actions justify cancellation or termination of a visit.
3. On-going parental decision-making—Joint custody arrangements should be avoided in domestic violence cases, because any power over decision-making gives the batterer on-going opportunities to assert control over the victim. If the Court is not inclined to make the victim the sole legal custodian, however, the decision-making process needs to be clearly delineated and the custodial parent should retain final decision-making authority. A GAL may assist the court by recommending means of communication, deadlines for response and other particulars to circumvent the control dynamic. ([See Appendix C](#))

B. Uniform Superior Court Rule 24.9 -- Appointment, Qualification and Role of a Guardian ad Litem.

1. **Appointment**

The Guardian ad Litem ("GAL") is appointed to assist in a domestic relations case by the superior court judge assigned to hear that particular case, or otherwise having the responsibility to hear such case. The appointing judge has the discretion to appoint any person as a GAL so long as the person so selected has been trained as a GAL or is otherwise familiar with the role, duties, and responsibilities as determined by the judge. The GAL may be selected through an intermediary.

2. **Qualifications**

GAL shall receive such training as provided by or approved by the Circuit in which the GAL serves. This training should include, but not be limited to, instruction in the following subjects: domestic relations law and

procedure, including the appropriate standard to be applied in the case; domestic relations courtroom procedure; role, duties, and responsibilities of a GAL; recognition and assessment of a child's best interests; methods of performing a child custody/visitation investigation; methods of obtaining relevant information concerning a child's best interest; the ethical obligations of a GAL, including the relationship between the GAL and counsel, the GAL and the child, and the GAL and the court; recognition of cultural and economic diversity in families and communities; base child development, needs, and abilities at different ages; interviewing techniques; communicating with children; family dynamics and dysfunction, domestic violence and substance abuse; recognition of issues of child abuse; and available services for child welfare, family preservation, medical, mental health, educational, and special needs, including placement/evaluation/diagnostic treatment services.

3. **Role and Responsibilities**

The GAL shall represent the best interests of the child. The GAL is an officer of the court and shall assist the court and the parties in reaching a decision regarding child custody, visitation and child-related issues. Should the issue of child custody and/or visitation be tried, the GAL shall be available to offer testimony in accordance with provision 6 and 7 herein.

The GAL holds a position of trust with respect to the minor child at issue, and must exercise due diligence in the performance of his/her duties. A GAL should be respectful of, and should become educated concerning, cultural and economic diversity as may be relevant to assessing a child's best interests.

A GAL's appointment, unless ordered otherwise by the Court for a specific designated period, terminates upon final disposition of all matters pertaining to child custody, visitation and child-related issues. The GAL shall have the authority to bring a contempt action, or other appropriate remedy, to recover court-ordered fees for the GAL's services.

4. **Duties**

By virtue of the order appointing a GAL, a GAL shall have the right to inspect all records relating to the minor child maintained by the Clerk of the Court in this and any other jurisdiction, other social and human service agencies, the Department of Family and Children Services, and the Juvenile Court. Upon written release and/or waiver by a party or appropriate court order, the GAL shall have the right to examine all records maintained by any school, financial institution, hospital, doctor or other mental health provider, any other social or human services agency or financial institution pertaining to the child which are deemed confidential by the service provider. The GAL shall have the right to examine any residence wherein any person seeking custody or visitation rights proposes to house the minor child. The GAL may request the court to order examination of the child, parents or anyone seeking custody of the child,

by a medical or mental health professional, if appropriate. The GAL shall be entitled to notice of, and shall be entitled to participate in all hearings, trials, investigations, depositions, settlement negotiations, or other proceedings concerning the child.

5. **Release to GAL of a Party's Confidential Information from Non-Parties**

GAL's right to request and receive documents and information from mental health professionals, counselors, and others with knowledge of a confidential nature concerning a party is conditional upon the party agreeing to sign a release allowing the GAL access to such records and information.

Upon receipt of a party's signed waiver/release form, the GAL shall have the right to inspect all records, documents and information relating to the minor child(ren) and/or the parties maintained by any mental health professionals, counselors and others with knowledge of a confidential nature concerning a party or minor child.

6. **Written Report**

Unless otherwise directed by the appointing judge, the GAL shall submit to the parties or counsel and to the Court a written report detailing the GAL's findings and recommendations at such time as may be directed by the assigned judge. At trial, the report shall be admitted into evidence for direct evidence and impeachment purposes, or for any other purposes allowed by the laws of this state. The court will consider the report, including the recommendations, in making its decision. However, the recommendations of the GAL are not a substitute for the court's independent discretion and judgment, nor is the report a substitute for the GAL's attendance and testimony at the final hearing, unless all parties otherwise agree.

a) **Contents of Report**

The report shall summarize the GAL's investigation, including identifying all sources the GAL contacted or relied upon in preparing the report. The GAL shall offer recommendations concerning child custody, visitation, and child-related issues and the reasons supporting those recommendations.

b) **Release of Report to Counsel and Parties**

The Report shall be released to counsel (including counsel's staff and experts) and parties only, and shall not be further disseminated unless otherwise ordered by the Court.

c) **Release of GAL's File to Counsel**

If ordered by the Court, the parties and their counsel shall be allowed to review and/or copy (and shall pay the cost of same) the contents of the GAL's file.

d) **Unauthorized Dissemination of GAL's Report and Contents of File**

Any unauthorized dissemination of the GAL's Report, its contents or the contents of the GAL's file by a party or counsel to any

person, shall be subject to sanctions, including a finding of contempt by the Court.

e) **Sealing of Written Report**

If filed, the Report shall be filed under seal by the Clerk of Superior Court in order to preserve the security, privacy, and best interests of the children at issue.

7. **Role at Hearing and Trial**

It is expected that the GAL shall be called as the Court's witness at trial unless otherwise directed by the Court. The GAL shall be subject to examination by the parties and the court. The GAL is qualified as an expert witness on the best interest of the child(ren) in question. The GAL may testify as to the foundation provided by witnesses and sources, and the results of the GAL's investigation, including a recommendation as to what is in a child's best interest. The GAL shall not be allowed to question witnesses or present argument, absent exceptional circumstances and upon express approval of the Court.

8. **General and Miscellaneous Provisions**

a) **Requesting Mental Fitness and Custody Evaluations**

Based upon the facts and circumstances of the case, a GAL may request the Court to order the parties to undergo mental fitness and/or custody evaluations to be performed by a mental health expert ([See Appendix I, Paragraphs 1-2](#)), approved by the Court. The Court shall provide for the parties' responsibility for payment of fees to the appointed experts.

b) **Filing Motions and Pleadings**

If appropriate, the GAL may file motions and pleadings if the GAL determines that the filing of such motion or pleading is necessary to preserve, promote, or protect the best interest of a child. This would include the GAL's right to file appropriate discovery requests and request the issuance of subpoenas. Upon the filing of any such motions or pleadings, the GAL shall promptly serve all parties with copies of such filings.

c) **Right to Receive Notice of Mediations, Hearings and Trials**

Counsel shall notify the GAL of the date and time of all mediations, depositions, hearings and trials or other proceedings concerning the children(ren). Counsel shall serve the GAL with proper notice of all legal proceedings, court proceedings wherein the child(ren)'s interests are involved and shall provide the GAL with proper and timely written notice of all non-court proceedings involving the child(ren)'s interests.

d) **Approval of Settlement Agreements**

If the parties reach an Agreement concerning issues affecting the best interest of a child, the GAL shall be so informed and shall have the right and opportunity to make objections to the Court to any proposed settlement of issues relating to the children prior to the Court approving the Agreement.

e) Communications Between GAL and Counsel

A GAL may communicate with a party's counsel without including the other counsel in the same conversation, meeting or, if by writing, notice of the communication. When communicating with the GAL, counsel is not required to notify opposing counsel of the communication or, if in writing, provide opposing counsel with a copy of the communication to the GAL.

f) Ex Parte Communication Between GAL and the Court

The GAL shall not have ex parte communications with the Court except in matters of emergency concerning the child's welfare or upon the consent of the parties or counsel. Upon making emergency concerns known to the Court, the GAL may request an immediate hearing to address the emergency. Notification shall be provided immediately to the parties and counsel of the nature of the emergency and time of hearing.

g) Payment of GAL Fees and Expenses

It shall be within the Court's discretion to determine the amount of fees awarded to the GAL, and how payment of the fees shall be apportioned between the parties. The GAL's requests for fees shall be considered, upon application properly served upon the parties and after an opportunity to be heard, unless waived. In the event the GAL determines that extensive travel outside of the circuit in which the GAL is appointed or other extraordinary expenditures are necessary, the GAL may petition the Court in advance for payment of such expenses by the parties.

h) Removal of GAL from the Case

Upon motion of either party or upon the court's own motion, the court may consider removing the GAL from the case for good cause shown.

C. Distinguishing the Roles of Guardian ad Litem and Child's Attorney

In some domestic violence cases it may be necessary or desirable for a child to have independent legal counsel, whether or not the court has chosen to utilize the services of a guardian ad litem, and it is necessary for the court and the parties to recognize the differences in these roles.

A guardian ad litem is an investigator and expert witness, and does not enter into any attorney-client relationship. A guardian ad litem has no duty of confidentiality (except the duty under Rule 29.4(6) (d) to prevent unauthorized dissemination of the GAL's report and file), and no work-product privilege. A guardian ad litem generally may not question witnesses or present argument, but is expected to submit a report of his or her investigation to the parties and the court and to testify at trial. The GAL is also expected to exercise his or her independent judgment in defining a child's best interests and recommending a course of action to the parties and the court.

In contrast, an attorney for a child enters into a normal attorney-client relationship with the child. The attorney is bound by the duty of confidentiality (Georgia Rule of Professional Conduct 1.16(a); and generally is prohibited from acting as legal counsel in any case where he or she is a necessary witness. (Georgia Rule of Professional Conduct 3.7). An attorney for a child is expected to offer evidence and argument and to cross-examine witnesses, as necessary pursuant to the duties to provide competent and diligent representation (Georgia Rules of Professional Conduct 1.1 and 1.3). Furthermore, at least to the extent the child is capable of making adequately considered decisions, the attorney is bound by the child's direction concerning the objectives of the representation (Georgia Rules of Professional Conduct 1.2 and 1.14).

K. APPENDIX K - MEDIATION

Table Of Contents

A.	Introduction.....	K:2
1.	Why is mediation in domestic violence cases so controversial?	K:2
2.	Is mediation sometimes appropriate in cases involving domestic violence?.....	K:3
3.	How do Georgia’s current mediation guidelines deal with domestic violence?.....	K:3
4.	Are the guidelines always followed?	K:4
5.	Practically speaking, how does Georgia’s current screening work?.....	K:5
6.	What steps could we take to improve the mediation process?.....	K:5
B.	Georgia Commission on Dispute Resolution.....	K:6
	Preamble	K:66
	Guidelines For Mediation In Cases Involving Issues Of Domestic Violence	K:88
A.	Phase One - Initial Screening of All Domestic Relations Cases	K:9
B.	Phase Two.....	K:10
	1. Further Screening.....	K:10
	2. Informed Consent.....	K:11
C.	Phase Three.....	K:12
	1. Referral to Mediation if Domestic Violence Alleged.....	K:12
	2. Safeguards For The Mediation Session	K:13
D.	Confidentiality In Screening For Domestic Violence.....	K:13
	Appendix A Guidelines for Phase II Screening.....	K:14
	I. Contacting the alleged victim:	K:14
	II. Information to be included in the screening interview:	K:14
C.	Concerns About the Use of Mediation in Cases Involving Domestic Violence.....	K:15
D.	Safeguards for Judicial Consideration in Mediated Agreements.....	K:16
1.	Custodial Arrangements.....	K:17
2.	Visitation Arrangements	K:17
3.	Telephone Contact	K:18
4.	Financial Issues	K:18

A. Introduction

The Georgia Supreme Court's Commission on Dispute Resolution is responsible for establishing policies governing court-connected alternative dispute resolution programs in Georgia. The Commission has established policy in the form of written guidelines on mediation in domestic violence cases. The Commission's *Guidelines for Mediation in Cases Involving Issues of Domestic Violence* and *Guidelines for Screening for Domestic Violence by the Court* and the ADR Program were originally issued in 1995 and revised by the Commission in 2003. The Commission's Guidelines are set forth in their entirety in Section B.

When these guidelines were developed and later revised, there was strong resistance to the use of mediation in cases involving domestic violence. It was generally believed that mediation is inconsistent with the needs of victims of domestic violence who would not be able to speak up against their abusive partners during the process. These concerns are reflected in the joint statement in Section C presented by The Georgia Commission on Family Violence and the Georgia Coalition Against Domestic Violence on the dangers involved in the use of mediation. This statement first appeared in the third edition of the bench book. They also provide a list of safeguards to consider when the court reviews mediated agreements in Section D.

The use of mediation remains a controversial issue within the domestic violence community. However, a growing number of scholars and advocates are recognizing that mediation—done properly—may actually better serve victims and survivors of domestic violence than the alternative of litigation. In the sixth edition of this benchbook we expand on this viewpoint, and offer suggestions for judges to consider.

1. **Why is mediation in domestic violence cases so controversial?**

Cases involving allegations of domestic violence present a unique controversy in divorce mediation policy. The use of mediation to resolve family court issues began in 1980 in California when every divorcing couple was required to go through mediation to resolve custody and visitation issues. Throughout the 1990s, similar measures spread across the country because mediation reduces the burden on the court system and improves the efficiency of the divorce process. However, there was concern from domestic violence advocates that victims of domestic violence would be unable to voice their true interests in the presence of their abusers. Conceptualizing domestic violence as a systematic effort to gain power and control over the victim through a variety of abusive tactics (cross reference Appendix A for discussion of different theories and definitions of domestic violence), advocates argued that the power imbalance present in abusive relationships would impede the victim's ability to advocate for child support, alimony, and custody rights. Pressure from battered women's advocates led policymakers in most states to include limitations to the standard mediation requirements in domestic violence cases. These provisions generally rest on the assumption that mediation is never appropriate for a victim of domestic abuse and litigation is better suited to protect the interests of the victim.

Standard provisions include some sort of screening for domestic violence in order to obtain informed consent to participate from the victim as well as to give a chance to opt out of the mediation process.

2. **Is mediation sometimes appropriate in cases involving domestic violence?**

Sometimes, yes. First of all, not every act of family violence as defined by statute occurs within a context of control. Some violence is episodic, and there may not be a significant power imbalance in these relationships. Even in relationships where there is a dynamic of control, mediation is a non-adversarial process, takes less time, and can give the victim more control over the outcomes. Some studies have shown that divorcing parties report greater satisfaction with mediation than with litigation, even in cases that involved emotional or physical abuse (Davies, Ralph, Hawton, & Craig, 1995; Depner, Cannata, & Ricci, 1994). Scholars also point out that low-income victims of domestic violence often have no access to legal representation, and if screened out of mediation may be at greater risk than if they were able to mediate their issues (Beck & Raghavan 2010).

Safeguards for the protection of domestic violence victims have been developed and used effectively in mediation settings. These include:

- establishment of security measures for the arrival and departure of the victim and abuser
- meeting with the parties alone prior to the start of mediation
- establishing a distress signal for victims to discreetly alert the mediator to stop the session
- use of caucus or shuttle in mediation, or frequent use of caucus in joint sessions just to check in with the victim
- permission to have a friend, advocate, or attorney at the mediation.

Using these and other safeguards, a mediator takes steps to ensure the safety of the parties during the mediation, and produces a settlement with specific guidelines to prevent future violence.

It is important for the mediator to recognize the abusive or controlling history before beginning the mediation. Differentiation between types of domestic violence and proper training on how to correct the power imbalance allow a mediator to promote safety while maximizing the benefits of an agreement specific to the couple's situation.

The most severe cases of domestic violence should go through litigation rather than mediation. However, mediation should not automatically be ruled out for domestic violence cases if mediators with the proper training are available.

3. **How do Georgia's current mediation guidelines deal with domestic violence?**

When a couple seeks divorce in Georgia, the court system conducts the initial domestic violence screening process, checking for a criminal history of domestic violence, a family violence temporary protective order or mention of domestic violence in the pleadings themselves. These cases are set aside for the next phase of screening. At this point, every district does things slightly differently. Most programs then ask the alleged victim eleven screening questions outlined in the Guidelines for Mediation in Cases Involving Issues of Domestic Violence. These questions focus on how the victim feels about her partner and how comfortable she is around him. Based on the responses, the court advises how the domestic abuse situation could affect the mediation, and the victim is then given the opportunity to opt out of mediation. If she chooses to mediate, the couple is directed to specially trained domestic violence mediators in the local ADR office.

The Georgia Office of Dispute Resolution (GODR) regulates the Alternative Dispute Resolution system. Currently, all divorce mediators receive limited domestic violence training during the forty-two hour Divorce and Family Mediation training. However, the type and degree of the training depends on the specific program, since the GODR approves curricula from a variety of professional development firms, collegiate faculty, and individual trainers. Additionally, the GODR establishes special fourteen hour training requirements for mediators who will deal with domestic violence. The Guidelines require that at least two mediators in each ADR program have the extra domestic violence training, and some ADR programs require all mediators to have both.

When a couple is referred to an ADR program with allegations of domestic violence, they receive a mediator with the special domestic violence training. The mediator decides how to conduct the mediation based on his or her assessment of the situation.

4. **Are the guidelines always followed?**

In practice, these procedures vary widely across the state. Some ADR programs are so overloaded that they aren't able to conduct the screenings at all. Other programs conduct more thorough screening than the guidelines require. Sometimes the screening occurs over the phone, and sometimes it occurs in person. In some districts, the eleven screening questions are asked by the mediator. In others, the intensive intake assessment in the court conducts this questionnaire. Some programs require all mediators, regardless of caseload, to receive the extra domestic violence training.

There are limited continuing education requirements for domestic violence in mediation, so some mediators were trained long ago, and may not have studied how to recognize signs of coercive control or review lethality factors in a relationship. There are significant differences in the mediation process across the districts in Georgia.

5. **Practically speaking, how does Georgia’s current screening work?**

In general, the domestic violence risk assessment process in Georgia fails to screen for domestic violence unless it is self-reported through an arrest report, the filing of a TPO, or an attorney suspects a problem. Usually, it’s only in those cases that the victim is asked the eleven questions about mediation, and only those couples are required to see a mediator with domestic violence training if the victim doesn’t opt out. However, many cases are not flagged by either of these indicators because the victim fears reprisals for reporting the problems or the abusive behavior has not escalated enough to file for a TPO. Domestic Violence is one of the most chronically underreported crimes in the United States. Approximately 60% of family violence victimizations were reported to police between 1998 and 2002 (Durose, 2005). Furthermore, only 20% of the 1.5 million people who experience intimate partner violence annually obtain civil protection orders (Tjaden et. al, 2000). Therefore countless cases go through the standard mediation process without a specially trained domestic violence mediator.

The degree of screening can vary across districts due to the individual requirements of the ADR centers. Furthermore, the eleven questions are only asked of the alleged victim of violence and focus on her fears, not the actual history of coercive behavior. This method fails to provide the mediator sufficient information on the context of control in the relationship—arguably the most significant issue in determining the appropriateness of mediation.

Another concern is the fact that when violence is self-reported, the abuser sometimes makes him/herself out as the victim. If the victim uses violent resistance, then it is even possible that the victim of violence will have a more serious criminal record than the actual abuser, in which case the offender will be misrepresented in the court record. Thus, in the current process, a victim could be treated as the abuser based on previous violent record when in fact the abuser exhibits more coercive controlling and intimidating behaviors.

6. **What steps could we take to improve the mediation process?**

First, the domestic violence screening process could focus on indicators of the parties’ ability to represent themselves in a standard mediation setting or a specialized mediation process that takes domestic violence into account (Adkins, 2010). Rather than only obtaining informed consent, the goal of the screening could be to better prepare mediators to evaluate the couple’s situation and offer a mediation setting suitable to the power dynamic present. The current screening emphasizes informed consent for the victim of violence, when several factors—including the level of coercive control in a relationship, the degree of the power imbalance between a couple, and the context of control, whether violent or emotional—affect the dynamics between the couple (Johnson 2009).

These indicators are significant delineations for the court and the mediators to evaluate. In fact, some scholars contend that measuring coercive control is the most efficient screening mechanism in the mediation context (Beck

& Raghavan, 2010), thus utilizing an instrument designed to reveal its presence (including questions about coercion, isolation, jealousy, history of emotional and sexual abuse, threats and escalation of violence) would potentially improve safety for victims.

Although it is not the mediator's responsibility to stop post-divorce violence, the mediation process is a keystone to establishing a responsible post-divorce arrangement for at-risk couples. Effective mediations depend on knowledge of the couple's history and coercive relationship; therefore, effective screening ought to focus on so informing the mediator.

Some scholarship suggests that both parties in the divorce, regardless of past criminal record, ought to go through the same screening questions. Both parties should receive counsel during private meetings with the mediator regarding the specifics of the process and the style of mediation to be used (Adkins, 2010).

Next, domestic violence training for all mediators could be made mandatory to reduce the number of possible domestic abuse cases that go through mediation unrecognized. This way, when a domestic violence case is not caught through the screening process, any mediator would be able to recognize the signs of coercive and controlling behaviors, and would also be equipped to implement the necessary safety precautions for abuse cases including meeting privately with the parties before mediation, caucusing in mediations, staggered arrival times, and specific terms of agreement. Mandating periodic continuing education in domestic violence for all mediators would help ensure that they are up to date in their understanding of this complicated issue.

After the discovery of domestic abuse, mediators could also offer the victim resources and contacts in local domestic abuse centers. Services for domestic violence victims provide the resources to help them move on both psychologically and legally. It could easily become a standard of practice for all mediators to keep literature available about nearby shelters or centers.

- B. Georgia Commission on Dispute Resolution
Domestic violence mediation policy and guidelines applicable to all court-connected alternative dispute resolution programs.

Preamble

To Guidelines For Mediation In Cases Involving Issues Of Domestic Violence

The Committee on Ethics of the Georgia Commission on Dispute Resolution studied the issue of mediation in cases involving allegations of domestic violence. It is apparent that mediation is a process that continues to evolve. Those who believe in the value of

mediation hold strong views about whether it is appropriate in cases involving issues of domestic violence. Many feel that mediation of some issues is appropriate. It is also clear that advocates of battered women have equally strong views about mediation's inappropriateness in these cases.

The Committee on Ethics conducted a hearing on June 28, 1994. Experienced mediators, the Chair of the Committee on Family Violence, judges, and a program director participated in the meeting. The Committee also read a number of articles and studies from other states concerning this issue. The Director has talked with advocates for battered women and men who have worked with batterers' groups for years. From all this investigation and discussion, the Committee presented certain guidelines to the entire Commission, which were adopted at the December 1994 meeting of the whole Commission.

The Committee on Ethics found that there are two diverse and very well-reasoned arguments as to whether mediation is appropriate for cases that involve domestic violence or allegations of serious domestic violence. The first is that mediation is never appropriate in these cases by the very nature of and premise of mediation. The other is that if the cases are carefully screened and the mediator is trained to handle these cases, mediation can be used to reach a settlement of some issues. It was clear from all sources that violence itself cannot be the subject of mediation and that mediation is not a substitute for counseling, education, and legal sanctions. This led to the clearest guideline, that no criminal cases involving domestic violence should be referred to mediation. The violent act or acts must be dealt with through the actual court procedure in order to emphasize the seriousness of the act and the fact that domestic violence, where proved, is indeed against the law.

The Committee does not agree with those who believe that mediation is never appropriate in cases involving domestic violence. The Committee finds compelling the argument that to automatically exclude these cases denies a victim of domestic violence the opportunity to use what can be a very worthwhile alternative to the battleground of the courtroom. Thus, the Committee recommended Guidelines that reflected this philosophy, and the Commission adopted them in 1995.

The Strategic Planning Committee of the Georgia Commission on Dispute Resolution reviewed the Guidelines for Mediation in Cases Involving Issues of Domestic Violence in 2002-2003. The Committee adheres to the general principles expressed in the 1995 guidelines that cases involving allegations of domestic violence should not be automatically excluded from the mediation process. The Committee focused on the intake and screening procedures required in these guidelines. Based on information from programs across the state, the Committee proposed amendments to the guidelines that would: allow all alleged victims of domestic violence to choose, based upon informed consent, whether or not to utilize mediation; enable ADR programs to more consistently apply the screening guidelines; clarify the nature of informed consent to participate in mediation; provide that all alleged victims of domestic violence are referred to a specially trained mediator; and, place the responsibility of assessing the benefit of participating in

the mediation process on the alleged victim and her/his attorney rather than the program director.

Thus, the Commission on Dispute Resolution approved the following revised guidelines on May 20, 2003 to be implemented by all the ADR programs no later than November 1, 2003.

Guidelines For Mediation In Cases Involving Issues Of Domestic Violence¹

For purposes of these guidelines and the procedures that implement them, domestic violence is defined as follows:

Causing or attempting to cause physical harm to a current or former intimate partner or spouse; placing that person in fear of physical harm; or causing that person to engage involuntarily in sexual activity by force, threat of force or duress.

In addition to acts or threats of physical violence, for purposes of these guidelines, domestic violence may include abusive and controlling behaviors (such as intimidation, isolation, and emotional, sexual or economic abuse) that one current or former intimate partner or spouse may exert over the other as a means of control, generally resulting in the other partner changing her or his behavior in response. Even if physical violence is not present in these circumstances, such a pattern of abusive behavior may be a critical factor in whether or not a party has the capacity to bargain effectively. Therefore, a person conducting screening for domestic violence must be alert to patterns of behavior that, while not overtly violent, may indicate a pattern of domestic abuse that should be treated as domestic violence for purposes of these guidelines.

1. Criminal cases that involve domestic violence should not be referred to mediation from any court.
2. Cases arising solely under the Family Violence Act should not be referred to mediation from any court.²
3. All court programs should screen domestic relations cases for domestic violence through intensive intake.³ Those domestic relations cases referred to mediation directly from the bench are also subject to the domestic violence screening process.

¹ Approved by the Georgia Commission on Dispute Resolution on May 20, 2003, to replace the Guidelines adopted April 6, 1995.

² A case filed as a divorce action or other domestic relations matter that contains a count under the Family Violence Act is not precluded from referral to mediation and should be screened pursuant to these guidelines; provided, however, that issues related to protection from violent behavior are not an appropriate subject of mediation or negotiation. This provision was added by the Commission on Dispute Resolution on March 22, 2005.

³ While it is intended that the intake and screening protocol will be routinely applied to all domestic relations cases, programs can also use the screening process when allegations of domestic violence arise in other types of cases such as juvenile court and probate court matters.

Intake procedures should be designed to identify those cases, which involve allegations of domestic violence.

The Georgia Commission on Dispute Resolution and the Georgia Office of Dispute Resolution will develop guidelines to assist courts in designing appropriate intake procedures and training for intake personnel.

Existing programs should send a description of present intake and screening procedures to the Georgia Commission on Dispute Resolution for review. New programs should include such a description on any rules submitted to the Commission for approval.

4. When intake and screening procedures are in place⁴ and there are mediators available who have advanced domestic violence training, and the alleged victim chooses to proceed with mediation, those cases may be referred to mediation. However, only mediators who have received special training should mediate such cases. The Georgia Commission on Dispute Resolution and the Georgia Office of Dispute Resolution will assist courts in developing appropriate training.

5. Every program should have no less than two mediators who have received special training in domestic violence.

6. If allegations of domestic violence arise in the context of a mediation, any mediator who has had no special training in handling cases involving domestic violence should in most instances conclude the mediation and send the case back to the court. In concluding the mediation, the mediator should take precautions to guard the safety of the participants, particularly the alleged victim, and of the mediator.

Guidelines For Screening For Domestic Violence By The Court And The ADR Program

Approved by the Georgia Commission on Dispute Resolution: May 20, 2003

I. Screening

Screening for domestic violence is a shared responsibility of the court, program directors, attorneys, mediators, and parties. However, the final determination as to appropriateness of mediation will be made by the court.

All ADR programs should seek to educate the public about mediation in general and about the factors which should be considered in gauging the appropriateness of mediation in a case involving allegations of domestic violence. Mediation brochures and parenting seminars for divorcing couples may be vehicles for dissemination of this information.

A. Phase One - Initial Screening of All Domestic Relations Cases

(a) At the initial screening stage, the ADR program should determine whether either party has filed a petition under the Family Violence Act.

⁴ The term "intake" refers to the procedure for identifying cases involving allegations of domestic violence, and the term "screening" refers to discussion with the alleged victim to determine whether s/he chooses to proceed with mediation

For purposes of these guidelines, a petition filed pursuant to the Family Violence Act against the other party is considered an indication of domestic violence, as is any verbal or written statement alleging domestic violence made in pleadings or in the screening process.

If there is or has been a petition filed under the Family Violence Act, the program should proceed to Phase II of the screening process.⁵

(b) If there has been no petition for a protective order under the Family Violence Act, it is the responsibility of the program to continue with Phase I of the screening process and inquire about domestic violence in every domestic relations case. This screening inquiry may be accomplished by various means such as: contact with the attorneys and parties; written questionnaires; a “check-off” question on a referral to mediation notice or a written communication to the parties that they should contact the program if there are any allegations of domestic violence. If programs review pleadings for allegations of domestic violence, the absence of such allegations in the pleadings does not end the screening inquiry. Programs that screen pleadings for domestic violence must also use other means of screening in every domestic relations case. It then becomes the responsibility of the parties and their attorneys to inform the ADR program of any domestic violence allegations. When the party and/or attorney has indicated that there may be domestic violence, it is the responsibility of the program to follow up on these indications of domestic violence and continue with Phases II and III of the screening process.

(c) If there is no indication of domestic violence, then the case will be scheduled for mediation in the routine manner.

(d) If there is an indication of domestic violence in Phase I, then the program will contact the party alleging domestic violence to obtain further information as set forth in Phase II. If that party is represented by counsel, her or his attorney must be contacted first and given an opportunity to participate in further screening should s/he choose to do so.

B. Phase Two

Further Screening Where There Is an Indication of Domestic Violence

1. Further Screening: The means by which a program elicits this screening information is to be determined by each program and, ultimately, approved by the

⁵ A case that is filed solely pursuant to the Family Violence Act should not be referred to mediation, and, if referred, should be returned to the court process as inappropriate for mediation. The Guidelines apply to domestic relations cases, other than cases filed solely under the FVA, that may contain a claim for relief under the FVA among other claims. The purpose of Subsection (I)(A)(a) is to indicate that a petition for or order granting relief pursuant to the FVA, whether past or pending, is a clear indication to the screener that domestic violence allegations are or have been a factor in the case that has been referred to mediation, and that the screener should proceed with the informed consent interview process with the alleging party so that the party can make a decision about whether or not to participate in mediation. This provision is not intended to imply that cases filed solely pursuant to the FVA should be referred to mediation. This explanatory footnote was added by the Commission on Dispute Resolution on March 22, 2005.

Georgia Commission on Dispute Resolution. Screening techniques should include personal contact, either by telephone interview or face-to-face interview. The person conducting the screening interview shall be a trained mediator who has had advanced domestic violence mediation training. In selecting the screening technique, personnel should be aware that the screening process itself could place a victim at risk, and must therefore ensure that the screening is conducted under safe and confidential circumstances.

If direct contact reveals that there is in fact no allegation of domestic violence (because the indication in Phase I resulted from a miscommunication, clerical error, etc.), then the case may be scheduled for mediation in the normal manner. If there is an allegation of domestic violence, the process continues in order to ensure that the alleged victim is fully informed about the mediation process before making a decision whether to proceed with mediation.

2. Informed Consent:

Informed consent involves two aspects of information to be discussed with the alleged victim: (1) information about the mediation process; and (2) information about how the individual's circumstances may affect her or his ability to function in the mediation setting. Because the dynamics of a relationship characterized by a pattern of violent and abusive behavior may manifest in mediation, an alleged victim of such behaviors is provided with choice in order to avoid further victimization or endangerment.

The Ethical Standards for Neutrals (Appendix C, Chapter 1, Alternative Dispute Resolution Rules) place primacy on the principles of self-determination and voluntariness. These standards also require that parties be fully informed about the mediation process. In keeping with these principles, and the necessity of protecting participants, an alleged victim of domestic violence will be given the opportunity to exercise choice about whether to proceed with mediation prior to assignment of the case. To ensure that the alleged victim's choice to proceed with mediation is self-determined, s/he must be provided with sufficient information about the process to make an informed choice. At a minimum, the nine items set forth in "Ethical Standard I. Self-Determination/Voluntariness, A" must be explained. This information may be conveyed informally in conversation between screening staff and the alleged victim, and may be discussed in conjunction with the following screening questions. (Please see Appendix A of this document.) While mediation is oriented towards the future, past and/or present patterns of party interaction can have a significant impact upon the process. Questions about party interaction are a valuable tool for ensuring that the alleged victim has enough information about the mediation process to make an informed decision about whether s/he wishes to proceed with mediation. For this reason, ADR programs should make a good faith effort through some screening technique to discuss the following questions with the party alleging domestic violence. The purpose of this process extends beyond obtaining information and should assist the party in focusing on barriers and the capacity to mediate.

1. *Can you tell me more about what has happened that led you to file for a protective order (or say there has been violence, etc.)?*
2. *Mediation is a process that helps parties to plan for the future. Are you able at this time to think about your own future needs?*
3. *Have you had an opportunity to think about your own needs, interests and concerns separate from those of your spouse?*
4. *Do you think that you will be able to talk about your needs, interests and concerns if your spouse is in the room?*
5. *Is there any reason that you do not feel able to discuss your needs openly with your spouse?*
6. *Are you able to disagree with your spouse and talk about that disagreement? Do you feel safe in saying no to things that you do not agree with?*
7. *Do you have concerns about sitting in the same room with your spouse?*
8. *Are you afraid of your spouse? If so, would you be able to speak up for yourself in a separate room with a mediator? (Explain shuttle mediation option.)*
9. *Are you still living in the same home with your spouse? If so, do you think you would feel safe in returning home after discussing the issues in your case in mediation?*
10. *Do you have concerns about going to court?*
11. *Do you have any other concerns about safety that you would like us to know about?*

After presenting information about the process of mediation and discussing the information elicited by these questions, the screener should ask whether the person needs any further information about the mediation process in order to decide whether or not s/he is willing to mediate.

C. Phase Three

1. Referral to Mediation if Domestic Violence Alleged

After the information in Phase II has been discussed, the party alleging domestic violence may choose whether or not to proceed with mediation. If represented, s/he should be encouraged to discuss that decision with counsel and given an opportunity to do so before a decision is made. No case involving issues of domestic violence should be sent to

mediation without the consent of the alleged victim given after a thorough explanation of the process of mediation.

- (a) If the person alleging domestic violence declines mediation, the case will be released for process through the court system, and the court will simply be notified that mediation was not appropriate.
- (b) If the alleged victim chooses to proceed with mediation, the case should be sent to mediation unless the program or the court determines that there is a compelling reason (such as extreme violence) that this particular case should not be referred.
- (c) If the party alleging domestic violence chooses to mediate, the program must take appropriate steps to ensure that the safeguards set forth in Section II herein are in place for the mediation session

2. Safeguards For The Mediation Session

In Cases Involving Issues Of Domestic Violence

1. The program should exercise care to avoid disclosure of the parties place of residence by either the program staff or the mediator.
2. The mediator conducting the session should have received special training in dealing with issues of domestic violence in the context of mediation.
3. The alleged victim should have an attorney or advocate available for the entire session or sessions. If the alleged victim does not have an attorney, s/he should be invited to bring an advocate or friend to the mediation session to be available for consultation and to see him/her safely to his/her car.
4. Arrangements should be made for the parties to arrive and leave the mediation session separately.
5. The session itself should be made safe through adequate security and any other necessary means.
6. Arrangements should be made for the session to be held entirely in caucus if that is necessary.
7. At the earliest possible point in the mediation the mediator should explore power dynamics in order to 1) confirm the comfort of each party with the mediation format and 2) confirm the ability of each party to bargain for him/herself.

D. Confidentiality In Screening For Domestic Violence

Program directors and staff conducting screening for domestic violence should keep information elicited confidential. Information elicited should not be communicated to the court unless absolutely necessary. The court should simply be informed that the

case is inappropriate for mediation. Communication of sensitive information to the court could create a necessity for the judge to recuse him/herself.

Under O.C.G.A § 17-17-9.1, communications between a victim and victim assistance personnel appointed by a prosecuting attorney and any notes, memoranda, or other records made by such victim assistance personnel of such communication are work product of the prosecuting attorney. These communications are not subject to disclosure except where such disclosure is required by law. Such work product shall be subject to other exceptions that apply to attorney work product generally.

Appendix A Guidelines for Phase II Screening

I. Contacting the alleged victim:

If the alleged victim is represented by counsel, consult with her/his attorney regarding your need to contact the alleged victim to conduct an interview to learn more about the allegations and to provide information about mediation so that the alleged victim can make an informed choice about whether to participate in mediation.

Because you are not making a decision about whether the allegations of domestic violence are credible, it is better to not contact the alleged perpetrator unless there are indications of violence on the part of both parties in Phase I. If any contact with the alleged perpetrator is necessary, exercise great care to avoid disclosure of any allegations of abuse that do not appear in court pleadings.

If it is necessary to contact the alleged victim by mail, avoid expressing specific concerns regarding domestic violence in correspondence. If you mail routine correspondence about the mediation to the parties, do not include the alleged victim's address on any correspondence that is sent to anyone other than the victim.

When you telephone to arrange an interview, take precautions to ensure that the person is able to speak privately.

During first contact with the alleged victim, explain how the case came to your attention for further screening and the purpose of the screening, which is to allow the person to make an informed choice.

II. Information to be included in the screening interview:

- a. Neutrality: an explanation of the role of the mediator as a neutral person who will facilitate the discussion between the parties but who will not coerce or control the outcome; explanation that the mediator will not allow abusive behavior of which she or he is aware and will have skills in balancing power, but will not in any way serve as an advocate for the alleged victim.

- b. Confidentiality: an explanation of confidentiality of the mediation session and any limitations on the extent of confidentiality;
- c. Termination: an explanation that the mediation can be terminated at any time by either party or the mediator;
- d. Legal counsel: an explanation that the alleged victim may bring an attorney to the mediation or consult her/his attorney by telephone during the mediation as needed; and an explanation that if s/he does not have an attorney, s/he may bring another advocate or friend;
- e. Expert advice: an explanation that the mediator will not provide any legal or financial advice;
- f. Process: an explanation of how mediation is conducted (joint sessions, caucus, etc.) with an explanation of the option of shuttle mediation;
- g. Good faith: an explanation that parties will be expected to negotiate in good faith and therefore should be prepared to make full disclosure of matters material to any agreement reached; but that good faith does not in any way require parties to enter an agreement about which they have any reservations;
- h. Effect of agreement: an explanation that a mediated agreement, once signed, can have a significant effect on the rights of the parties and the status of the case.

C. Concerns About the Use of Mediation in Cases Involving Domestic Violence

The Georgia Coalition Against Domestic Violence and Georgia Commission on Family Violence take the position that mediation in family violence cases is not appropriate as it increases the danger for the victim and children. Families in which violence is present have significant power imbalances, which should be addressed by the court. Batterers can use the mediation process to continue to control and victimize survivors.

Despite the risks, family violence victims are being referred to mediation in Georgia. Mediators who are not trained to screen for family violence and correct the power imbalances are at risk for presenting mediation plans that increase the danger for victims and their children. Mediators who are not trained in family violence will likely not understand the safety needs of victims at home or during the mediation process. If the victim is encouraged or pressured to disclose concerns, needs that contradict the batterer's needs, the victim may face dangerous consequences as they leave the mediation site, or later at home. For example, many battered women have learned, through years of violence, to submit to the batterer's needs and wants at the expense of their own. If the victim is unable to focus on her own needs and those of her children, she will be

ineffective in communicating those needs to the mediator. She may also be so intimidated by the batterer that she feels it is worth giving up needed economic resources to keep the batterer from becoming enraged. Even if a victim is successful in communicating her needs, the batterer may recognize he is losing control of the victim and seek to maintain that control through increased contact, intimidation and violence.

Further, it is unrealistic to expect victims of family violence to self-identify, or prove their eligibility in order to abstain from mediation. Many victims minimize or deny the violence in their lives to survive. They may be unable to face and identify the violence as it could undermine those efforts. Additionally, many victims may be too embarrassed to disclose family violence, particularly in rural and/or tight-knit communities.

To minimize the danger that mediation can create, at minimum specialized mediators must be used for cases in which family violence is present. Specialized mediators must have extensive training on family violence issues and safety concerns. They should recognize the need to have an advocate involved in the process for any family violence case that proceeds through mediation. They should also understand the risks and concerns in family violence cases and have guidelines for when cases should be referred back to court without mediation. Victims must be notified that they have the right to withdraw from mediation at any time. (*See Page 6 of this appendix – Informed Consent*).

To further safeguard victims and children in these cases, we recommend that judges review the following issues carefully to minimize the efforts of batterers to use the court systems to further victimize and harm their family members. The violence itself and the following safety issues are **never to be mediated**:

1. criminal actions;
2. safe visitation exchange;
3. supervised visitation;
4. existing protection orders; and
5. other contact issues that will allow the batterer to monitor or control the victim's movements and actions.

D. Safeguards for Judicial Consideration in Mediated Agreements

Below is a list of issues for judges to look for in mediated agreements in order to minimize the adverse affects to families where domestic violence is present and reduce the number of times the parties return to court. These issues, coupled with shuttle mediation and the preference for an advocate to be in the room with the victims, can negate some of the adverse dynamics that can happen in mediation of domestic violence civil cases.

In general, these **orders should be specific and clear with appropriate timetables for events to happen**. Do not leave any issue to be “mutually agreed

upon by the parties”. This requires the parties to negotiate which is simply fertile ground for conflict and future litigation.

The suggestions outlined herein focus almost entirely on agreements made with regard to the children. When a batterer is no longer in a position to control the victim directly, as when the parties are married, the children become the vehicle for control. What follows are suggestions about how to ensure that any Order you approve is effective in separating the children from the control batterers exert as they attempt to press the limits of the mediated agreement.

1. Custodial Arrangements

a) Joint Physical Custody.

Successful joint physical custody arrangements require that the parties have proven, effective communication skills and a balance of power. Neither exists in relationships where violence has been an issue. Frequent moves by children between homes require that parents talk on a regular, sometimes daily basis. Few decisions can be made without one parent consulting the other as all decisions affect both households. Families where violence has occurred and where the parties share joint physical custody inevitably return to the Court for assistance in settling disagreements.

b) Joint Legal Custody.

It's preferable that the victim/parent be awarded sole legal and physical custody. Consultation as required by joint legal custody is fruitless; the parties will never agree on what is in their child's best interest, even on the most obvious of issues. The result is more litigation, with the batterer bringing the victim back to court alleging he/she has not consulted on all issues. If the parties are going to be awarded or have agreed on joint legal custody, the victim must also be awarded final decision making authority. When batterers are awarded final decision-making authority on any issue, the decisions are never based on the best interest of the child. Rather, they make decisions that will have the most impact on the victim's life.

2. Visitation Arrangements

a) Provisions surrounding **visitation must be very specific** and leave little to chance. Nothing should be allowed to be “mutually agreed upon.” Following are questions that need to be answered before an Order is entered:

- (i) Who is responsible for transportation?
- (ii) Where does drop-off and pick-up take place, *specifically*? Which CVS parking lot on Peachtree Street? Which corner of the parking lot? Public places where people regularly gather are preferable to either party's home.
- (iii) How long does the custodial parent have to wait for the visiting parent before the visitation is deemed cancelled? If

that batterer knows that his/her former spouse has a date on the same night the children are supposed to be picked up, is the pick-up going to be timely?

- (iv) Who can be present at the transfers? It's probably *not* a good idea for Mom's new boyfriend or Dad's new girlfriend to be there.
- b) **Weeknight visitations should be discouraged.** These visits require a lot of coordination, more than the parties are capable of. Issues surrounding extra-curricular activities, homework and test preparation, etc., all must be addressed each time one of these visitations occurs.
- c) If visitation is going to be supervised, it must be clear who's going to supervise, who must pay, where it can take place, under what circumstances supervision may cease and what the process will be if the arrangements need to change. The supervisor should not be someone who does not believe the violence ever occurred, e.g. the batterer's mother.

3. Telephone Contact

- a) Be realistic about telephone contact. What's the purpose of calling a 6-month-old child? Such contact is often used as an opportunity for an abuser to maintain contact with his/her victim and find out information otherwise unavailable.
- b) If telephone contact is ordered, there needs to be a **window of time during which the call can occur**. For example, the caller must call between 7:30 and 8:00 p.m. on a specific day of the week. Requests for daily phone contacts should be evaluated thoroughly to assure it is not a veiled stalking attempt. If the person being called has caller identification on the phone, allow the child to answer the phone, thus minimizing contact between the parties.
- c) Include in the Order that the **caller not discuss with the child anything involving the custodial parent**. While hard to enforce, the victim/parent needs to be able to file a Petition for Citation of Contempt should it become an issue.
- d) Place the **responsibility of calling on the non-custodial parent**, not the child.

4. Financial Issues

- a) If the obligor is employed, have **payments made through Income Deduction Order**. This allows for less contact between the parties and ensures payment as long as the employment status remains the same. If child support is ordered, alimony payments can be paid via Income Deduction Order, as well.
- b) **DO NOT allow the batterer to be responsible for paying directly for things that affect the victim's life** (mortgage, utilities, car payments, etc.). All monies should go directly to the victim so he/she can be in charge of making necessary payments.

- c) **Make sure the parties did not make any agreement that leaves them connected financially.** If one party is awarded the house or a car, it must be refinanced to remove the other party's name if both are on the title or loan. If a Qualified Domestic Relations Order needs to be prepared, it needs to be clear who prepares it and by when. If the parties are splitting up debt, make every effort to ensure the batterer cannot damage the credit or financial status of the victim by not making payments as required by the Order.

L. APPENDIX L - UNIFORM FORMS

A. Introduction

The Georgia Protective Order Registry (GPOR) was created to serve as a statewide, centralized database for protective orders. It is managed by the Georgia Crime Information Center (GCIC) and linked to the National Crime Information Center (NCIC) Network. Law enforcement, prosecutors, and courts may access the database 24 hours per day, 7 days per week to assist in the enforcement of orders and ensure the safety of victims. (O.C.G.A. § 19-13-52)

As part of the registry, O.C.G.A. § 19-13-53 dictates the use of standardized forms, which are to be promulgated by the Uniform Superior Court Rules. "The standardized form or forms for protective orders shall be in conformity with the provisions of this Code, (the Family Violence and Stalking Protective Order Registry Act, (O.C.G.A. § 19-13-50 et al.) shall be subject to the approval of the Georgia Crime Information Center and the Georgia Superior Court Clerks' Cooperative Authority as to form and format, and shall contain, at a minimum, all information required for entry of protective orders into the registry and the National Crime Information Center Protection Order File."

For further information about, and to access the GPOR, see [Appendix M - Georgia Protective Order Registry](#).

B. Family Violence Forms

Access the most current Uniform Forms here:

<http://www.gsccca.org/filesandforms/sb57forms.asp>

The Clerk of each Superior Court is able to provide the uniform forms as well.

Uniform Forms List:

Family Violence Ex Parte Protective Order
Family Violence Six Month Protective Order
Family Violence Twelve Month Protective Order
Family Violence Three Year / Permanent Protective Order
Stalking Ex Parte Temporary Protective Order
Stalking Six Month Protective Order
Stalking Twelve Month Protective Order
Stalking Three Year / Permanent Protective Order
Stalking Permanent Protective Order Pursuant to Criminal Conviction
Dismissal of Temporary Protective Order
Order for Continuance of Hearing and Ex Parte Protective Order
Order to Modify Prior Protective Order

M. APPENDIX M – GEORGIA PROTECTIVE ORDER
REGISTRY

Table Of Contents

A. The Creation of the Georgia Protective Order RegistryM:2

B. Specific Benefits of GPOR to the CourtM:2

C. Other Search Features of the RegistryM:3

D. File Retention and Standardized FormsM:3

E. Agencies with GPOR Access.....M:3

F. Gaining Access to GPOR WebsiteM:3

G. For More InformationM:4

- A. The Creation of the Georgia Protective Order Registry
The Georgia Protective Order Registry (GPOR) was created to serve as a statewide, centralized database for protective orders. It is managed by the Georgia Crime Information Center (GCIC) and linked to the National Crime Information Center (NCIC) Network. Law enforcement, prosecutors, and courts may access the database 24 hours per day, 7 days per week to assist in the enforcement of orders and ensure the safety of victims. (OCGA 19-13-52)

Everyone recognizes the inherent danger of domestic violence cases and the difficulty faced by the court due to the private nature of these acts of family violence. Add to this a report by the Research Division of the Administrative Office of the Courts (2005) that indicates 17,600 Georgia protective orders were litigated pro se in 2004, and the tremendous responsibility placed on the court becomes clear.

Used together NCIC and Georgia's Registry provide a comprehensive resource for the court.

- B. Specific Benefits of GPOR to the Court

There is a general misunderstanding of what is available on GPOR that may account for the under use of this valuable resource by the court. It is generally thought that the National Crime Information Center (NCIC) site provides the same information. This is not the case. There are two main differences that are important to the court.

The Georgia Protective Order Registry accepts 100% of all orders filed in Georgia. The Georgia Registry will attempt to transmit all orders to NCIC for inclusion in the National Protective Order file. Approximately 96% of all orders received from the Georgia Registry are successfully transmitted to NCIC. Approximately 3% - 5% are rejected by NCIC due to lack of required information – information that many petitioners, particularly stalking victims may not have.

Additionally, the original order in its entirety is available on GPOR. The original order provides detailed information on the respondent, petitioner and the children that is not available on the NCIC site. Some counties are currently scanning the petition itself, which includes a narrative of events in the petitioner's own words, that led up to the request for protection. Particularly with witnesses in criminal cases or petitioners in civil cases, who fear going forward with a case, this information can be very helpful to the court. This percentage may seem small but with an average of 7,300 active protective orders on the registry, this means that approximately 350 orders are not showing on NCIC.

Additionally, the original order in its entirety is available on GPOR. The original order provides detailed information on the respondent, petitioner and the children that is may not be available on the NCIC site. Some counties are currently scanning the petition itself, which includes a narrative of events in the petitioner's

own words, that led up to the request for protection. Particularly with witnesses in criminal cases or petitioners in civil cases, who fear going forward with a case, this information can be very helpful to the court.

The court sometimes receives petitions from the same petitioner that are then withdrawn or dismissed. This can raise a concern about the use of court resources but ultimately may indicate the presence of domestic violence. A search of previous orders may assist the court in identifying petitioners who dismiss orders out of fear and capitulation to the intimidation tactics of the abuser. ([See Section 2.4.3 D. - Repeat Petitioners](#))

The Georgia Crime Information Center is currently working on re-designing the POR web site. The goal of the re-design is to enhance the Protective Order Registry program by improving the accuracy and completeness of records, enhancing delivery of services, and expanding access to services and records.

- C. Other Search Features of the Registry
 1. Search for orders by civil action file number, county, or respondent name
 2. View PO conditions; effective, expiration and service dates; respondent and petitioner information
 3. View or print an image of the order
 4. Run reports by expiration date of order, order type, order status and county

- D. File Retention and Standardized Forms
Inactive records will be maintained on-line for the remainder of the year in which the record was cleared or expired, plus five years.

All standardized forms that appear in [Appendix L - Uniform Forms](#) of this benchbook are accepted in the registry. In order for the registry to be most effective, it behooves the court to use these state promulgated forms. Unfamiliar forms impact the data entry time and can cause confusion for the law enforcement officers and deputies charged with enforcing orders across county lines.

- E. Agencies with GPOR Access
 1. Sheriff's Offices
 2. Police Departments
 3. 911 Offices
 4. State, county and private probation offices
 5. Superior and Magistrate courts
 6. District attorney's offices'
 7. Solicitor's offices'
 8. Department of Corrections
 9. Department of Pardons and Parole

- F. Gaining Access to GPOR Website
Judicial access through the Sidebar is not available at this time. While this method of access is being explored, judicial officers may gain access similar to other agencies:
 1. Obtain a user ID/password form from GCIC

2. Fill out form and return to GCIC
3. GCIC will assign a user ID/password
4. Confirmation form will be faxed/emailed back to the user

G. For More Information

Ms. Daryl Beggs at (404) 270-8464 or email: daryl.beggs@gbj.ga.gov

Ms. Mary King at (404) 270-8453 or email: mary.king@gbj.ga.gov

N. APPENDIX N – VISITATION, CUSTODY, PROTECTION AND SUPPORT OF CHILDREN

Table Of Contents

Introduction..... N:2

A. Issues for Judicial Consideration in Cases Involving Domestic Violence
..... N:2

1. Evaluators. N:2

2. Parental Alienation Syndrome. N:2

3. Custody and Visitation considerations. N:2

B. Suggestions for Consideration in Cases Involving Domestic Violence . N:2

1. Custodial Arrangements..... N:3

 a) Joint Physical Custody..... N:3

 b) Joint Legal Custody. N:3

2. Visitation Arrangements N:3

 a) Questions to be answered before an Order is entered..... N:3

 b) Weeknight visitations should be discouraged..... N:4

 c) Child Support Adjustments
.....N:N:4

3. Telephone Contact N:55

4. Financial Issues..... N:55

C. Safety Focused Parenting Plan..... N:77

Introduction

An American Psychological Association report (1996) notes that custody and visitation disputes appear to occur more frequently in cases where there is a history of domestic violence. This reinforces what the domestic violence community has known for decades. Batterers use the courts to harass their victims once the victim has left and is out of his immediate control.

A. Issues for Judicial Consideration in Cases Involving Domestic Violence

1. **Evaluators.**

It may be wise to consider utilizing evaluators - Mental Health professionals ([See Appendix I](#)), Guardians *ad Litem* ([See Appendix J](#)) - or Court Appointed Special Advocates (CASA) to protect the physical and psychological well-being of the children. It is crucial to choose a trained evaluator.

Marjory Fields (2008) reports that “The safety of Intimate Partner Violence (IPV) victims and their children can be compromised by evaluators who recommend custody or unsupervised visits for IPV offenders. Evaluators have a duty to screen all custody and visitation cases for IPV, as well as child abuse and neglect”

The American Psychological Association’s Report (1996) states “When children reject their abusive fathers, it is common for the batterer and others to blame the mother for alienating the children. They often do not understand the legitimate fears of the child.”

2. **Parental Alienation Syndrome.**

“Although there are no data to support the phenomenon called Parental Alienation Syndrome (PAS), in which mothers are blamed for interfering with their children's attachment to their fathers, the term is still used by some evaluators and courts to discount children's fears in hostile and psychologically abusive situations." (Page 40). Carole S. Bruch (2001) extensively repudiates the theory of Parental Alienation Syndrome on multiple counts.

3. **Custody and Visitation considerations.**

In general, orders should be specific and clear with appropriate timetables for events to happen. Do not leave any issue to be “mutually agreed upon by the parties”. This action requires the parties to negotiate which simply encourages conflict and future litigation.

B. Suggestions for Consideration in Cases Involving Domestic Violence

The suggestions outlined herein focus almost entirely on agreements made with regard to the children. When a batterer is no longer in a position to control the victim directly, as when the parties are married, the children become the vehicle

for control. What follows are suggestions about how to ensure that Orders are effective in separating the children from the control batterers exert as they attempt to press the limits of the agreement.

1. **Custodial Arrangements**

a) **Joint Physical Custody.**

Successful joint physical custody arrangements require that the parties have proven, effective communication skills and a balance of power. Neither exists in relationships where violence has been an issue. Frequent moves by children between homes require that parents talk on a regular, sometimes daily basis. Few decisions can be made without one parent consulting the other as all decisions affect both households. Families where violence has occurred and where the parties share joint physical custody inevitably return to the Court for assistance in settling disagreements.

b) **Joint Legal Custody.**

It's preferable that the victim/parent be awarded sole legal and physical custody. Consultation as required by joint legal custody is fruitless; the parties will never agree on what is in their child's best interest, even on the most obvious of issues. The result is more litigation, with the batterer bringing the victim back to court alleging he/she has not consulted on all issues. If the parties are going to be awarded or have agreed on joint legal custody, the victim must also be awarded final decision making authority. When batterers are awarded final decision-making authority on any issue, the decisions are never based on the best interest of the child. Rather, they make decisions that will have the most impact on the victim's life.

2. **Visitation Arrangements**

a) **Questions to be answered before an Order is entered.**

Provisions surrounding visitation must be very specific and leave little to chance. Nothing should be allowed to be "mutually agreed upon." Following are questions that need to be answered before an Order is entered:

- (i) Who is responsible for transportation?
- (ii) Where does drop-off and pick-up take place, *specifically*? Which CVS parking lot on Peachtree Street? Which corner of the parking lot? Public places where people regularly gather are preferable to either party's home.
- (iii) How long does the custodial parent have to wait for the visiting parent before the visitation is deemed cancelled? If that batterer knows that his/her former spouse has a date on the same night the children are supposed to be picked up, is the pick-up going to be timely?

(iv) Who can be present at the transfers? It's probably *not* a good idea for Mom's new boyfriend or Dad's new girlfriend to be there.

b) Weeknight visitations should be discouraged.

These visits require a lot of coordination, more than the parties are capable of. Issues surrounding extra-curricular activities, homework and test preparation, etc., all must be addressed each time one of these visitations occurs.

If visitation is going to be supervised, it must be clear who's going to supervise, who must pay, where it can take place, under what circumstances supervision may cease and what the process will be if the arrangements need to change. The supervisor should not be someone who does not believe the violence ever occurred, e.g. the batterer's mother.

c) Child Support Adjustments

O.C.G.A. § 19-6-15 (K) has new guidelines that provide for adjustments to an amount for child support based a certain number of visitation days. Under the new guidelines, child support may be increased if the payor has sixty days of visitation or less. Conversely, child support may be decreased if the payor has one hundred days of visitation or more. Section K labeled "parenting time" states that following:

- i. The child support obligation table is based upon expenditures for a child in intact households. The court may order or the jury may find by special interrogatory a deviation from the presumptive amount of child support when special circumstances make the presumptive amount of child support excessive or inadequate due to extended parenting time as set forth in the order of visitation or when the child resides with both parents equally.
- ii. If the court or the jury determines that a parenting time deviation is applicable, then such deviation shall be included with all other deviations and be treated as a deduction.
- iii. In accordance with subsection (d) of [Code Section 19-11-8](#), if any action or claim for parenting time or a parenting time deviation is brought under this subparagraph, it shall be an action or claim solely between the custodial parent and the noncustodial parent, and not any third parties, including the child support services.

In [Brown v. Georgia Dept. of Human Resources, 263 Ga. 53, 428 S.E.2d 81 \(1993\)](#), the court held that, “while a noncustodial parent is not entitled to credit against child support arrearages for time a child spent living with him or her as a matter of law, credit may be allowed where the child has lived with the noncustodial parent, with the express approval of the custodial parent, where the support provided to the child is within the spirit and intent of the child support order, or where the custodial parent agrees to the noncustodial parent's direct support of the child as an alternative to the payment of child support to the custodial parent. The court went on to imply, by its holding under the facts of the case, that a custodial parent's agreement to the noncustodial parent's direct support of a child need not be overtly stated, but may be found by the court to have been implied based on the custodial parent's actions, such as leaving the child with the noncustodial parent for a substantial period of time, failure to support the child, and failure to demand child support until after resuming custody of the child”.

3. **Telephone Contact**

- a) Be realistic about telephone contact. What’s the purpose of calling a 6-month-old child? Such contact is often used as an opportunity for an abuser to maintain contact with his/her victim and find out information otherwise unavailable.
- b) If telephone contact is ordered, there needs to be a window of time during which the call can occur. For example, the caller must call between 7:30 and 8:00 p.m. on a specific day of the week. Requests for daily phone contacts should be evaluated thoroughly to ensure it is not a veiled stalking attempt. If the person being called has caller identification on the phone, allow the child to answer the phone, thus minimizing contact between the parties.
- c) Include in the Order that the caller not discuss with the child anything involving the custodial parent. While difficult to enforce, the victim/parent needs to be able to file a Petition for Citation of Contempt should the call violate the order.
- d) Place the responsibility of calling on the non-custodial parent, not the child.

4. **Financial Issues**

- a) **Ensure that child support is to be paid through Income Deduction Orders or through Division of Child Support Services.** Judges should avoid direct payments of child support to ensure the victim’s safety by limiting any additional contact that the victim may have to have with the abuser. Georgia state law requires immediate income withholding in most cases, though there is an exception for good cause or for a written agreement reached between the parties that provides for an alternative payment arrangement. O.C.G.A. 19-6-32(a)(1) (2012). Even when an offender purports to show good cause or when there is a written agreement between the parties, if there is domestic violence

involved, the court should avoid issuing an order that allows contact between the parties. By requiring child support to be paid via Income Deduction or through the Division of Child Support Services, the payor is distanced from the receiver. This eliminates the need for the victim to reveal his or her address to obtain support, and eliminates any excuse that the abuser may have for contacting the victim or avoiding payment.

- b) **Take steps to avoid requiring victims to interact with abusers.** The victim should never be expected to meet with the abuser and should not be required to appear in person if he or she fears for his or her life. Efforts should be taken to avoid requiring victims to go with their abusers to file additional petitions or complete additional paperwork. When possible, if additional paperwork is necessary, it should be completed by clerical staff and parties should be kept separate.
- c) **DO NOT allow the batterer to be responsible for paying directly for things,** such as services or bills, that affect the victim's life (mortgage, utilities, car payments, etc.). All monies should go directly to the victim so he/she can be in charge of making necessary payments.
- d) **Make sure the parties did not make any agreement that leaves them connected financially.** If one party is awarded the house or a car, it must be refinanced to remove the other party's name if both are on the title or loan. If a Qualified Domestic Relations Order needs to be prepared, it needs to be clear who prepares it and by what date it will be completed. If the parties are splitting up debt, make every effort to ensure the batterer cannot damage the credit or financial status of the victim by not making payments as required by the Order.
- e) **The court should draft detailed orders and child support schedules.** When a court orders child support, the order should set a detailed payment schedule and guidelines. This sets limits on an offender, and removes any discretion that he might otherwise have to exercise some kind of control over the victim.
- f) **If necessary, forego child support to ensure victim safety.** Though in many cases, with the proper care, child support can be ordered safely, in other cases, the danger to the victim may be too great. In instances where a child support order is likely to compromise the safety of the victim, it is better to postpone ordering child support until a time when the likelihood of danger has been reduced.
 - i. Good Cause exception to Child Support. Federal law permits victims who would otherwise be required to seek child support, specifically victims receiving money through the Temporary Assistance to Needy Families (TANF) program, to avoid seeking child

support if they can show “good cause.” If good cause is shown, then the victim will not be required to provide information about the father and AGENCY will not contact him to seek child support.

C. Safety Focused Parenting Plan.

_____ COUNTY SUPERIOR COURT
STATE OF GEORGIA

_____,)
Plaintiff,)
)
)
)
)
_____,)
Defendant.)

Civil Action
Case Number _____

PARENTING PLAN

() The parties have agreed to the terms of this plan and this information has been furnished by both parties to meet the requirements of OCGA Section 19-9-1. The parties agree on the terms of the plan and affirm the accuracy of the information provided, as shown by their signatures at the end of this order.

() This plan has been prepared by the judge.

This plan () is a new plan.
() modifies an existing Parenting Plan dated _____.
() modifies an existing Order dated _____.

Child's Name	Date of Birth

I. Custody and Decision Making:

- A. Legal Custody shall be (choose one:)**
() with the Mother
() with the Father
() Joint

B. Primary Physical Custodian

For each of the children named below the primary physical custodian shall be:

	d/o/b:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Joint
	d/o/b:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Joint
	d/o/b:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Joint
	d/o/b:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Joint
	d/o/b:	<input type="checkbox"/> Mother	<input type="checkbox"/> Father	<input type="checkbox"/> Joint

WHERE JOINT PHYSICAL CUSTODY IS CHOSEN BY THE PARENTS OR ORDERED BY THE COURT, A DETAILED PLAN OF THE LIVING ARRANGEMENTS OF THE CHILD(REN) SHALL BE ATTACHED AND MADE A PART OF THIS PARENTING PLAN.

C. Day-To-Day Decisions

Each parent shall make decisions regarding the day-to-day care of a child while the child is residing with that parent, including any emergency decisions affecting the health or safety of a child.

D. Major Decisions

Major decisions regarding each child shall be made as follows:

- | | | | |
|----------------------------|---------------------------------|---------------------------------|--------------------------------|
| Educational decisions | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |
| Non-emergency health care | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |
| Religious upbringing | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |
| Extracurricular activities | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |
| _____ | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |
| _____ | <input type="checkbox"/> mother | <input type="checkbox"/> father | <input type="checkbox"/> joint |

E. Disagreements

Where parents have elected joint decision making in Section I.D above, please explain how any disagreements in decision-making will be resolved.

II. Parenting Time/Visitation Schedules

A. Restrictions (Check if applicable)

- The non-custodial parent shall begin attending FVIP (Family Violence Intervention Program) and shall provide proof of compliance to this court.
- The non custodial parent shall attend parenting classes before visitation can begin and shall provide proof of compliance to this court.
- The non custodial parent shall attend alcohol / drug abuse /mental health counseling before visitation can begin and shall provide proof of compliance to this court.

B. Restrictions (Check if applicable)

- 1. No Parenting Time**
The non-custodial parent shall have no contact with the children until further court order. All parenting decisions shall be made by the residential parent.
- 2. Supervised Parenting Time**
Whenever parenting time is exercised by the non-custodial parent as outlined below, including day-to-day visitation and holiday or vacation visitation, it shall be conducted with a supervisor present. Supervised parenting time shall apply during the day-to-day schedule as follows:

Place: _____

Person/Organization supervising:

Instructions for supervision: (i.e.: child cannot be removed from supervisor's home, drug/alcohol restrictions)

Responsibility for cost
 mother father divided equally

C. Visitation Schedule

During the term of this parenting plan the non-custodial parent shall have at a minimum the following rights of parenting time/ visitation (choose an item):

- The weekend of the first and third Friday of each month.
- The weekend of the first, third, and fifth Friday of each month.
- The weekend of the second and fourth Friday of each month.

- () Every other weekend starting on _____.
- () Each _____ starting at _____ a.m./p.m. and ending _____ a.m./p.m.
- () Other: _____

For purposes of this parenting plan, a weekend will start at _____ a.m./p.m. on [Thursday / Friday / Saturday / Other: _____] and end at _____ a.m./p.m. on [Sunday / Monday / Other: _____].

Any weekday visitation will begin at _____ a.m./p.m. and will end [____p.m. / when the child(ren) return(s) to school or day care the next morning / Other:_____].

This parenting schedule begins:

- () _____ OR () date of the Court's Order
(day and time)

D. Major Holidays and Vacation Periods

1. Thanksgiving

The day to day schedule shall apply unless other arrangements are set forth:

 _____ beginning _____.

2. Winter Vacation

The day to day schedule shall apply except as follows (check if appropriate):

- () The non-custodial parent shall have the child(ren) beginning on _____ at _____ m. and ending on _____ at _____ m.

()The () mother () father shall have the child(ren) for the first period from the day and time school is dismissed until December _____ at _____ a.m./p.m. in () odd numbered years () even numbered years () every year. The other parent will have the child(ren) for the second period from the day and time indicated above until 6:00 p.m. on the evening before school resumes. Unless otherwise indicated, the parties shall alternate the first and second periods each year.

- () Other agreement of the parents:

_____.

3. Summer Vacation

Define summer vacation period:

The day to day schedule shall apply unless other arrangements are set forth:

_____ beginning _____.

4. Spring Vacation (if applicable)

Define: _____

The day to day schedule shall apply unless other arrangements are set forth:

_____ beginning _____.

5. Fall Vacation (if applicable)

Define: _____

The day to day schedule shall apply unless other arrangements are set forth:

_____ beginning _____.

6. Other Holiday Schedule (if applicable)

Indicate if child(ren) will be with the parent in ODD or EVEN numbered years or indicate EVERY year:

	MOTHER	FATHER
Martin Luther King Day	_____	_____
Presidents' Day	_____	_____
Mother's Day	_____	_____
Memorial Day	_____	_____
Father's Day	_____	_____
July Fourth	_____	_____
Labor Day	_____	_____
Halloween	_____	_____
Child(ren)'s Birthday(s)	_____	_____
Mother's Birthday	_____	_____
Father's Birthday	_____	_____

Religious Holidays: _____

Other: _____

Other: _____

Other: _____

7. Other extended periods of time during school, etc. (refer to the school schedule)

D. Start and end dates for holiday visitation

For the purposes of this parenting plan, the holiday will start and end as follows (choose one):

- Holidays shall start at ___ a.m. on the day of the holiday.
- Holidays shall end at ___ p.m. on the day of the holiday.
- Holidays that fall on Friday will include the following Saturday and Sunday
- Holidays that fall on Monday will include the preceding Saturday and Sunday
- Other: _____

E. Coordination of Parenting Schedules

Check if applicable:

- The holiday parenting time/visitation schedule takes precedence over the regular parenting time/visitation schedule.
- When the child(ren) is/are with a parent for an extended parenting time/visitation period (such as summer), the other parent shall be entitled to visit with the child(ren) during the extended period, as follows:

F. Transportation Arrangements

For visitation, the place of meeting for the exchange of the child(ren) shall be:

The _____ will be responsible for transportation of the child at the beginning of visitation.

The _____ will be responsible for transportation of the child at the conclusion of visitation.

Transportation costs, if any, will be allocated as follows:

Other provisions: _____

G. Contacting the child

When the child or children are in the physical custody of one parent, the other parent will have the right to contact the child or children as follows:

Telephone

Other: _____

Limitations on contact

The mother father shall pay for a cell phone for the child(ren) and shall contact the child(ren) only at that number during the times identified above. The parents shall not contact each other directly except when urgent circumstances require it.

H. Communication Provisions

Please check appropriate provision:

Each parent shall promptly notify the other parent of a change of address, phone number or cell phone number. A parent changing residence must give at least 30 days notice of the change and provide the full address of the new residence.

Due to prior acts of family violence, the address of the child(ren) and victim of family violence shall be kept confidential. The protected parent shall promptly notify the other parent, through a third party, of any change in contact information necessary to conduct visitation.

III. Access to Records and Information

Rights of the Parents

Absent agreement to limitations or court ordered limitations, pursuant to O.C.G.A. § 19-9-1 (b) (1) (D), both parents are entitled to access to all of the child(ren)'s records and information, including, but not limited to, education, health, extracurricular activities, and religious communications. Designation as a non-custodial parent does not affect a parent's right to equal access to these records.

Limitations on access rights:

() Access to the child(ren)'s records and information outlined above poses a potential safety concern for the child(ren) or parent; therefore, access to such documents is restricted as follows:

Other Information Sharing Provisions:

IV. Modification of Plan or Disagreements

Parties may, by mutual agreement, vary the parenting time/visitation; however, such agreement shall not be a binding court order. Custody shall only be modified by court order. No parent may coerce, intimidate, threaten, or harm the other parent to secure an agreement to changes in this parenting plan.

V. Child Safety

The parents shall follow the safety rules checked below (check all rules that apply):

() The following person(s) present a danger to the child(ren) and shall not be present during parenting time:_____

() The child(ren) shall not be physically disciplined.

() There shall be no firearms in the parent's home, car, or in the child(ren)'s presence during parenting time.

() Neither party shall consume alcohol or illegal drugs and then operate a motor vehicle when the child(ren) is/are in his or her custody.

() Neither parent shall be intoxicated or under the influence of any controlled substance (e.g. illegal or non-prescribed drugs) during the period of time that s/he is with the child(ren).

() The child(ren) shall not be left alone until they reach at least ___ years of age.

() Other: _____

VI. Special Considerations

Please attach an addendum detailing any special circumstances of which the Court should be aware (e.g., health issues, educational issues, etc.)

() There has been family violence by the _____ against the _____ and the safety of the victim and the child(ren) shall be the primary focus of interactions between the abuser, the victim, and the child(ren). O.C.G.A. Sec. 19-9-3(4).

() _____

VII. Parents' Consent

Please review the following and initial:

1. We recognize that a close and continuing parent-child relationship and continuity in the child's life is in the child's best interest. **when the parents have shown that they can act in the best interest of the child.**

Mother's Initials: _____ Father's Initials: _____

Reason for not signing:

() There has been domestic violence by the _____ against the _____ and/or minor child(ren) and a close and continuing parent-child relationship or continuity in the child(ren)'s life is not in the child(ren)'s best interest. O.C.G.A. §19-9-3(a)(4).

2. We recognize that our child's needs will change and grow as the child matures; we have made a good faith effort to take these changing needs into account so that the need for future modifications to the parenting plan are minimized.

Mother's Initials: _____ Father's Initials: _____

3. We recognize that the parent with physical custody will make the day-to-day decisions and emergency decisions while the child is residing with such parent.

Mother's Initials: _____ Father's Initials: _____

() We knowingly and voluntarily agree on the terms of this Parenting Plan. Each of us affirms that the information we have provided in this Plan is true and correct.

Father's Signature

Mother's Signature

ORDER

The Court has reviewed the foregoing Parenting Plan, and it is hereby made the order of this Court.

This Order entered on _____, 20 ____ .

JUDGE

COUNTY SUPERIOR COURT

O. APPENDIX O – CHILDREN AND DOMESTIC VIOLENCE

Table Of Contents

Introduction.....	O:2
A. Effects of Domestic Violence on Children	O:3
1. Factors that influence child response to exposure to domestic violence.	O:3
2. Effects of exposure to domestic violence.	O:3
3. Impact of witnessing arguments or domestic violence.	O:4
4. Effects of domestic violence based on gender.....	O:4
5. Impact of violence on family units.	O:5
6. Correlation between witnessing domestic violence and maltreatment or abuse of children.....	O:5
B. Termination of Parental Rights.....	O:6
C. Best Practices	O:6

Introduction

Children often are involved in cases of domestic violence that come before the court. It may be instinctive to assume that children would be severely and negatively impacted by remaining in a home where domestic violence has occurred, or by remaining with a parent who was a victim of domestic violence. However, it would be counterproductive and sometimes harmful to the children to assume that the negative impacts of witnessing domestic violence outweigh the negative impacts of removal. In situations where children are involved, regardless of whether or not they actually witnessed the violence, the court should consider the context of the situation and a number of variables that can help assess what types of assistance are in the children's best interest.

A New York District Court decision, *Nicholson v. Williams* (203 F. Supp. 2d 153, 2002), included a number of variables and findings by various experts on the impact of domestic violence on children, and on determining whether removal from the home is in the best interest of the child. The experts emphasized that there is a great deal of variability in the effects of domestic violence on children, and though children can be negatively impacted by witnessing such violence (including post-traumatic stress disorder, sleep disturbances, separation anxiety, more aggressive behavior, passivity or withdrawal, greater distractibility, concentration problems, hypervigilance, desensitization to other violent events, propensity to use violence in future relationships, propensity to hold a pessimistic view of the world, increased risk for depression and anxiety and disruptive behavior disorders, issues with compliance with authority, higher level of aggression, and higher rate of academic difficulties), such an impact is by no means certain and depends on a number of factors.

Collectively, the experts suggest in order to assess the impact of domestic violence, one should examine: the level of violence in families; degree of child's exposure to the violence; child's exposure to other stressors; child's individual coping skills, age, frequency and content of what the child saw or heard; the child's proximity to the event, the victim's relationship to the child; and the presence of a parent or caregiver to mediate the intensity of the event.

Further, experts emphasized that in some cases, children experienced no negative effects or impact from having witnessed domestic violence. They also noted that domestic violence against a mother does not necessarily result in violence against the child; however, if such violence did occur, the perpetrator of the violence would be the same in both situations. The experts found it extremely unlikely that a victim of domestic violence would then perpetrate violence on his or her child.

The court should remove children from the home after witnessing domestic violence only as a last resort. Children most benefit from having a mature, nurturing and caring relationship with an adult who can be a parent, teacher or a therapist, from being able to talk about what they've witnessed, and from having a safe environment. Judges should consider other resources, such as Children 1st (which serves as a single point of entry for public health-based programs and services for at-risk children) as part of case plans for

children exposed to violence. Not every child needs or benefits from the same intervention, and help should be gender and age specific.

A. Effects of Domestic Violence on Children

There is a great deal of variability on children's experience and the impact of those experiences. Several factors have been identified that influence children's responses to being exposed to domestic violence (*Nicholson v. Williams*, 203 F. Supp. 2d 153 (2002)).

1. Factors that influence child response to exposure to domestic violence.

- Level of violence in families;
- Degree of child's exposure to the violence;
- Child's exposure to other stressors;
- Child's individual coping skills;
- Child's age;
- Frequency and content of what the child saw or heard;
- Child's proximity to the event;
- Victim's relationship to the child; and
- Presence of a parent or caregiver to mediate the intensity of the event.

2. Effects of exposure to domestic violence.

The effects of exposure to domestic violence can manifest in several different ways. The experts who testified in *Nicholson v. Williams*, regarding the effects on children witnessing domestic violence, identified short-term, long-term, and other effects.

Short-term effects can include:

- Post-traumatic stress disorder;
- Sleep disturbances;
- Separation anxiety;
- More aggressive behavior;
- Passivity or withdrawal;
- Greater distractibility;
- Concentration problems;
- Hypervigilance; and
- Desensitization to other violent events.

Long-term effects

- Propensity to use violence in future relationships;
- Propensity to hold a pessimistic view of the world; and
- May not occur when a child has a period of safety after watching domestic violence.

Other effects

- Increased risk for depression and anxiety and disruptive behavior disorders;
- Issues complying with authority;
- Higher level of aggression; and
- Higher rate of academic difficulties.

3. Impact of witnessing arguments or domestic violence.
 Betsy McAlister-Groves, in her book *Children Who See Too Much*, more generally studied the impact of witnessing arguments, or domestic violence, on children (McAlister-Groves, Betsy. *Children Who See Too Much*. Boston: Beacon Press, 2002. Print.)
 Children who witnessed arguments in the home as infants showed reactions of distress when exposed to “background anger,” such as their parents arguing or yelling (McAlister-Groves 56). When older, children are likely to try to distract, comfort, or problem solve for arguing parents (McAlister-Groves 56). When parents resolve arguments, children are much less likely to be affected (McAlister-Groves 57).
 Witnessing physical aggression between their parents is more harmful to children than witnessing verbal aggression (McAlister-Groves 57). Exposure to domestic violence affects children’s emotional development, social functioning, ability to learn and focus in school, moral development and ability to negotiate intimate relationships as adolescents and adults. Witnessing domestic violence is also associated with greater rates of juvenile delinquency, antisocial behavior, substance abuse, and mental illness (McAlister-Groves 57-58).

4. Effects of domestic violence based on gender.
 Richard Gelles studied the effects of domestic violence on children by comparing children, based on gender, who experienced violence with those who witnessed violence. Generally, children who experienced or were exposed to more violence at home and children who had only experienced violence had more problems than those who were only exposed to violence or who were neither exposed nor experienced family violence (Gelles, Richard. “Partner Violence and Children.” From *Ideology to Inclusion 2009: New Directions in Domestic Violence Research and Intervention*. California Alliance for Families and Children. The LAX Marriott, Los Angeles, CA. 26 June 2009. Plenary.)
 School Troubles
 Boys who experienced violence had more problems than boys who were exposed to violence, or who were exposed to and experienced violence.
 Girls who experienced and were exposed to violence had more problems than girls who either only experienced violence or were only exposed to violence.
 Delinquency
 Experience or exposure to violence made no difference in children’s delinquency.
 Problems with Adults
 Boys who experienced violence only had more problems than boys who were exposed to violence, or both experienced and were exposed to violence.

Girls who experienced and were exposed to violence had more problems than girls who either experienced only or were exposed only to violence.

Physical Aggression

Boys who experienced or were exposed to violence are more likely to develop physical aggression than girls who experienced or were exposed to violence.

5. Impact of violence on family units.

Jodi Klugman-Rabb studied the impact of violence on family units as a whole. Generally, violence increases risk of self-destructive behaviors (such as gang involvement, self-mutilation, substance abuse, inability to manage emotions and impulses, sexual promiscuity, cutting school, and future violence). She also found that children living in violence are more likely to have developmental delays or cognitive and language problems. She also found that violence had indirect effects on families. (Klugman-Rabb, Jodi. "Working with Parents and Families: The Effects of Domestic Violence on Family Systems." From *Ideology to Inclusion 2009: New Directions in Domestic Violence Research and Intervention*. California Alliance for Families and Children. The LAX Marriott, Los Angeles, CA. 26 June 2009. Plenary.)

Indirect effects of violence

Harsh parenting;
Inconsistent parenting/discipline/reinforcement;
Insecure attachment styles; and
Increased clinical-level anxiety and depression overall.

6. Correlation between witnessing domestic violence and maltreatment or abuse of children

There is some correlation between the presence of domestic violence in a household and direct maltreatment of children. Abuse tends to flow from the batterer. Generally, the victim of abuse does not then abuse his or her children; a scenario in which a man hits his wife, and she hits the child, is rare (Nicholson 203 F. Supp. 2d at 198). In those cases in which the victim of domestic violence abuses his or her children and are then prosecuted for battery and assault against the children, Georgia courts have allowed those victims to admit evidence of battered person syndrome to show a lack of the requisite intent (Pickle v. State, 280 Ga. App. 821 (2006)).

Witnessing domestic violence, itself, does not constitute maltreatment.

Many children who witness domestic violence show no negative effects, and some show strong coping abilities (Nicholson 203 F. Supp. 2d at 198).

B. Termination of Parental Rights

Georgia courts have terminated parental rights of both the batterer and the victim, in the right circumstances. In the Interest of D.O.R., the court terminated the parental rights of the batterer and the victim, where the victim suffered from depression, was unwilling to take a drug test, and failed to meet with a domestic violence assessor among other things. The victim's failure to comply with previous court orders and case plans was reason to find that giving her parental rights would harm the child (287 Ga. App. 659 (2007))

C. Best Practices

Judges should do a careful assessment of risks and protective factors in every family before drawing conclusions about the risks and harm to children (Nicholson 203 F. Supp. 2d at 198).

Child protection services and courts should avoid strategies that blame the non-abusive parent for failure to protect because of the system's inability to hold the actual perpetrator of the violence accountable (Nicholson 203 F. Supp. 2d at 200).

Children should be protected by offering battered parents appropriate services and protection (Nicholson 203 F. Supp. 2d at 202). This could include referring the victim to a local domestic violence center or shelter, or referring to the public health program, Children 1st. The form and further information are found at <http://health.state.ga.us/programs/childrenfirst/>

Children who witness violence may need professional psychotherapeutic help depending on changes in behavior and how long they have been occurring, the severity of the violence witnessed, and whether there is ongoing risk to the child, or the parent is unable to care for the child adequately (McAlister-Groves 86-87). Children are best helped by three elements: a nurturing, respectful, and caring relationship with an adult; giving children permission to talk, to tell their stories about what they have seen; and creating a safe environment for children who have witnessed violence (McAlister-Groves 101, 103).

P. APPENDIX P – CYBERSTALKING

Table Of Contents

Introduction.....	P:2
A. Georgia Stalking Law	P:3
1. Constitutionality of GA Stalking Law	P:3
2. Definition of Stalking	P:3
B. Use of Technology to Stalk.....	P:3
1. Forms of Computer and Electronic-Based Harassment.....	P:3
C. Application of Stalking Laws in Cyberstalking cases	P:4
1. Interpretation of Stalking Laws to Include Cyberstalking	P:4
D. Venue in Cyberstalking.....	P:5
E. Internet Resources.....	P:5

Introduction

A 1999 Department of Justice report defined cyberstalking as the use of the e-mail or other electronic communications devices to stalk another person. O.C.G.A. § 16-5-90 defines stalking as occurring when a person “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.” Contact includes communication by computer, by computer network, or by other electronic device. It is classified as a misdemeanor, but upon the second and subsequent convictions, is classified as a felony. The Violence Against Women Act also provides, under 42 U.S.C.S. § 14043b, grants to, among other things, develop safe uses of technology, to protect against abuses of technology, or providing training for law enforcement on high tech electronic crimes of domestic violence, dating violence, sexual assault and stalking.

As with offline stalkers, cyberstalkers are motivated by a desire to exert control over their victims. Evidence suggests that the majority of cyberstalkers are men, and the majority of their victims are women. Though cyberstalking does not involve physical contact, it is not necessarily more benign than offline stalking. The Internet provides increased access to personal information, and ease of communication, to potential stalkers. Cyberstalking can also foreshadow more serious behavior, such as physical violence. (*Stalking and Domestic Violence: Report to Congress, 2001*).

Technology advances rapidly, and so does stalkers’ means of controlling, harassing, watching, and contacting their victims. New technologies and electronic communications, such as GPS locators, untraceable phones, tiny hand-held video cameras, and online social networking sites such as Facebook and My Space, all allow perpetrators to have an unprecedented amount of access to information about their victims, as well as giving them a means by which they can perpetrate harassment easily, quickly, and at a distance.

The National Network to End Domestic Violence instituted the Safety Net project to educate victims, advocates and the general public to find safety using technology. The project also trains law enforcement, social services and community response teams to hold perpetrators accountable when using technology to harass, stalk, use surveillance and threaten.

When domestic violence cases or temporary protection order petitions involving cyberstalking appear, it is important to take cyberstalking seriously, even though the stalking may be conducted at a distance. In cases where the technology was recently developed, or is unknown to the court, it is also important to take advantage of the many online and organizational resources available to explain cyberstalking tools. The Court can include language in temporary protection orders addressing cyberstalking to prevent electronic communication, harassment, threats and stalking.

A. Georgia Stalking Law

1. Constitutionality of GA Stalking Law

Georgia's stalking law uses broad language that can be interpreted to cover technology, both current and future. Subject to a case-by-case interpretation by the court, the language allows the state to argue that any conduct, electronic or otherwise, with the purpose of harassing or intimidating another person, is stalking; and includes, but does not limit, the meaning of "contact" to electronic communications. Though overbroad statutory language can lead to challenges of the law's constitutionality, Georgia's stalking law has been found constitutional, by *Johnson v. State*, 264 Ga. 590 (1994), and was found not to be vague or overbroad.

2. Definition of Stalking

Georgia defines stalking, in O.C.G.A. §16-5-90(a)(1) as: A person commits the offense of stalking when he or she 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. For the purpose of this article, the terms "computer" and "computer network" shall have the same meanings as set out in [Code Section 16-9-92](#); the term "contact" shall mean any communication including without being limited to communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device; and the place or places that contact by telephone, mail, broadcast, computer, computer network, or any other electronic device is deemed to occur shall be the place or places where such communication is received. For the purpose of this article, the term "place or places" shall include any public or private property occupied by the victim other than the residence of the defendant. For the purposes of this article, the term "harassing and intimidating" means a knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person's safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose. This Code section shall not be construed to require that an overt threat of death or bodily injury has been made.

B. Use of Technology to Stalk

1. Forms of Computer and Electronic-Based Harassment

The Internet allows stalkers to access personal information about their victims easily, quickly and from the privacy of their own homes. Some recently identified forms of computer and electronic-based harassment include:

- a) Monitoring e-mail communication either on the victim's computer or through other programs.
- b) Sending threatening, insulting and harassing e-mails.
- c) Disrupting victim's e-mail by flooding a victim's e-mail inbox with unwanted mail or by sending a virus program.
- d) Using the victim's e-mail identity to send false messages or to purchase goods or services.
- e) Using the Internet to seek and compile a victim's personal information for use in harassment.
- f) Using prepaid calling cards to harass victims, making the caller difficult to trace.
- g) Use of GPS devices, which use satellite navigational technology to pinpoint a person or object's particular location, to track a victim's location.
- h) Use of computer monitoring software that allows a stalker to monitor the activities of his or her victim.
- i) Use of tiny hidden video cameras to monitor a victim's activities. (Southworth, Finn, Dawson, Fraser and Tucker, "Intimate Partner Violence, Technology, and Stalking", 2007.)

C. Application of Stalking Laws in Cyberstalking cases

1. Interpretation of Stalking Laws to Include Cyberstalking

Courts across the country have been forced to interpret outdated and limited stalking laws in order to determine whether new technological means of stalking or harassing victims constitute crimes. Many courts have been willing to interpret statutes to include new forms of technology that fit the spirit of stalking laws.

- a) In *New York v. Munn*, 179 Misc. 2d 903, 688 N.Y.S.2d 384 (1999), a man was held liable for posting a message on an Internet newsgroup asking others to kill a specific police officer, mentioning him by name, as well as all other NYPD police officers. The court found that a communication made on the Internet is initiated by electronic means or written, and is directed at the complainant was covered under the stalking statute, and that the message was directed at the complainant by the inclusion of his name in the message.
- b) In *Remsburg, Administratrix for the Estate of Amy Boyer v. Docusearch Inc.*, 149 N.H. 148 (2003), a man purchased his victim's personal information from an information broker, set up a Web site referencing stalking and killing his victim, who he later shot and killed. The court held that information brokers, in cases such as those, may be held liable for the sale of such personal information. The New Hampshire stalking statute references the state's harassment statute to define "communicates", (,") which

defines communications almost exactly as does the Georgia statute, which includes specific electronic communications while not limiting prohibited contact to communications by those means (RSA 644:4).

- c) In *Colorado v. Sullivan*, 53 P.3d 1181 (Colo. Ct. App. 2002), a Colorado man was in violation of the state's stalking law after installing a GPS on his estranged wife's car in order to check on her whereabouts during their divorce. The Colorado stalking statute prohibits any form of communication between the perpetrator and the victim, and does not specifically designate electronic communications as prohibited (C.R.S. 18-9-111).
- d) In *H.E.S. v. J.C.S.*, 815 A.2d 405 (NJ 2003), a man was held liable under the state's stalking law for watching his estranged wife for months via a small camera placed in a tiny hole in her bedroom wall. The New Jersey stalking statute includes broad statutory language, and prohibits communicating by any means: harassing, or conveying written or verbal threats by any means of communication to cause a reasonable person to fear for his or her safety (N.J. Stat. §2C:12-10(1))

D. Venue in Cyberstalking

- 1. With increased means of cyberstalking and electronic communications, perpetrators are able to stalk victims from a distance. Perpetrators can send e-mails, text messages, use GPS tracking, and other means of cyberstalking across state lines. Georgia case law has not clearly addressed when prosecution of an out-of-state perpetrator is appropriate.
 - a) In *Carlisle v. State*, 273 Ga. App. 567 (2005), the defendant mailed a letter to his victim's apartment and was subsequently charged with stalking. Venue was appropriate in the county where the victim's apartment was located, because that was where the letter was received.
 - b) In *Huggins v. Boyd*, 2010 Fulton County D. Rep. 2141 (2010), a respondent non-resident sent harassing e-mails to a woman living in Georgia, where she resided. She filed for a temporary protection order and the Court of Appeals found that the conduct on which the TPO was based occurred at the physical place where the respondent typed and sent the e-mails, and therefore that the temporary protection order (TPO) should have been filed in South Carolina.

E. Internet Resources

It is nearly impossible to keep up with new technologies that can be used and manipulated to stalk and harass victims. Several Web sites have resources that can be used to keep up to date with new technologies.

The National Center for Victims of Crime: Stalking Resource Center provides links to articles and publications on Internet safety, as well as new means of cyberstalking.

<http://www.victimsofcrime.org/our-programs/stalking-resource-center>

The National Network to End Domestic Violence: Safety net program assists in training victims, advocates, and law enforcement on cyberstalking and electronic harassment. The page features links and resources related to cyberstalking:

<http://www.nnedv.org/projects/safetynet.html>

Q. APPENDIX Q – CONFIDENTIALITY OF DOMESTIC VIOLENCE ORGANIZATIONAL RECORDS

Table Of Contents

Introduction.....	Q:2
A. Overview Chart.....	Q:3
B. Confidentiality	Q:5
1. Violence Against Women Act	Q:5
2. Family Violence Protection and Services.....	Q:5
3. United States Postal Service	Q:6
4. GA Statute Requiring Confidentiality of Domestic Violence Shelter	Q:66
5. State Standards for Certification.....	Q:66
C. Privilege	Q:66
1. GA Privilege Statute	Q:67
2. Federal Rule of Evidence 501.....	Q:78
3. Federal Case Law on Privilege.....	Q:8
4. Development of Privilege	Q:99
Dean Wigmore’s 4 criteria.....	Q:99
D. Right to Privacy	Q:99
1. GA Right to Privacy.....	Q:99

Introduction

Communications between a representative of a domestic violence organization and a victim of domestic violence are often initiated in confidence, and, in general, the victim and counselor assume that communications during counseling are meant to be confidential. If the organization's records or communications are not kept confidential, victims may be reluctant to seek counseling or assistance. (Department of Justice, Report to Congress on the Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors, Findings and Model Legislation (1995)). In a variety of cases involving domestic violence—from divorces to custody disputes to criminal cases—a party may attempt to compel testimony or production of documents from shelters.

While nothing in federal statutory law explicitly requires that domestic violence organizational records be kept confidential, when domestic violence organizations receive grants under the Family Violence Protection and Services Act (FVPSA), they are required to prove that procedures are in place to keep records confidential. Domestic violence organizations also receive grants under the Violence Against Women Act (VAWA) in order to develop confidentiality protocols to protect personally identifying information of victims. Domestic violence shelters in Georgia are certified by the Department of Health and Human Services, and receive funding under FVPSA, with many also receiving funding under VAWA. When domestic violence shelters receive subpoenas or third-party requests to produce documents or testimony, questions may arise as to the legality of their complying with the requests and as to the confidentiality of the organization's records. There is no Georgia statute protecting the confidentiality of domestic violence organization records and communications with victims.

Some domestic violence shelter staff(s) already have privilege, based on the privilege between a patient and a licensed social worker or professional counselor during the psychotherapeutic relationship, as recognized in O.C.G.A. § [24-5-501](#) (effective January 1, 2013). However, [O.C.G.A. § 24-5-509](#) creates a new privilege for communications between a family violence or sexual assault victim and counselors, including volunteers, providing services to such victims at family violence shelters and rape crisis centers. However, in both civil and criminal cases, a party may by motion, compel the testimony of an agent of a family violence or rape crisis unit to whom disclosures were made by an alleged victim upon showing: that the evidence is material and relevant; that it is not otherwise available; and, that the probative value of the evidence sought substantially outweighs “the negative effect of the disclosure on the victim.” Other than evidence of prior inconsistent statements, disclosures will not be ordered if the only purpose of the evidence relates to the alleged victim's character for truthfulness. If the moving party requests disclosure on proper grounds, the court is to take the evidence under seal for *in camerareview* and may order disclosure of those portions of the evidence which are proper under the code section.

If a communication is not privileged under the Georgia statute, Federal courts can extend privilege on a case-by-case basis where the public interest in keeping the communication confidential outweighs the need for the evidence *Jaffee v. Redmond*, 518 U.S. 1(1996).

Courts often use Dean Wigmore’s factors to determine whether to apply privilege: (1) the communications must originate in confidence; (2) confidentiality must be essential to the proper maintenance of the relationship; (3) the relationship must be one that society deems worthy of protecting; and (4) disclosure must injure the relationship more than it benefits the litigation. Wigmore, *A treatise on the Anglo-American System of Evidence in Trials at Common Law*,. Vol. 5, Pg. 2, §2285. Although Georgia state courts are not required to follow *Jaffee*, there is a history of courts extending privilege beyond the statute, such as extending the psychiatrist-patient privilege to include communications between a general physician and a patient for a therapeutic purpose. *Wiles v. Wiles*, 264 Ga. 594.

A. Overview Chart

<i>Overview</i>	
Violence Against Women Act	Commissioned a report on confidentiality for domestic violence victims, in an effort to improve federal provisions and state provisions protecting domestic violence victims, and provides grants to organizations to allow them to develop procedures and systems to keep personally identifying information of victims confidential.
Family Violence Protection and Services Act (FVPSA)	In order to receive grants under FVPSA, an organization must prove that procedures are in place to ensure confidentiality of records.
Federal Rule of Evidence 501; Notes of Committee on Judiciary (H.R. No. 93-650)	House committee suggests that principles of common law privilege should be interpreted in light of “reason and experience,” and that privilege should be recognized on a “case-by-case” basis.
Department of Justice Report to Congress (1995)	Suggested model statutes for states to ensure confidentiality for communications between sexual assault and domestic violence victims and their counselors.
Federal Case Law – Extension of Privilege	Extended privilege to include communications between a psychotherapist and his or her patient. <i>Jaffee v. Redmond</i> , 518 U.S. 1 (1996).
GA Right to Privacy	Recognizes right to privacy for communications between certain persons for the public good. <i>Pavesich v. New England Life Insurance Co.</i> , 122 Ga. 190 (1905).
GA Privilege Statute 6 O.C.G.A. § 24-5-509	O.C.G.A. § 24-5-509 (effective January 1, 2013) creates a new privilege for communications between a family violence or sexual assault victim and counselors, including volunteers, providing services to such victims at family

	violence shelters and rape crisis centers.
GA Statute – Confidentiality for Domestic Violence Shelter Location	Knowing disclosure of location of a domestic violence shelter without permission of the shelter’s director constitutes a misdemeanor. O.C.G.A. § 19-13-23
GA Standards for Certification O.C.G.A. § 19-13-21 et. seq. G. Comp. R. & Regs. r. 290-5-46-.05	DHS sets minimum standards which shelters must follow to receive state and federal funds administered by DHS. Residents’ personal information shall be kept confidential.

B. Confidentiality

1. Violence Against Women Act

42 U.S.C.A. § 13942: Confidentiality of communications between sexual assault or domestic violence victims and their counselors.

Provides for a study, report, and recommendations for measures to be taken to protect the confidentiality of communications between domestic violence victims and their counselors.

For a summary of the report, see below.

42 U.S.C.S. § 14043b: Grants made to protect the privacy and confidentiality of victims of domestic violence, dating violence, sexual assault, and stalking.

Grants are made to ensure that personally identifying information of victims of domestic violence, sexual violence, stalking, and dating violence are not disclosed

14043b-1: Grants made under this subtitle may be used —

to develop or improve protocols, procedures, and policies for the purpose of preventing the release of personally identifying information of victims (such as developing alternative identifiers);

to defray the costs of modifying or improving existing databases, registries, and victim notification systems to ensure that personally identifying information of victims is protected from release, unauthorized information sharing and disclosure;

to develop confidential opt-out systems that will enable victims of violence to make a single request to keep personally identifying information out of multiple databases, victim notification systems, and registries; or

to develop safe uses of technology (such as notice requirements regarding electronic surveillance by government entities), to protect against abuses of technology (such as electronic or GPS stalking), or providing training for law enforcement on high-tech electronic crimes of domestic violence, dating violence, sexual assault, and stalking.

2. Family Violence Protection and Services

42 U.S.C.S. § 10402: State demonstration grants authorized.

Grants under this subsection cannot be made unless the organization provides “documentation that procedures have been developed and implemented including copies of the policies and procedure, to assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under this title and provide assurances that the address or location of any shelter-facility assisted under this title will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public.”

3. United States Postal Service

Required to implement regulations to secure confidentiality of shelters and victims' addresses. (42 U.S.C. 13951 (1994).)

4. GA Statute Requiring Confidentiality of Domestic Violence Shelter

O.C.G.A. § 19-13-23 (2010)

Any person who knowingly publishes, disseminates, or otherwise discloses the location of a family violence shelter is guilty of a misdemeanor except when done during confidential communications between a client and his or her attorney, or when authorized by the director of the shelter.

5. State Standards for Certification

O.C.G.A. § 19-13-21 et. seq.

The Department of Human Services is required to establish minimum standards for shelters that serve victims of domestic violence.

Shelters must comply with DHS standards in order to receive state and federal funding through the Department.

G. Comp. R. & Regs. r. 290-5-46-.05

“Personal information shall be treated as confidential and shall not be disclosed except to the resident, the management, the Department’s licensing agency and others for whom written authorization is given by the resident.”

C. Privilege

1. GA Privilege Statute

O.C.G.A. § 24-9-21 (2010) ([O.C.G.A. § 24-5-501\(a\)\(1\)](#)) (effective January 1, 2013, replaces § 24-9-21)).

There are certain admissions and communications excluded on grounds of public policy. Among these are:

- (1) Communications between husband and wife;
- (2) Communications between attorney and client;
- (3) Communications among grand jurors;
- (4) Secrets of state;
- (5) Communications between psychiatrist and patient;
- (6) Communications between licensed psychologist and patient as provided in Code Section 43-39-16;
- (7) Communications between patient and a licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, or licensed professional counselor during the psychotherapeutic relationship; and
- (8) Communications between or among any psychiatrist, psychologist, licensed clinical social worker, clinical nurse specialist in psychiatric/mental health, licensed marriage and family therapist, and licensed professional counselor who are rendering psychotherapy or have rendered psychotherapy to a

patient, regarding that patient's communications which are otherwise privileged by paragraph (5), (6), or (7) of this Code section.

As used in this Code section, the term "psychotherapeutic relationship" means the relationship which arises between a patient and a licensed clinical social worker, a clinical nurse specialist in psychiatric/mental health, a licensed marriage and family therapist, or a licensed professional counselor using psychotherapeutic techniques as defined in Code Section 43-10A-3 and the term "psychotherapy" means the employment of "psychotherapeutic techniques."

Lipsev v. State (170 Ga. App. 770 (1984))

Found that there is no privilege created just because a communication is made in confidence. Parties must bear to each other one of the specific relationships recognized as privileged by the statute.

Wiles v. Wiles (264 Ga. 594 (1994))

Extended psychiatrist-patient privilege to a communications between a patient and a medical doctor who diagnosed and treated emotional and mental conditions but who was not a licensed psychiatrist.

(9) Communications between family violence counselors.

[O.C.G.A. § 24-5-509](#) (effective January 1, 2013) creates a new privilege for communications between a family violence or sexual assault victim and counselors, including volunteers, providing services to such victims at family violence shelters and rape crisis centers. However, in both civil and criminal cases, a party may by motion, compel the testimony of an agent of a family violence or rape crisis unit to whom disclosures were made by an alleged victim upon showing: that the evidence is material and relevant; that it is not otherwise available; and, that the probative value of the evidence sought substantially outweighs "the negative effect of the disclosure on the victim." Other than evidence of prior inconsistent statements, disclosures will not be ordered if the only purpose of the evidence relates to the alleged victim's character for truthfulness. If the moving party requests disclosure on proper grounds, the court is to take the evidence under seal for *in camera* review and may order disclosure of those portions of the evidence which are proper under the code section.

2. **Federal Rule of Evidence 501** General Rule

Privilege must be governed by the rules of common law except in civil actions based on state substantive law, in which privilege should be determined in accordance with state law. (Fed. R. Evid. 501) Notes of Committee on the Judiciary (House Report No. 93-650)
Principles of common law should be interpreted in light of reason and experience (House Report No. 93-650)
Recognition of a privilege should be made on a case-by-case basis. (House Report No. 93-650)
Jaffee v. Redmond, 116 S. Ct. 1923 (1996)
Interprets 501 as allowing and requiring Federal courts to establish new privileges where the need for the privilege outweighs the cost in loss of evidence.
Privilege sought to be established must “serve public ends.” (116 S. Ct. at 1929)

3. *Jaffee v. Redmond* - Federal Caselaw on Privilege

518 U.S. 1, 116 S. Ct. 123 (1996).

Holding

Confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment are protected from compelled disclosure under Fed. Rule of Evidence 501(30 Creighton L. Rev. 319).

Extension of Privilege

The court used a balancing test from *Trammel v. U.S.* (45 U.S. 40, 51 (1980)) in order to determine whether extension of privilege was appropriate. They asked: does privilege promote sufficiently important interests to outweigh the need for probative evidence?

The court suggests that a privilege must serve both important private interests as well as public ends. *Jaffee*, 518 U.S. at 10.

Psychotherapist-patient Privilege

The reasoning used by the Court in *Jaffee* to justify the expansion of privilege to include communications between a psychotherapist and a patient could likewise be used to justify extension of privilege to include communications between a domestic violence counselor and victim. *Id.*

The court reasoned that the privilege was “rooted in the imperative need for confidence and trust.” *Jaffee*, 518 U.S. at 10 (quoting *Trammel*, 445 U.S. at 51). The relationship between the domestic violence counselor and victim is likewise rooted in confidence and trust, as a domestic violence counselor is often sought out by a victim looking to escape and hide from a violent partner.

Effective psychotherapy depends upon an “atmosphere of confidence and trust” due to the “sensitive nature of the problems for which individuals consult psychotherapists.” *Id.* At 10. A similar statement can be made about the atmosphere of confidence and confidentiality present in a domestic violence shelter, during communications between a domestic violence

counselor and victim. The problems for which a victim consults a domestic violence counselor are of a similarly sensitive nature to problems for which an individual consults a psychotherapist.

4. **Development of Privilege**

Dean Wigmore's 4 criteria

(John H. Wigmore, A treatise on the Anglo-American System of Evidence in Trials at Common Law, vol. 5, pg 2, §2285)

Often cited by courts, such as the *Jaffee* court, as the basis for extending privilege.

Four conditions necessary to establish privilege

The communications must originate in a confidence that they will not be disclosed;

This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;

The relation must be one which in the opinion of the community ought to be sedulously fostered; and

The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

D. Right to Privacy

1. **GA Right to Privacy**

Ga. Const. Art. I, § I (2010)

No person shall be deprived of life, liberty, or property except by due process of law.

Pavesich v. New England Life Insurance Co. (122 Ga. 190 (1905)).

“The right of privacy within certain limits is a right derived from natural law, recognized by the principles of municipal law, and guaranteed to persons in this State by the constitutions of the United States and of the State of Georgia, in those provisions which declare that no person shall be deprived of liberty except by due process of law.” 122 Ga. at 197.

The law asserts that certain communications are made private (such as those between husband and wife or between attorney and client) to recognize that “for the public good some matters of private concern are not to be made public even with the consent of those interested.” 122 Ga. at 201

R. APPENDIX R – RESTITUTION AND VICTIM’S COMPENSATION

Table Of Contents

A.	Introduction.....	R:2
B.	Restitution.....	R:2
1.	Definition.....	R:2
2.	Authority.....	R:2
3.	Monitory and Enforcement.....	R:3
4.	Georgia Procedure.....	R:3
5.	Best Practicces.....	R:4
C.	Victim’s Compensation.....	R:5
1.	Generally.....	R:5
2.	Georgia.....	R:5
3.	Best Practices.....	R:5
D.	Alternative Options.....	R:5
1.	Child Support.....	R:5
2.	Public Benefits.....	R:6

A. Introduction

Domestic violence, sexual violence or stalking are known to cause emotional, psychological and physical injury to a victim. However, those types of violence can also cause staggering economic injury. As an example, inclusive of medical and mental health care, lost wages and property, and court fees, the lifetime cost of a rape can exceed \$145,000 (Delisis, 2010). Overall, the costs of domestic violence, sexual violence and stalking exceed \$5.8 billion yearly (NCIPC 2003). These costs, and this type of injury is often overlooked as courts focus on securing the safety of the victim through the criminal justice system and through civil protection orders.

Aside from the justice of ensuring that a victim is reimbursed for all of the expenses caused by domestic violence, sexual violence or stalking, there is a safety issue that occurs with the economic loss, particularly in the instance of domestic violence. When a domestic violence survivor leaves a domestic relationship, and loses the income of the abuser, he or she may be giving up economic security. The survivor may have difficulty paying for basic needs, such as food or shelter, as well as other needs that are a direct result of the domestic violence, such as health care or relocation. These financial difficulties make survivors vulnerable for further abuse and violence, and may serve as a rationale for returning to a violent relationship.

There are two key ways to improve safety for victims and survivors of domestic violence, as well as to reimburse them for all of the associated costs. First, courts have the option of ordering restitution to be paid from the offender to the victim. Second, government programs can provide crime victim compensation to reimburse victims for a variety of crime-related expenses. In addition to those options, there are additional avenues through which victims may receive economic relief or reimbursement for the expenses associated with domestic and/or sexual violence.

B. Restitution

1. Restitution is court-ordered payment by an offender, to a victim, for the harm caused by the offender's wrongful acts. Restitution benefits victims by providing them with compensation for economic losses, by holding the offender accountable and by allowing them to see that the criminal justice system responds to their needs and losses. Restitution also impacts offenders by providing them with the experience of taking responsibility for the injuries they've caused and of being held accountable to the victim and society. In some cases, this might give offenders the opportunity to understand the injury they've caused and the consequences suffered by the victim.
2. In every state, courts have the statutory authority to order restitution. In 18 states, victims have a state-constitution based right to restitution. Generally, when considering whether to order restitution, courts consider state and local policy, the financial burden placed on the victim, and the financial resources of the defendant. Though an abuser can be ordered to pay

restitution at several points in the criminal justice process, he or she is most often not ordered to make any restitution to the victim.

- i. Abusers can be held responsible for paying for a wide range of expenses. In domestic violence situations, victims' safety can be increased by allowing restitution for expenses such as: moving costs, credit card fees, attorneys fees, expenses related to participation in the criminal justice system, home security, and future mental health care, among others.
3. Monitoring and Enforcement
- i. Though it is important to increase the availability of restitution for victims of domestic or sexual violence, obtaining an order of restitution is useless if that order is not enforced. Several states have come up with systems that monitor compliance; for example: in Michigan, probation or parole officers are required to review every case in which restitution was ordered twice a year, to make sure that the payments are being made as ordered, and in Utah the Corrections the Department is responsible for collecting restitution, and files a report if an defendant defaults.
 - ii. The state can also increase the likelihood of payment of restitution by requiring state payments to the defendant to be used to satisfy restitution orders. Some state statutes allow various state payments, such as lottery winnings, witness fees, or bond proceeds, to be applied to restitution. In addition, many state statutes require that prison work programs direct a portion of an offender's wages to the payment of restitution, if it has been ordered.
 - iii. If an offender defaults on the payment of restitution, probation or parole is a means by which an offender might be compelled to comply. Many states provide that probation or parole may be revoked for failure to pay restitution, if the failure to pay is willful. Because that is difficult to prove, this remedy is rarely invoked. Similarly, some states permit probation or parole to be extended when restitution is unpaid at the time that the supervision would otherwise expire.
4. Georgia Procedure
- i. If an offender that has been ordered to pay restitution, and is placed on probation, then the restitution is a condition of the probation. O.C.G.A. 17-14-3(b) (2012).
 - ii. If an offender that has been ordered to pay restitution is granted relief by either the Department of Juvenile Justice, the Department of Corrections or the State Board of Pardons or Paroles, then the order to make restitution becomes a condition of that relief. O.C.G.A. 17-14-3(c)(2012).
 - iii. There are statutorily outlined factors for the court to consider in determining restitution (O.C.G.A. 17-14-10(2012)):
 1. Financial resources and other assets of offender
 2. Earnings or other income of offender

3. Financial obligations of the offender, including obligations to dependents
 4. Amount of damages
 5. Goal of restitution to the victim and the goal of rehabilitation to the offender
 6. Previously made restitution
 7. Period of time during which restitution order will be in effect
 8. Other factors which the court deems appropriate
- iv. In a criminal case, the burden of demonstrating the victim's loss is on the state and the burden of demonstrating the offender's financial resources
 - v. Once restitution has been ordered, it is enforceable as a civil judgment by execution. If an offender fails to comply with the restitution order, the order can be enforced by an attachment for contempt upon the application of the prosecuting attorney or the victim, and such failure can be grounds to revoke or cancel relief, such as earned time allowances. O.C.G.A. 17-14-13 (2012).
5. Best Practices
- i. In many cases, victims fail to request restitution because they are unaware of their right to do so. Police officers, prosecutors and courts should make victims aware of their right to restitution, to give them the time and opportunity to gather evidence to document economic losses.
 - ii. The collection of restitution can be improved by conducting a thorough investigation of convicted offenders' assets, either before or after restitution is ordered. In order to do this effectively, there must be a coordinated effort between law enforcement, prosecution, courts, probation, corrections, parole and victim services. This information will allow the court to craft a payment plan for the offender, lessening the likelihood of default. If the offender does default, having this information can assist in collection efforts.
 - iii. In order to prevent defendants from concealing or wasting assets to avoid paying restitution, prosecutors should seek a restraining order or injunction to preserve assets that may later be used to pay restitution.
 - iv. A system should be in place to monitor compliance with and enforce restitution orders; options include attaching state payments or prison work program wages, utilizing probation or parole, utilizing private collection agencies, or converting restitution orders to civil judgments.
 1. In Georgia, whichever official is responsible for collecting restitution is required to review the case at least twice per year to ensure that restitution is being paid as ordered. If the restitution is not being paid as ordered, a written report of the violation must be filed with the court. O.C.G.A. 17-14-14(c) (2012).

C. Victim's Compensation

1. Generally

1. Every state has established a compensation program for victims of crime. These programs reimburse medical costs, mental health counseling, lost wages or loss of support, as well as other crime-related expenses. In order to receive compensation, victims must comply with state statutes and rules.

2. Georgia

1. The Georgia Crime Victim's Compensation Program is administered by the Criminal Justice Coordinating Council. Compensation is available to people who: are physically injured as a result of a violent crime, personally witnessed or were threatened with a violent crime, were hurt helping a victim of a violent crime, are the parent or guardian of someone killed or injured as a result of a crime, are a dependent of a homicide victim who relied on the victim for support. Compensation is not available to parties that provoked or consented to events that led up to the crime.

2. In order to be eligible for compensation, the victim or witness must have reported the crime within 72 hours. In cases of domestic violence, obtaining a temporary protective order within 72 hours of the incident will fulfill that requirement. The 72 hour requirement can also be waived for good cause shown. They must also file an application within 1 year of the crime, unless they can show good cause. There are categorical caps for covered expenses in each benefit category; the maximum program amount is \$25,000 per victim.

3. Best Practices

1. Law enforcement officers, prosecutors, and the courts should ensure that victims are made aware of the availability of compensation. Victims of domestic violence should be referred to the local domestic violence center or shelter or to the victim witness program at the prosecutor's office for assistance in working with the Criminal Justice Coordinating Council on applications for compensation.

D. Alternative Options

Beyond seeking compensation for injuries that occurred as a result of violence, victims have other recourses available to them to remedy any economic issues that persist after the domestic violence relationship has ended.

1. Child Support

i. In cases that involve shared children, parents have the ability to file a petition with the court for child support. It should be noted that because control can often be an aspect of a domestic violence relationship, a respondent may attempt to use money, or the payment

of child support, to maintain some kind of economic control over the petitioner. There are steps that can be taken by the courts to reduce the likelihood of such control and to ensure the safety of the petitioner.

ii. See also Appendix N

2. Public Benefits

- i. Victims in Georgia have the option for applying for Temporary Assistance for Needy Families (TANF), Georgia's welfare program. Though Georgia has established a 48-month limit on TANF, it grants hardship waivers to temporarily waive the limit if a family member has been, is, or may become a victim of domestic violence.

S. APPENDIX S – JUDICIAL COMPLIANCE HEARINGS

Table Of Contents

A.	Introduction.....	S:2
B.	Offender Accountability	S:2
C.	Domestic Violence Courts	S:3
1.	Generally.....	S:3
2.	Goals.	S:3
D.	Judicial Review Hearings	S:4
1.	Generally.....	S:4
2.	Procedure	S:4
3.	Judicial Responses	S:4
E.	Georgia Model Practices.....	S:5
1.	Athens-Clarke County Compliance Officer Program.....	S:5
2.	Troup County Procedures	S:5

A. Introduction

Even after a court has handled a domestic violence case, and has drafted orders designed to ensure the safety of a domestic violence victim, the victim's safety can be compromised if the abuser fails to adhere to the court's orders. While courts have procedures in place that are designed to hold offenders accountable, they are not always sufficient to ensure victim safety. In criminal cases, offenders are often sentenced to probation. Probation allows for heightened accountability; if an offender fails to adhere to the terms of his or her probation, the probation supervisor may impose graduated sanctions or, if circumstances warrant, may arrest the offender without warrant. O.C.G.A. 42-8-38(a) (2012). The probation officer, or law enforcement officers, has the discretion and the power to hold an offender responsible for failure to comply with terms of probation.

However, in civil cases, there is no government actor or agency that has the same power to hold an offender accountable for failing to comply with court orders. If an offender fails to comply with a civil order, the only way to hold that offender accountable is for the victim report violations to the police or to bring a contempt action in court. This system requires the victim to be the first line of defense against his or her abuser. Victims must expend time and energy to return to court. The victim may also be required to gather and produce evidence of the abuser's failure to adhere to court orders. This system also increases the danger to domestic violence victims. Requiring a contempt hearing requires a victim to interact with his or her abuser, by appearing in court. In some cases, a victim may avoid undergoing the effort of returning to court if he or she is fearful of retribution from his or her abuser or if they believe they will be in danger.

There are many different means by which state agencies and courts can hold domestic violence offenders accountable. Many jurisdictions have established Domestic Violence Courts for just such a purpose. These courts develop an expertise in domestic violence which is used to improve victim safety, increase accountability of offenders through effective intervention and monitoring, and to provide opportunities for offender rehabilitation through counseling and treatment. Other jurisdictions have designated compliance officers, who regularly monitor an offender's compliance with court orders, such as an order to attend Family Violence Intervention Program (FVIP) classes.

B. Offender Accountability

1. Many jurisdictions have had difficulty holding offenders accountable, and thus ensuring victim safety. Domestic violence courts and judicial hearings are designed to address that problem. Judges have the opportunity to craft tailored responses to each offender, and the reviews encourage and allow for a coordinated community response. These systems have an enhanced ability to hold offenders to court orders and to quickly respond to those who fail to comply.
2. Court monitoring through periodic court compliance hearings has been shown in studies to increase Family Violence Intervention Program attendance rates. In a multistate evaluation of four different judicial

compliance hearing programs, intervention program completion rates rose from under 50% to 65% (Gondolf 1997). Other studies have shown that in jurisdictions with compliance hearings, completion rates increase to over 50% (Cissner 2006).

C. Domestic Violence Courts

1. As part of a broad “problem-solving” court movement, which included the establishment of drug courts, mental health courts, and community courts, among others, domestic violence courts have emerged across the U.S. As of 2009, 208 domestic violence courts had been established (Center for Court Innovation 2009). These courts handle domestic violence cases on separate calendars, maintain separate calendars, and are headed by specially trained judges.
2. Goals
 1. Victim Safety
 - i. Many domestic violence courts feature dedicated victim advocates, who facilitate the victim’s access to services. These advocates provided a number of services, including accompanying victims to court, safety planning, explaining the criminal justice system, providing housing referrals, and counseling.
 2. Offender Accountability
 - i. Regular judicial monitoring of compliance with court-mandated programs and other court orders results in prompt response to violations.
 - ii. Many domestic violence courts refer offenders to intervention programs. While the most prevalent intervention program used was a batterer program, which attempts to rehabilitate an offender, these courts also require offenders to report to other programs, such as alcohol or substance abuse treatment or mental health treatment, if such intervention is indicated.
 - iii. Domestic violence courts use various methods to hold offenders accountable. Many use probation supervision, but receive compliance reports from probation officers and offices. Some courts also use judicial monitoring or regular court review hearings.
 - iv. When an offender fails to comply with court orders, responses include verbal admonishment, immediate return to court, increased court appearances, revocation of probation and jail.
 - a. Though studies have shown a lack of consistency across courts, such variation may be a response of the court attempting to tailor responses and consequences to individual offenders.

4. Administration of Justice
 - i. Domestic violence courts attempt to ensure a consistent application of statutory requirements, legally appropriate procedures, and sentences. This is achieved by ensuring that judges in domestic violence courts are specially trained, and by encouraging coordination between criminal justice agencies, victim service organizations and offender programs.

D. Judicial Review Hearings

Judicial review hearings require an offender to appear before the judge post-conviction or post-civil order review to demonstrate that he or she is complying with either the conditions of probation or the civil order. The purpose of these hearings is to improve offender compliance and victim safety by holding the offender accountable to judicial orders and removing the burden of holding the offender accountable from the victim.

1. Procedure
 - i. Judicial review hearings are regularly scheduled court appearances, often held in intervals of 30 days after sentencing or the issue of a civil protection order.
 - ii. Probation officers monitor the individual offenders and seek input from victims to draft comprehensive reports, which are provided to the judge prior to the hearings.
 - iii. The judge uses that review, and a dialogue with the offender, as well as various actors and agencies (probation officers, prosecutors, the defense bar, FVIP programs, victim advocates, etc.) to sanction those with poor compliance and to encourage those who are successfully complying with probation or civil orders.
2. Judicial Responses
 - i. Judicial review hearings provide judges with wide discretion and a range of sentencing options to encourage compliance with court orders; these hearings allow the judge to deviate from a “one-size-fits-all” approach to dealing with domestic violence offenders and allow a judge to tailor his or her responses to individual offenders.
 - ii. Sanctions can include:
 1. Community service
 2. Fines
 3. Restitution
 4. Intensive probation
 5. Additional FVIP classes
 6. Full and partial jail time
3. An evaluation of model domestic violence courts found that when the court revoked probation for noncompliance, there was significantly less reabuse (Harrell 2007).

E. Georgia Model Practices

1. Athens-Clarke County Compliance Officer Program
 - i. In Athens-Clarke County, the responsibility of monitoring offenders' compliance with orders to attend FVIP falls to a designated compliance officer within the Probation department. Prior to the designation of a compliance officer, compliance with FVIP orders was 7%. Since a compliance officer has been in place, compliance with FVIP orders has risen to 70%.
 - ii. In civil cases, after a Temporary Protective Order (TPO) is issued, the respondent is required to enroll in FVIP within 20 days, and provide the designated compliance officer of proof of enrollment within 30 days. If the respondent fails to provide the required proof, the officer will attempt to make contact with the respondent. If the officer cannot contact the respondent, he or she will request a status hearing from the issuing judge. The status hearing will ordinarily occur two weeks from the date that it is requested.
 1. If the respondent provides the officer with proof of FVIP enrollment, the officer will request that the judge remove the hearing from the docket.
 2. If the respondent fails to enroll in FVIP, but appears at the status hearing, the judge will give the respondent a new deadline for enrollment.
 3. If the respondent fails to appear at the status hearing, the judge will issue an arrest order. The respondent will be brought to court, questioned by the judge, and released with a new deadline for enrollment.
 - iii. In criminal cases, an offender must enroll in FVIP within 30 days of receiving a sentence of probation or within 30 days of leaving jail.
 1. If the offender fails to enroll in FVIP within 60 days, the probation office issues a probation warrant revocation. The offender is arrested and held in jail before appearing before the judge. Some portion of the offender's probation is revoked and, upon relief, the offender is given 30 days to enroll in FVIP.
2. Troup County Procedures
 - i. Defendants on pre-trial diversion or who have been convicted of an offense under the Family Violence Act are required to attend "status hearings."
 1. During "status hearings" defendants must provide the Judge with an update on how they have been complying with court orders, such as FVIP.
 2. The court ensures that defendants on pre-trial diversion have not committed any new offenses and have complied with any other conditions of the pre-trial diversion.

- a. When defendants fail to meet their requirements for pre-trial diversion, the case is set for trial.
- 3. For defendants on probation, the probation officer appears at the hearing to give a report on the defendant's compliance with the conditions of probation.
 - a. When defendants fail to meet their requirements for probation, a probation revocation hearing is set.

RESOURCES

A. Local Resources

LOCAL DOMESTIC VIOLENCE RESOURCES		
VICTIM SERVICES		
Name of Organization	Contact Person	Telephone number
Georgia Domestic Violence Hotline – Safe Haven	Will provide local DV resources	1-800-HAVEN 1-800-334-2836
Tapestri, Inc.	For immigrants and refugees	1-404-299-2185
Shelter/Advocacy Program		
Shelter/Advocacy Program		
Sexual Assault Center		
DA’s Victim Assistance Program		
Georgia Legal Services		
Child Advocacy Center		
Guardian Ad Litem		
Council on Aging		
Sign Language Interpreter		
Interpreter for		
Interpreter for		
Community Service Board		
Counseling Agency		
Faith-based Program		
Housing Authority		
Other		
Other		

LOCAL DOMESTIC VIOLENCE RESOURCES

OTHER SERVICES

Name of Organization	Contact Person	Telephone Number
Adult Protective Services		
Child Protective Services		
State Certified FVIP Provider		
State Certified FVIP Provider		
State Probation Office		
Private Probation		
Private Probation		
Parole Office		
Police (DV contact)		
Police (DV contact)		
Police (DV contact)		
Sheriff (DV contact)		
Sheriff (DV contact)		
Sheriff (DV contact)		
Superior Court Clerk's Office		
State Court Clerk's Office		
Other		

B. State and National Resources

DOMESTIC VIOLENCE RESOURCES		
STATE RESOURCES		
Name of Organization	Website	Telephone number
Administrative Office of the Courts’ Georgia Commission on Interpreters	http://w2.georgiacourts.org/ coi/	404-463-6478
Court Appointed Special Advocates, Inc. (CASA)	http://www.gacasa.org/	800-251-4012 404-874-2888
Criminal Justice Coordinating Council	http://cjcc.ga.gov/	404-657-1956
Family Violence Intervention Programs, State Certification	http://www.gcfv.org/index. php?option=com_content& view=article&id=81&Item id=13	404-651-6539 404-463-3178
Georgia Association of Chiefs of Police	http://www.gachiefs.com/	770-495-9650
Georgia Bureau of Investigation	gbi.georgia.gov/	404-244-2600
Georgia’s Protective Order Registry	See Appendix M, Section F	404-270-8464
Georgia Coalition Against Domestic Violence	http://www.gcadv.org/	404-209-0280
Georgia Commission on Family Violence	http://www.gcfv.org/	404-657-3412
Georgia Council of Superior Court Judges	http://www.cscj.org/	404-656-4964
Georgia Council on Aging	http://www.gcoa.org/	404-657-5343
Georgia Crime Victims Compensation Program	http://cjcc.georgia.gov/victi ms-compensation	404-657-1956 1-800-547-0060
Victim Services		404-657-2222 800-547-0060
Georgia Department of Corrections	http://www.dcor.state.ga.us/	
Pardons and parole Victim services		404-656-5651 800-593-9474
Georgia Public Defender Standards Council	http://www.gpdsc.com	800-676-4432
Georgia Legal Services	http://www.glsp.org/	404-206-5175

DOMESTIC VIOLENCE RESOURCES

STATE RESOURCES

Name of Organization	Website	Telephone number
Georgia Network to End Sexual Assault	http://www.gnesa.org/	404-815-5261 866-354-3672
Georgia Office of Dispute Resolution	http://www.godr.org/	404-463-3788
Institute of Continuing Judicial Education	http://www.uga.edu/icje/	706-369-5842
Domestic Violence Benchbook	http://icje.uga.edu/documents/2010DVBenchbook.doc	
Institute on Human Development and Disability, UGA	http://www.ihdd.uga.edu/	706-542-3457
International Women's House (Shelter for battered immigrant and refugee women and children)	http://www.internationalwomenshouse.org/	770-413-5557
Language Line Services	http://www.language.com/	800-752-6096
Prevent Child Abuse Georgia	http://www.preventchildabusega.org/html/home.html	Office 404-870-6565 Helpline 800-CHILDREN
Prosecuting Attorneys Council of Georgia	http://www.pacga.com/	
Atlanta (main)		404-969-4001
Albany		229-430-3818
Macon		478-751-6645
Savannah		912-748-2843
Raksha Network for South Asians	http://www.raksha.org/	404-876-0670
Helpline		404-842-0725
Tapestri Refugee and Immigrant Coalition	http://www.tapestri.org/	
DV line Atlanta		404-299-2185
DV outside Atlanta		866-562-2873
Anti-Human Trafficking		404-299-0895
Outside Atlanta		866-317-3733

DOMESTIC VIOLENCE RESOURCES

STATE RESOURCES

Name of Organization	Website	Telephone number
U.S. Attorney's Offices – Violence Against Women Acts Contacts Northern District Middle District Albany	http://www.usdoj.gov/usao/gan/ http://www.usdoj.gov/usao/gam/	404-581-6000 478-752-3511 229-430-7754

DOMESTIC VIOLENCE RESOURCES

NATIONAL RESOURCES

Name of Organization	Website	Telephone number
ABA Commission on Domestic Violence This is the home page for the ABA Commission on Domestic Violence. It provides information for attorneys, judges and other professionals who work with the judicial system on issues of domestic violence	http://www.abanet.org/domviol/home.html	202-662-1000
American Judges Association The American Judges Association and American Judges Foundation have published an introductory booklet for judges handling domestic violence cases including an overview of the literature and steps judges can take in appropriately handling cases.	http://aja.ncsc.dni.us/domviol/booklet.html	
National Center for the Prosecution of Violence Against Women	http://www.ndaa.org/ncpvaw_home.html	703-519-1651
Communities Against Violence Network (CAVNET) Online database of information and a virtual international community of over 900 professionals. Free public access or more extensive access with membership fee.	http://www.cavnet2.org/	

DOMESTIC VIOLENCE RESOURCES

NATIONAL RESOURCES

Name of Organization	Website	Telephone number
<p>Family Violence Prevention Fund San Francisco office Washington DC office Boston office</p> <p>A comprehensive website for FV that provides judges with groundbreaking materials, online resources and guidelines.</p>	<p>http://www.endabuse.org</p>	<p>415-252-8900 202-595-7382 617-262-5900</p>
<p>Legal Momentum New York office Washington DC office</p> <p>Works on a national policy level to eradicate discrimination against victims of violence</p>	<p>http://www.legalmomentum.org/</p>	<p>212-925-6635 202-326-0040</p>
<p>Minnesota Center Against Violence and Abuse (MINCAVA)</p> <p>Located at the University of Minnesota, this site is an electronic clearinghouse providing access to over 3000 resources.</p>	<p>http://www.mincava.umn.edu</p>	<p>612-624-0721</p>
<p>National Center for Missing and Exploited Children</p> <p>Can assist if there is a fear of child abduction and steps necessary to prevent kidnapping – interstate or outside United States.</p> <p>24 hr. hotline: Office:</p>	<p>http://www.missingkids.com/</p>	<p>1-800-THE-LOST 703-224-2122</p>
<p>National Center for State Courts Williamsburg, VA Denver, CO Arlington, VA Washington, D.C.</p> <p>This site includes the Family Violence Forum, which provides regular updates about approaches taken by various courts in combating family violence as well as many</p>	<p>http://www.ncsconline.org</p>	<p>800-616-6164 800-466-3063 800-532-0204 703-841-0200</p>

DOMESTIC VIOLENCE RESOURCES

NATIONAL RESOURCES

Name of Organization	Website	Telephone number
research articles and a detailed Resource Guide.		
<p>National Council of Juvenile and Family Court Judges – Family Violence Department</p> <p>Maintains a website providing information and links to state laws related to domestic violence for every state. Also provides judicial DV training & information about firearms, full faith and credit and other domestic violence issues.</p>	<p>http://www.ncjfcj.org/</p>	<p>800-527-3223</p>
<p>National Criminal Justice Reference Service – Spotlight on Family Violence</p> <p>Family violence facts, publications, programs training and technical assistance.</p>	<p>http://www.ncjrs.gov/spotlight/family_violence/Summary.html</p>	
<p>National Criminal Justice Reference Service</p> <p>Research abstract data base on a wide range of criminal justice research housing more than 185,000 publications. Can subscribe to a weekly electronic list of new additions</p>	<p>http://www.ncjrs.gov/abstractdb/search.asp</p>	
<p>National Domestic Violence Hotline</p> <p>Provides callers with crisis intervention, information about domestic violence and referral to local programs 24 hours a day, in both English and Spanish. The Hotline also has interpreters available to translate an additional 139 languages.</p>	<p>http://www.ndvh.org/</p>	<p>800-799-SAFE</p>
<p>National Immigration Project of the National Lawyers Guild</p>	<p>http://www.nationalimmigrationproject.org/</p>	<p>617-227-9727</p>

DOMESTIC VIOLENCE RESOURCES

NATIONAL RESOURCES

Name of Organization	Website	Telephone number
Protects the rights of non-citizen survivors of domestic violence.		
National Organization for Victim Assistance Provides information and training to advocates working with crime victims.	http://www.trynova.org/	800-879-NOVA 703-535-NOVA
National Resource Center on Domestic Violence	http://www.nrcdv.org/	800-537-2238
Stalking Resource Center Information clearinghouse, practitioners network and training.	http://www.ncvc.org/src/Main.aspx	202-467-8700
United States Justice Department Office on Violence Against Women This site provides information on model programs, federal grant programs and links to the most recent statistical information on violence against women, including physical and sexual assault.	http://www.usdoj.gov/ovw/	202-307-6026
Vera Institute of Justice New York office Washington DC New Orleans This site includes information, updates and downloadable resource materials on judicial review hearings. Can send for free documentary “Judicial Review Hearings in Domestic Violence Cases” or call ICJE to borrow this short film.	http://www.vera.org	212-334-1300 202-347-6776 504-593-0936
Intimate Partner Sexual Abuse This is an excellent online course developed and written by the National Judicial Education Program of Legal Momentum. ICJE of Georgia will accredit this course for Superior and	http://www.njep-ipsacourse.org	

DOMESTIC VIOLENCE RESOURCES

NATIONAL RESOURCES

Name of Organization	Website	Telephone number
State Court Judges..		

- C. State Resources in the LGBTQQI community:
Most Shelters can/will accommodate survivors from the LGBTQQI community.
If local area shelters will not accommodate these survivors, please contact United 4 Safety.

DOMESTIC VIOLENCE RESOURCES

LGBTQQI COMMUNITY RESOURCES

Name of Organization	Website	Telephone number
United 4 Safety Trained advocates to respond to callers. Training for community groups, agencies, law enforcement, courts. Referral resources for survivors/batterers.	http://www.united4safety.org/ united4safety@gmail.com	404-200-5957
Atlanta Lesbian Health Initiative Lesbian Batterers Group Fax	http://www.thehealthinitiative.org/ info@thehealthinitiative.org	(404) 688-2524 (404) 688-2638

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CASE CITATION INDEX

A

Abrams v. State, common-law marriage, [5:36](#)
Allen v. Allen, enforceability of settlement, [3:26](#)
Allen v. Clerk, family violence, [4:2](#)
Allen v. State, police observation, [5:3](#)
Almond v. State, photographs of injuries, [5:3](#)
Alvarado v. State, battered person syndrome, [5:41](#)
Anderson v. Deas, personal jurisdiction, [2:1](#); stalking, [4:10](#)
Apprendi v. New Jersey, prior conviction(s), [4:15-16](#)
Arrington v. Arrington, child support, [3:28](#)
Aycock v. Aycock, form of child support, [3:26](#)

B

Babb v. State, lapse in time, [5:25](#)
Babb v. State, prior difficulties, [5:24](#)
Banks v. State, hearsay, [5:21](#)
Barrow v. State, child support, [3:29](#)
Bearden v. State, corporal punishment, [5:32](#); parental discipline, [4:1](#); simple assault, [4:9](#)
Beck v. State, spousal testimonial privilege, [5:34](#)
Bell v. State, photographs of injuries, [5:2](#); prior difficulties, [5:26](#); statements, [5:14](#);
witness as expert, [5:40](#)
Benton v. State, family counseling, [4:16](#); incest, [4:7](#), lapse in time, [5:25](#); limiting
instruction, [5:25](#); no contact with victim, [4:17](#); prior difficulties, [5:24](#)
Biggins v. State, aggravated battery, [4:3](#)
Blazel v. Bradley, presumption of constitutionality, [1:14-15](#)
Bogan v. State, affirmative showings, [5:23](#)
Bowers v. State, battery, [4:11](#); cruelty to children, [4:4](#); parental discipline, [4:1](#)
Boyd v. State, Evidence [5:13](#), Harmless Error [5:13](#), Right of Confrontation [5:13](#)
Bradley v. State, contempt against petitioners, [3:41](#)
Bragg v. State, aggravated stalking, [4:6](#)
Brannon v. State, mutual combat, [5:28](#)
Bridges v. State, murder, [4:2-3](#)
Brooks v. State (1998), appeal bond, [4:24](#)
Brooks v. State (2012), harmless error, [5:14](#)
Brown v. State, hearsay evidence, [5:6](#) ; medical evidence, [5:7](#) ; prior acts, [5:24](#) ;
statements as evidence, [5:15](#)
Bryan v. Bryan, awarding alimony, [3:15](#)
Buchheit v. Stinson, corporal punishment, [4:1](#), [5:32](#) ; family violence, [2:15](#); reasonable
discipline, [1:8](#)

Buice v. State, justification of self-defense, [5:27](#)

Burk v. State, reckless conduct, [4:4](#)

C

Cagle v. Davis, ex parte definition, [2:4](#)

Caldwell v. State, officer as expert, [5:40](#)

California v. Green, hearsay, [5:20](#)

Camphor v. State, bonds, [4:24](#)

Carlisle v. State, Stalking venue [P:5](#)

Carroll v. State, Georgia Court of Appeals conclusion, [2:2](#); child visitation, [3:7](#); Civil Practice act, [3:32](#)

Carter v. State, kidnapping, [4:4](#); medical reports; photographs of injuries, [5:2-3](#)

Chambers v. State, home search, [4:20](#); statements as evidence, [5:19](#)

Chapman v. State, battered woman syndrome, [5:29](#)

Chester v. State, battered person syndrome, [5:29](#), [5:41](#)

Childers v. State, jury selection, [5:44](#)

Childs v. State, rape, [4:7](#)

Clarke v. State, bonds, [4:25](#)

Cobble v. State, battery, [4:10](#)

Cobb v Cobb, military jurisdiction, [2:2](#)

Collins v. Bazan, stalking, [1:14](#); stalking order, [3:21](#); threats and family's safety, [1:11](#)

Collins v. Collins, child support, [3:29](#)

Colorado v. Sullivan, Cyberstalking [P:3](#), GPS [P:3](#)

Commonwealth v. Alphas, stalking statute, [1:15](#)

Commonwealth v. Kwiatkowski, vague stalking statute, [1:15](#)

Cooks v. State, no limiting instruction, [5:25](#); no notice required, [5:24](#)

Cox v. State, battery, [4:10](#); criminal trespass, [4:11](#)

Cranford v. State, waiver of error, [5:12-13](#)

Crawford v. Washington, case citations, [5:11](#), [5:12-15](#); hearsay evidence, [5:4-5](#), [5:33](#)

Crisp v. McGill, child custody, [3:28](#)

Crowley v. Lilly, due process standards, [1:14](#)

Culmer v. State, exception of evidence, [5:6](#)

Cunningham v. State, prior acts, [5:25](#); prior difficulties, [5:24](#)

D

Danzis v. State, abusive language, [5:32](#)

Davidson v. Davidson, awarding alimony, [3:15](#)

Davis v. Davis, findings of contempt [3:38-39](#), contempt sanction, [3:39](#)

Davis-Redding v. Redding, venue, [2:1](#); family violence v. divorce cases, [3:26](#)

Davis v. Washington, defendant's misconduct, [5:20](#); 911 statements, [5:16](#); statements as evidence, [5:9-10](#), [5:15](#)

Delgado v. Souders, freedom of travel, [1:15](#)

Demons v. State, confession of crime, [5:2](#); hearsay statements as evidence, [5:15](#); mutual combat, [5:27-28](#)

Dickson v. State, testimonial statement, [5:18](#)
Dixson v. State, prior acts, [5:24-25](#), [5:25](#)
Duggan v. Duggan-Schlitz, “commence and continue” hearing, [2:11](#); extension of order, [3:33-34](#)
Duitsman v. State, home search, [4:20](#)

E

Early v. State, involuntary manslaughter, [4:3](#)
Eich v. State, mutual combat, [5:28](#)

F

Feder v. Evans-Feder, child’s residence, [H:15](#)
Floyd v. Floyd, contempt remedies, [3:39](#)
Floyd v. State, juror’s state, [5:44](#)
Fly v. State, stalking, [1:14](#)
Flynt v. State, civil action v. criminal action, [3:29](#)
Ford v. State, aggravated stalking, [4:6](#)
Forde v. State, prior consistent statements, [5:7](#)
Freeman v. State, affirmative showings, [5:23](#)
Fuller v. State, voluntary manslaughter, [4:3](#)

G

Gallit v. Buckley, contempt decree, [3:40](#)
Gay v. Gay, incarceration, [3:42](#)
Georgia v. Randolph, home search, [4:20](#)
Gibbons v. State, evidence, [5:9](#)
Gilbert v. State, aggravated assault, [4:3](#); free speech, [1:15](#); warrantless arrest, [4:21](#)
Giles v. State, designating judges [2:2](#); stalking protective orders, [1:9](#)
Giles v. Calif., forfeiture exception, [5:20](#)
Gillespie v. State, family violence, [4:2](#); insufficient evidence, [5:43](#)
Ginn v. State, criminal trespass, [4:11](#); property damage, [4:8](#), [5:32](#); property damage as criminal trespass, [1:6](#)
Glisson v. State, privileges of witness, [5:37](#)
Gooch v. State, criminal damage to property, [4:8](#)
Graham v. State, battered person syndrome, [5:28](#)
Gresham v. Edwards, preliminary hearings, [5:21](#)
Griffin v. State, accident, [5:31](#); prior statement, [5:9](#); recanting statements, [5:10](#)
Grogan v. State, Apprendi rule, [4:16](#)

H

H.E.S. v. J.C.S., Cyberstalking [P:5](#), Hidden Video Camera [P:5](#)
Hargraves v. Lewis, consent decree, [3:27](#)

Hargrove v. State, kidnapping, [4:3-4](#); recusal of judge, [5:45](#)
Harper v. State, scientific principles, [5:40](#)
Harrison v. State, hearsay evidence, [5:6](#); necessity exception of evidence, [5:6](#); simple battery, [4:19](#); spousal testimonial privilege, [5:33](#)
Hartley v. State, evidence, [5:9](#); no corroboration of evidence, [5:1](#)
Hawks v. State, cycle of violence, [5:42](#); denial of abuse, [5:42](#); minimization of abuse, [5:42](#); prior abuse, [5:26](#); prosecuting partner, [5:42](#); torn clothing, [5:4](#)
Hayes v. State, prior difficulties, [5:26](#)
Helton v. State, martial communications privilege, [5:35](#)
Henry v. State, similar transactions, [5:23](#)
Herring v. State, prior acts, [5:25](#)
Hester v. State, non-testimonial statements, [5:15](#)
Huggins v. Boyd, Cyberstalking venue [2:1](#), [P:5](#)
Hight v. State, powers of arrest, [4:18](#)
Holland v. State, arrests, [4:19](#); eyewitness testimony, [5:2](#); family violence, [4:2](#); police observations, [5:3](#); public altercation, [4:21](#)
Holmes v. State, aggravated stalking, [4:6](#)
Hood v. Carsten, revocation of bonds, [4:25](#)
Howard v. Commissioners of the Sinking Fund of Louisville, military jurisdiction, [2:2](#)
Humphrey v. State, statements, [5:14](#)

I

Igidi v. State, limiting instruction, [5:23](#)
In re Paul, exceptions to privilege, [5:38](#)
In the Interest of D.O.R., termination of parental rights, [O: 6](#)

J

Jaffee v. Redmond, Confidentiality, [Q:2-3](#), [Q: 8](#), Federal extension of Privilege [Q:2-3](#)
[Q:8-9](#)
James-Dickens v. Petit-Compere, contempt, [3:9](#)
Johnson v. Cegielski, presumption of constitutionality, [1:14](#)
Johnson v. State, aggravated battery, [4:3](#); battered person syndrome, [5:29](#)
battery, [4:11](#); constitutionality of cyberstalking law [P:3](#), property crimes, [4:8](#);
reversing a conviction, [3:29](#); simple assault, [4:10](#);
stalking, [1:14](#), [4:10](#); terroristic threats, [4:8](#)
Jones v. State, cycle of violence, [5:34](#); leaving abuser, [5:42](#); profile, [5:42](#); prosecuting abuser, [5:43](#)
Jones v. U.S., hearsay, [5:21](#)

K

Kampf v. Kampf, due process standards, [1:15](#)
Kaufman v. Kaufman, findings of contempt, [3:39](#)

Kennestone Hosp. v. Hopson, exceptions to privilege, [5:38](#)
Kinney v. State, contempt of court, [4:13](#)
Kirkley v. Dudra, language of civil statutes, [1:15](#)
Kreitz v. Kreitz, language of civil statutes, [1:15](#)

L

LaFaro v. Cahill, free speech, [1:15](#)
Lamb v. State, affirmative showings, [5:22](#), [5:23](#)
Lampley v. State, civil domestic violence statutes, free speech, [1:15](#)
Lathan v. State, arson, [4:8](#)
Lewis v. Lewis, timing, [1:8](#); fear [1:12](#)
Lewis v. State, medical reports, [5:2](#); murder, [4:3](#);
Lipsey v. State, Confidentiality Q:8, Extension of Privilege Q:8
Loiten v. Loiten, service of petitions, [2:12](#)
Lord v. State, aggravated assault, [4:3](#); entry without search warrant, [4:20](#)

M

Mack v. State, property damage, [5:32](#)
Marquette v. Marquette, due process standards, [1:15](#)
Marshall v. State, corporal punishment, [5:32](#)
Mathews v. Eldridge, due process claims, [1:15](#)
McCauley v. State, home search, [4:20](#)
McClarity v. State, hearings, [5:22](#)
McCracken v. State, family violence, [4:2](#); self-defense, [5:27](#); warrantless arrest, [4:18](#), [4:19](#)
McCullors v. State, hearings, [5:24](#); prior difficulty, [5:25](#)
McPherson v. State, necessity exception of evidence, [5:6](#)
McTaggart v. State, prior assault, [5:26](#)
Miller v. State (2005), admission of physical altercation, [5:1](#); photographs of injuries, [5:2](#); self-defense, [5:27](#); statements, [5:13](#); witness as expert, [5:40](#)
Miller v. State (2011), necessity exception, [5:6](#); reversible error [5:13](#)
Mims v. State, hearsay, [5:5](#); prior consistent statements, [5:8](#)
Mize v. State, property damage, [5:3-4](#); weapons, [5:4](#)
Moody v. State, interviews as evidence, [5:12](#); photographs of injuries, [5:2](#); prior difficulties, [5:26](#); statements, [5:14](#)
Moore v. Moore, due process, [1:15](#)
Moorer v. State, battered person syndrome, [5:41](#); delayed reporting of abuse, [5:42](#); expert's qualifications, [5:40](#)
Mozes v. Mozes, parents residence, [H:15](#)
Mullins v. State, police observations, [5:3](#); terroristic threats, [4:8](#)
Murden v. State, "course of conduct," [3:29](#)

N

Nasworthy v. State, property damage, [5:4](#); torn clothing, [5:4](#); weapons, [5:4](#)
New York v. Munn, Cyberstalking [P:4](#), Internet Posts [P:4](#)
Newsome v. State, property damage as criminal trespass, [1:6](#); protection order violation, [4:6](#); aggravated stalking, [4:12](#)
Nollet v. Justices of the Trial Court, due process, [1:15](#)
Nguyen v. Dinh, permanent order, [3:33](#)
Nguyen v. State, battered person syndrome, [5:28](#)
Nicholson v. Williams, Children [O:2](#), [O:3](#)

O

Orr v. State, res gestae, [5:10](#)

P

Park v. State, excuses for cause, [5:44](#)
Payne v. State, medical evidence, [5:7](#)
Pavesich v. New England Life Insurance Co., Confidentiality [Q:3](#), [Q:9](#), Right to Privacy [Q:3](#), [Q:9](#)
People v. Blackwood, free speech, [1:15](#)
People v. Stuart, civil statutes, [1:15](#)
People v. Whitfield, language of civil statutes, [1:15](#)
Perdue v. State, aggravated child molestation, [4:7](#); child molestation, [4:7](#)
Peters-Riemers v. Riemers, due process standards, [1:14](#)
Peterson v. State, blood splatter, [5:1](#); prima facie showing, [5:31](#)
Pickle v. State, battered person syndrome, [5:43](#), maltreatment of children, [O:5](#)
Pilcher v. Stribling, evidence of stalking, [1:12](#)
Pirkle v. State, marital communications privilege, [5:35](#)
Pitts v. State, cross-examination, [5:19](#); false imprisonment, [4:4](#);
911 Statements, [5:16](#); simple battery, [4:8](#); statements as evidence, [5:12](#)

Q

Quick v. State, arrest, [4:18](#)

R

Randolph v. State, home search, [4:20](#)
Rawcliffe v. Rawcliffe, federal firearms, [E:5](#); stalking, [3:22](#);
Raymond v. State, reporting abuse, [5:42](#)
Rensburg, Administratrix for the Estate of Amy Boyer v. Docusearch Inc., Cyberstalking [P:4](#), Website [P:4](#)
Revere v. State, aggravated stalking, [4:6](#)
Reynolds v. Kresge, extension of protective orders, [3:33](#)
Rice v. State, cross-examination, [5:18](#)

Rigo v. State, battery, [4:10](#)
Roberson v. State, medical evidence, [5:7](#)
Robinson v. State, Confrontation Clause, [5:17](#), [5:18](#)
Rodriguez v. State, prior offenses, [5:21](#)
Rogers v. Rogers, enforceability of settlement, [3:26](#)
Ryan v. State, affirmative showings, [5:23](#)

S

Salter v. Greene, contempt against petitioners, [3:40](#); contempt of court, [4:13](#)
Sanders v. Shepard, due process standards, [1:15](#)
Sanford v. State, Evidence [5:17](#), Dying Declarations [5:17](#)
Schmidt v. Schmidt, award of attorney's fees, [3:21](#); civil contempt, [3:41](#); contempt of court, [4:12-13](#)
Scramek v. Bohren, free speech, [1:15](#)
Senior v. State, arson, [4:8](#)
Shaw v. State, criminal intent, [5:4](#); warrantless home search, [4:20](#); police observations, [5:3](#); simple battery, [4:9](#); warrantless arrest, [4:19](#)
Siharath v. State, expert's qualifications, [5:40](#)
Simmons v. State, battery, [4:9](#); no corroboration of evidence, [5:1](#); prior inconsistent statements, [5:9](#)
Simpson v. State, eyewitness evidence, [5:2](#); victim's cooperation, [5:44](#)
Smith v. State, affirmative showings, [5:22](#); battered person syndrome, [5:29](#); Jury Charge, [5:29](#); necessity exception, [5:5](#); spousal testimonial privilege, [5:34](#)
Southern v. State, battery, [4:9](#)
Spinner v. State, Apprendi rule, [4:16](#); battery, [4:10](#); prior conviction, [4:15](#)
Stanton v. Stanton, child custody, [3:30](#)
Starr v. State, cross-examination, [5:18](#)
State v. Barnett, family violence, [4:2](#), [5:43](#); felony, [5:43](#)
State v. Burke, protective orders, violation, aggravated stalking, [3:43](#), [4:5](#)
State v. Dean, prior battery conviction, [4:15](#), [4:16](#)
State v. Kidder, language of civil statutes, [1:15](#)
State v. Peters, spousal testimonial privilege, [5:33](#)
State v. Sarlund, language of civil statutes, [1:15](#)
State v. Swint, materiality of date, [5:43](#)
State v. Tousley, expert testimony, [5:41](#); scientific procedures, [5:40](#)
State v. Tripp, language of civil statutes, [1:15](#)
State v. Yapo, immunity from prosecution, [5:27](#)
Steelman v. Fowler, petitions, [2:12](#)

T

Talley v. State, prior acts, [5:23](#); stay away provisions, [4:17](#)
Tammy S. v. Albert S., military jurisdiction, [2:2](#)
Tanks v. State, contempt of court, [4:12](#); double jeopardy, [3:40](#)
Taylor v. State, parental discipline, [4:1](#)

Temple v. State, aggravated sexual battery, [4:7](#)
Thomas v. State, 911 calls, [5:16](#); prior abuse, [5:24](#)
Thompson v. State, battery, [4:9](#); non-testimonial statements, [5:16](#); res gestae, [5:10](#)
Trammel v. U.S., Confidentiality [Q:8](#),

U

U.S. v. Griffith, Georgia battery stature, [E:10](#)
U.S. v. Ventresca, criminal trial, [5:21](#)

V

Vaughn v. State, admissibility of scientific principles, [5:40](#)

W

Warren v. State, aggravated sodomy, [4:7](#); rape, [4:7](#)
Walton v. State, statements, [5:13](#), [5:17](#)
Watkins v. State, recanting statements, [5:10](#); simple battery, [4:9](#)
Webb v. State, marital communications privilege, [5:35](#)
White v. Regions Bank, exceptions to privilege, [5:38](#)
White v. State, marital communications privilege, [5:33](#); spousal testimonial privilege, [5:36](#)
Wilbourne v. State, res gestae, [5:10](#)
Wiles v. Wiles, Confidentiality [Q:3](#), [Q:7](#), Extension of Privilege [Q:3](#), [Q:7](#)
Williams v. Jones, counter petitions, [2:13](#); restraining the petitioner, [3:4](#)
Wilkerson v. State, Waiver of Error [5:12](#), Right of Confrontation [5:12](#)
Williams v. Marsh, due process, [1:15](#)
Williams v. State, prior violent acts, [5:30](#); three affirmative showings, [5:22](#); written notice, [5:30](#)
Williams v. Stepler, family violence order as final order, [2:15](#)
Willmon v. Daniel, due process, [1:15](#)
Wood v. State, elderly cruelty, [4:6](#)
Woods v. State, prior acts, [5:24](#)
Wright v. State, aggravated stalking, [4:5](#); arrest without warrant, [4:18](#); harmless error, [5:14](#); necessity exception, [5:6](#); testimonial statements, [5:12](#)

Y

Yearwood v. State, cruelty to children, [4:4](#)

GLOSSARY

ABA	American Bar Association
ADA	Americans with Disabilities Act
ADR	Alternative Dispute Resolution
AIDS	Acquired Immune Deficiency Syndrome
AOC's	Administrative Office of the Courts
AVLF	Atlanta Volunteer Lawyers Foundation
CASA	Court Appointed Special Advocates
CIMT	Crime Involving Moral Turpitude
DHS	Department of Homeland Security
DHR	Department of Human Resources
DSM-IV Lite	Diagnostical and Statistical Manual
EAD	Employment Authorization Document
ECT	Electroconvulsive Therapy
FOIA	Freedom of Information Act
FVB	Family Violence Battery
FVIP	Family Violence Intervention Programs
FVPSA	Family Violence Protection and Services Act
GAD	Generalized Anxiety Disorder
GAIN	Georgia Asylum and Immigration Network
GAL	Guardian Ad Litem
GCFV	Georgia Commission on Family Violence
GCIC	Georgia Crime Information Center
GDC	Georgia Department of Corrections
GDC's	Georgia Designated Courts
GPOR	Georgia Protective Order Registry
HUD	Housing and Urban Development
ICARA	International Child Abduction Remedies Act
ICE	Immigration and Customs Enforcement

IIRAIRA in judicio IPV IT	Illegal Immigration Reform and Immigrant Responsibility Act a course of legal proceedings Intimate Partner Violence Intimate Terrorism
LEP	Limited English Proficiency
LGBTQQI LPR	Lesbian Gay Bisexual Transexual Questioning Queer Intersex Lawful Permanent Resident
MCDV MVC	Misdemeanor Crimes of Domestic Violence Mutual Violent Control
NCIC NCJFCJ NCSC NICS	National Crime Information Center Network National Council of Juvenile and Family Court Judges National Center for State Courts National Instant Criminal Background Check System
O.C.G.A.	Official Code of Georgia Annotated
PAS POR	Parental Alienation Syndrome Protective Order Registry
SCV SIJS STOP Grant	Situational Couple Violence Special Immigration Juvenile Status Services Training Officers Prosecutors Violence Against Women Formula Grant Program (STOP Program)
TPO TPS TVPRA	Temporary Protective Order Temporary Protected Status Trafficking Victims Protection Reauthorization Act of 2008
U.S.C.A. USCIS	United States Code Annotated United States Citizenship and Immigration Services
VAWA VWAP VR	Violence Against Women Act Victim Witness Assistance Program Violent Resistance

INDEX

References in *italics* denote forms or resources.
Acronym definitions are listed in the glossary.

[A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [Z](#)

Numerics

911

- cases involving, [5:16](#)
- Georgia Protective Order Registry and, [3:37](#)
- protection order and, [F:1](#)

A

- absent parties, [2:15](#)
- abuse generally, [A:5-9](#)
 - behaviors as, [K:8](#)
 - children and, [O:1-5](#)
 - history of violence and, [A:10](#), [B:4](#)
 - immigrants, refugees and, [H:9](#)
 - prior, [5:24-25](#)
 - self defense and, [5:26-27](#)
 - substance, [I:17-19](#)
 - types of, [A:5-9](#)
 - victims and, [A:10-11](#)
 - women and, [B:3-6](#)
- abusers generally, [A:2-4](#), [B:2](#)
 - alcohol, drugs and, [B:5-6](#)
 - controlling, [B:5](#)
 - guns and threats by, [B:4](#)
 - immigrants, refugees as, [H:6-7](#), [H:13-14](#)
 - unemployment and, [B:5](#)
 - violence and, [B:3-5](#)
- abusive language, [5:29](#)
- accident, [5:31](#)
- Adams, D., [G:2](#)
- Adkins, Mary, [K:5](#), [K:6](#)
- Administrative Office of the Courts,
Research Division, [M:2](#)
- advocate
 - ex parte applicants and, [2:4](#), [D:2](#)
 - mediation and, [K:13](#)
 - prevention and, [B:7](#)
- affidavits, [3:8](#)
- agencies, [M:3](#)
- aggravated
 - assault, [1:4](#), [4:3](#), [4:13](#)
 - battery, [4:3](#), [4:14](#)
 - child molestation, [4:7](#)
 - felony, [H:8-9](#)
 - sexual battery, [4:7-8](#)
 - sodomy, [4:7](#)
 - stalking, [4:5](#), [4:23](#)
- aggravated stalking cases, [4:5-6](#)
- agreements, [3:27-29](#)
- Aiken, J., [3:5-6](#)
- alcohol generally, [3:7](#), [B:5-6](#), [I:17](#)
 - abuse and, [A:8](#)
- alcoholism, [I:6](#), [I:17](#)
- Aldarondo, E., [I:3](#), [I:4](#)
- alimony
 - child support and, [3:8](#)
 - Georgia's statutes and, [3:14](#)
 - payments as, [N:4](#)
- Alternative Dispute Resolution, [K:7](#), [K:9-12](#)
- AMEND Workbook for Ending
Violent Behavior, [A:6-7](#)
- American Bar Association, [3:5](#)
- American Psychiatric Association, [I:3](#), [I:29](#)
- American Psychiatric Glossary, [I:3](#), [I:29](#)
- American Psychological Association, [3:5](#), [I:3](#),
[N:2](#)
- ammunition. *See* firearms
- anger counseling, [3:17](#)
- Anger Management Programs*, [G:2](#)
- anger management programs, [3:17-18](#), [G:2](#)
- arrests, [4:18-21](#)
- arson, [4:8](#)
- Ascione, F.R., [B:4](#), [B:5](#)
- assault, [1:13](#)
- Assista*, [H:22](#)
- asylees, [H:4](#), [H:12](#)
- Athens-Clarke County, [E:4](#)

attorneys
children and, [J:7-8](#)
contempt officers as, [G:5-6](#)
ex parte applicants and, [D:1](#)
attorneys fees, [2:3-4](#), [3:20-21](#)

B

Babcock, J., [A:4](#)
bail, [4:21-25](#)
battered person syndrome
generally, [5:28-29](#)
case offenses as, [5:41](#)
battered women, [K:15](#)
See also abuse; victim; violence
batterers, [A:2-4](#) [K:15-16](#)
causes and, [A:4](#)
children and, [3:4-5](#), [K:17](#), [N:2-3](#), [O:1-6](#)
courts and, [C:1](#), [K:16](#)
family violence intervention program and, [3:18](#)
firearms and, [E:8](#)
immigrant victims and, [4:21](#), [H:1-20](#)
joint legal custody and, [K:17](#)
mediation and, [K:15-16](#)
parental rights and, [J:2](#)
See also abusers
batterer's intervention program
guardian ad litem and, [J:2](#)
See also family violence intervention programs
battery generally, [1:4](#), [1:13](#), [4:14-15](#)
case offenses as, [4:9-11](#), [4:15](#)
statute, [E:10](#)
beat, [4:1](#)
Beck, Connie, [A:9](#), [K:3](#), [K:5](#)
Beggs, Daryl, [M:4](#)
Bhattachatyaa, Aparna, [H:22](#)
Black's Law Dictionary, [2:4](#)
Bond, S., [A:4](#)
bond, [4:21-25](#)
Bowermaster, J., [3:4](#)
Brady Gun Act, [3:22](#)
Bridges, F.S., [1:2](#), [E:4](#)
Brigner, Mike, [vii](#)
Browne, Angela, [5:29](#)
Bruch, Carols, [N:2](#)
bruise, [4:1](#)
burden of proof, [2:14](#), [3:16](#), [3:23](#), [3:41](#)
Bureau of Alcohol, Tobacco and
Firearms, [E:10](#)
Bureau of Justice Statistics, [3:3](#)
Bureau of Justice Statistics Crime
Data Brief, [1:3](#)
Bureau of Labor Statistics, [1:12](#)

C

Caminar Latino, Inc., [H:21](#)
Campbell, Jacquelyn C., generally, [A:10](#), [B:5](#)
Danger Assessment Study and, [A:10](#)
firearms and, [3:3](#), [E:8](#), [E:13](#)
homicide and, [2:4](#), [B:5](#)
service on respondent and, [2:12](#)
Carlson, B.E., [1:3](#)
Carney, M., [A:4](#)
Carpiano, Richard M., [1:7](#)
Catholic Charities, [H:21](#)
Center for Pan Asian Community Services, [H:21](#)
Centers for Disease Control and
Prevention, [1:12-13](#)
certified programs, [3:18](#)
child custody generally, [3:28](#)
attorney for child and, [J:7-8](#)
guardian ad litem and, [J:2-7](#)
settlement agreement and, [3:28](#)
waivers and, [3:29-30](#)
child molestation, [4:7](#)
children generally, [3:4-9](#)
agreements regarding, [N:2-3](#)
ex parte applicants and, [D:1-2](#)
family violence orders and, [3:4-9](#)
Georgia Protective Order Registry
and, [M:2-4](#)
guardian ad litem and, [J:2-8](#)
immigrant status and, [H:11-12](#)
mediation and, [K:15-20](#)
supervised visitation and, [N:4](#)
telephone contact, [N:5](#)
child support generally, [2:12](#)
contempt remedies and, [3:39](#)
family violence orders and, [3:8-9](#)
payments and, [3:8](#), [K:18](#), [N:5-6](#),
petitions and, [3:8](#)
settlement agreement and, [3:28](#)
waivers and, [3:29-30](#)
circuits, [G:4](#)
civil cases
firearms in, [E:3-8](#)
Georgia Protective Order Registry
and, [M:1-4](#)
civil contempt, [4:11-12](#)
Civil Practice Act, [2:2-3](#), [2:11-12](#)
civil protection orders, [1:1](#)
civil protective orders generally, [1:1](#)
safety for families and, [1:1-15](#)
statutes and, [1:2-15](#)
Civil Rights Act, [H:16](#)
coercive control, [A:9](#)
cohabitation generally, [1:2](#), [E:3](#)
common law marriages, [5:36](#)
communications, [Q:9](#)

compliance, [3:19-20](#)
Computer Systems Protection Act, [1:10](#)
conduct, [1:5](#)
confidentiality generally, [Q:2-3](#)
 advocates and, [Q:6-8](#)
 communications, [Q:2](#), [Q:5-7](#)
 federal statutes, [Q:2-3](#)
 model statutes, [Q:3](#),
 shelter, [Q:2-7](#)

 See also privilege
confrontation clause, [5:10-21](#)
consent, [3:27-29](#)
Constitution, [1:14](#)
contact
 limiting, [D:1](#)
 telephone, [N:5](#)
 temporary protective order
 violation and, [G:4-5](#)
contempt generally, [3:9](#), [3:38-42](#)
contempt of court cases, [4:12-13](#)
control, [A:1-9](#), [B:5](#), [K:8](#)
convictions
 Family Violence Act and, [4:15-16](#)
 foreign nationals and, [H:7-8](#)
Cordova, Vidal, [H:22](#)
corporal punishment, [4:1](#)
 case offenses as, [5:32](#)
counter petition, [2:13](#)
counseling, [3:15-20](#), [4:23](#)
county lines, [M:3](#)
course of conduct, [1:11](#), [1:14](#), [3:29](#)
Court Appointed Special Advocates, [N:2](#)
court awareness, [J:2-4](#)
court clerks, [2:4](#), [J-4](#)
Court of Appeals
 attorney fees and, [3:20](#)
 contempt and, [3:40](#)
 custody, visitation and, [3:8](#)
court officers, [G:5](#)
court orders, [3:23](#)
Court Review, [C:1](#), [G:3](#)
court services, [A:9-11](#)
credible threat of violence, [1:14](#)
Crime Involving Moral Turpitude, [H:8](#)
crimes generally, [4:2-13](#)
 bail, bond and, [4:21-25](#)
 family violence, [4:1-2](#)
 felony, [4:2-8](#)
 miscellaneous, [4:11-13](#)
 misdemeanor, [4:8-11](#)
 proof of intent to commit, [5:4](#)
Crimes Against Persons Ages 65
 and Older, [1:4](#), [4:6](#)
criminal cases
 Georgia Protective Order Registry

 and, [M:2-4](#)
 mediation and, [K:7](#)
criminal contempt, [3:41-42](#)
criminal offenses, [1:4-6](#), [F:1](#)
criminal trespass, [1:6](#), [4:1](#)
cruelty
 children and, [4:4](#)
 elderly and, [4:6](#)
Cunningham, et.al., [A:4](#)
custody generally, [3:5-6](#), [N:3](#)
 disputes, [3:17](#)
 joint, [3:4-5](#), [J:3-8](#)
 mediation and, [K:17-19](#)
 order, [3:5](#)
 parents and, [J:3](#), [K:17](#), [N:3](#)
 rights, [H:11-12](#)
cyberstalking generally, [P:2](#)
 internet resources, [P:5](#)
 stalking laws, [P:3](#)
 technology, [P:2](#)
 venue, [P:5](#)

D

Danger Assessment Study, [A:10](#), [B:3](#)
Davies, B., [K:3](#)
DeBecker, Gavin, [B-2](#)
DeKeseredy, Walter S., [A:7](#)
Department of Corrections, [3:17](#), [3:37](#)
Department of Family and
 Children Services, [D:1](#), [J:4](#)
Department of Homeland Security, [H:17](#), [H:18](#)
Depner, Charlene, [K:3](#)
deportation, [H:3](#), [H:6](#), [H:7-8](#)
deputy sheriffs, [3:37](#)
Diagnostic and Statistical
 Manual – IV Lite, [I:3-29](#)
discipline, [1:8](#), [4:1](#)
disorders, [D:2](#)
 See also mental health
dispatchers, [3:37](#)
divorce, [1:15-16](#), [3:28](#), [3:30-31](#), [N:2](#)
domestic relations
 allegations and, [3:30-31](#)
 cases, [N:2-5](#)
 mediation and, [K:8-9](#)
 violence and, [1:3](#), [E:8](#)
Domestic Violence Task Force, [A:12](#), [G5-6](#)
Domestic Violence Courts, [S:3](#)
double jeopardy, [3:40](#)
drugs, [B:5-6](#)
due process, [1:14-15](#)
Duhart, Delis T., [1:13](#)
Durose, Matthew, [K:5](#)
Dutton, D., [A:4](#)
DVD's and videos, [G:5](#)

E

emotion, [K:8](#)
emotional abuse, [1:7](#), [A:7](#)
employee, [1:13](#), [2:15](#)
employer protective orders
duration of, [3:32](#)
employee and, [1:12-13](#), [2:15](#)
enforcement of, [3:34](#)
extensions for, [3:34](#)
jurisdiction for, [2:1](#)
remedies for, [3:1](#), [3:22-23](#)
service of orders for, [3:32](#)
employer protective order statute
generally [2:3](#)
petitioner and, [3:23](#)
employer restraining order, [2:15](#)
Employment Authorization Document, [H:5](#)
enforcement of orders, [3:19-20](#)
Ethical Standards for Neutrals, [K:11](#)
Evaluators, [1:2](#), [N:2](#)
evidence
admissible, [5:1-9](#)
blood as, [5:1](#)
Confrontation Clause and, [5:10-21](#)
corroboration of, [5:1-4](#)
eyewitness testimony as, [5:2](#)
hearsay as, [5:4-19](#)
medical, [5:6](#)
necessity exemption of, [5:5](#)
proof of intent as, [5:4](#)
statements as, [5:11-20](#)
ex parte applicants generally, [D:1-2](#)
ex parte hearing, [2:6-7](#)
ex parte orders generally, [2:4-7](#)
firearms and, [3:4](#)
gun restrictions and, [E:4](#)
outside of Georgia and, [3:37-38](#)
experts, [5:39-43](#)

F

false imprisonment, [4:4](#)
family problem resolution, [3:17](#)
family violence
acts of, [4:1-2](#)
arrests and, [4:18](#)
children and, [J:2-8](#)
discipline as, [4:1](#)
fear and, [1:9](#)
guardian ad litem and, [J:2-8](#)
homicide rates and, [1:2](#)
information sheet for, [F:1](#)
family violence (continued)
interpreters for, [H: 16](#)

intervention programs and, [3:17-19](#)
law and, [3:24-25](#)
mediation and, [3:17](#), [K:2-15](#)
mental health and, [I:3-4](#)
protection and, [1:8-9](#)
public altercation and, [4:21](#)
orders and, [3:18-19](#)
remedies and, [3:23-27](#)
report and, [4:19-20](#)
respondent visitation and, [3:6-8](#)
siblings and, [4:15](#)
temporary protective orders and, [G:3-5](#)
Family Violence Act
attorney's fees and, [3:20](#)
counterclaim and, [2:14](#)
court authority and, [3:13](#)
criminal law and, [4:1-2](#)
divorce and, [1:15-16](#)
felony crimes and, [4:2-8](#)
mediation and, [K:8](#)
mutual protective order and, [2:13](#)
property and, [3:9-15](#)
screening and, [K:9-12](#)
Sixth Amendment Right and, [4:15](#)
stalking and, [3:22-23](#)
standard of review and, [3:21](#)
Family Violence and Stalking Protective
Order Registry Act, [L:1](#)
family violence forms, [L:1](#)
Family Violence Intervention Programs, [G:1](#)
family violence intervention programs
certification manager, [G:2](#)
web address for, [G:6](#)
family violence orders
counseling for, [3:15-16](#)
custody in, [3:5-6](#)
misdemeanor offense and, [3:2](#)
violation of, [4:11-12](#)
family violence petition, [2:3-4](#), [3:8-9](#)
family violence protective orders
generally [1:2-8](#), [2:5-6](#), [2:14](#)
contempt, [3:38-42](#)
criminal violation and, [3:42-43](#)
duration of, [3:32-33](#)
enforcement of, [3:34](#)
extension of, [3:33-34](#)
registry of, [4:12](#)
remedies for, [3:1](#)
service of orders for, [3:31-32](#)
family violence registry, [4:12](#)
family violence shelter, [4:12](#)
fear generally, [1:9](#), [1:11](#)
panic disorder and, [I:9-11](#)
Federal Firearms Law, [E:3](#)
federal laws
firearms and, [3:3](#), [E:3-13](#)

offenses and, [E:9](#)
fees
 court awarded, [3:20-21](#)
 interpreters and, [H:16](#)
felony generally, [1:4](#)
 aggravated stalking as, [G:4](#)
 crimes as, [4:2-8](#)
 murder as, [4:2-3](#)
females, [1:3](#)
Fields, Marjory, [N:2](#)
finances, [K:18-19](#), [N:5-6](#)
fines, [3:41](#)
financial affidavit, [2:3-4](#)
firearms generally, [E:3-13](#)
 availability of, [1:2](#), [B:2](#), [B:4](#), [B:7](#), [E:4](#)
 bond and, [4:21](#)
 Brady Gun Act, [3:22](#)
 consequences and, [4:17-18](#)
 deportation and, [H:7-9](#)
 divorce action restraining orders and, [1:16](#)
 ex parte orders and, [2:5](#)
 Family Violence Act and, [3:2-4](#)
 federal prohibitions and, [E:9-10](#)
 Form A, [E:14](#)
 Form B, [E:15-16](#)
 Form C, [E:17-18](#)
 Form D, [E:19-20](#)
 Form E, [E:21](#)
 form list, [E:13](#)
 military and law enforcement and, [E:6](#)
 protection orders and, [1:2](#), [B:7](#), [E:3-8](#)
 restrictions and, [E:7](#), [E:9-13](#)
 safety and, [E:8](#)
 statistics and, [E:13](#)
 threats to kill and, [B:2-3](#), [B:4](#)
first offenses, [4:13-14](#)
Flitcraft, Anne J., [1:7](#)
foreign nationals, [H:3-22](#)
forms
 family violence, [L:1](#)
 Georgia orders and, [3:37](#)
 registry and, [M:3](#)
 superior court and, [2:4](#)
 Uniform Forms, [L:1](#)
Frattaroli, Shannon, [E:8](#), [E:13](#)
Freedom of Information Act, [H:6](#)
free speech, [1:15](#)

G

Gelles, Richard, [O:4](#)
Georgia Asylum and Immigration
 Network, [H:19](#)
Georgia Attorney General, [2:2](#)
Georgia Bureau of Investigation, [4:19](#)
Georgia Coalition Against

 Domestic Violence, [K:2](#), [K:15](#)
Georgia Commission on Dispute
 Resolution, [3:30](#), [K:2-6](#), [K:11](#)
Georgia Commission on Family
 Violence, [3:35](#)
 mediation and, [K:2](#), [K:15](#)
 protocol and, [G:5](#)
 telephone number for, [G:5](#)
Georgia Court of Appeals, [2:2](#), [3:22](#), [3:40](#), [5:33](#)
Georgia Crime Information
 Center, [3:35](#), [L:1](#), [M:2-4](#)
Georgia Criminal Justice Coordinating Counsel,
 [E:12](#)
Georgia Domestic Violence Fatality
 Review Project
 deaths with firearms and, [B:2](#), [B:4](#), [E:8](#)
 study cases and, [B:3-5](#)
 victims and, [B:1-4](#)
Georgia Family Violence Act, [E:4](#)
Georgia Office of Dispute
 Resolution, [K:4-9](#)
Georgia Protective Order
 Registry generally, [3:35-37](#), [M:1-4](#)
 protection orders and, [G:4](#)
 web access to, [3:36](#)
Georgia's Clerk of Superior Court, [G:4](#)
Georgia Rule of Professional Conduct, [J:8](#)
Georgia Security and Immigration
 Compliance Act, [H:15](#)
Georgia Superior Court Clerks'
 Cooperative Authority, [3:35](#), [L:1](#)
Georgia Supreme Court generally, [1:11](#), [1:13](#)
 battered person syndrome and, [5:27](#)
 three affirmative showings and, [5:19-20](#)
Gondolf, Edward W., [3:18](#)
Gottlieb, M., [G:2](#)
government employees, [E:9](#)
green card, [H:5](#), [H:8](#)
guardians ad litem generally, [J:1-8](#)
Gun Control Act of 1968, [4:17](#)
guns, [3:2-3](#), [4:21](#), [B:2](#), [B:4](#), [B:7](#)
 See also firearms and weapons

H

Hague Convention, [H:11-13](#)
harassing, [1:4](#), [1:9-10](#)
hearings, [2:6-12](#)
 judicial compliance, [G:5](#)
hearings (continued)
 pre-hearing process and, [2:7-10](#)

 similar transactions and, [5:19-23](#)
hearsay
 cases, hearings citing, [5:4-9](#)
 evidence as, [5:5](#)

Herman, Judith Lewis
abused parties and, [D:2](#)
fear and, [1:9](#), [1:12](#)
psychological abuse and, [1:7](#)
repeat petitioners and, [2:5](#)
Herrell, Adele, [G:4](#)
Holt, V.H.
two week orders and, [1:1](#), [2:17](#), [3:32](#)
Holtzworth-Munroe & Stuart, [A:3](#)
homicides
domestic, [E:8](#)
estrangement and, [2:4](#), [B:3](#), [B:5](#)
intimate partner, [B:2-7](#)
jobs and, [1:12](#), [B:5](#)
prevention of, [B:2](#), [B:6-7](#)
stalking and, [B:5](#)
See also family violence
Housing and Urban Development, [3:12](#)
Hunter, Nancy
brain development and, [3:5](#)
fear and, [1:9](#)
petitioner and, [1:12](#)
psychological abuse and, [1:7](#)

I

IIRAIRA, [H:19](#)
immigrants generally, [2:16](#), [H:3-21](#)
arrests and, [H:8](#)
battered women and, [H:9](#), [H:17](#)
batterer and victim as, [H:16-18](#)
(USCIS) Citizenship and Immigration
Service [H:3-7](#)
deportation and, [H: 7-8](#)
Form I-918 and, [H:11](#)
Georgia Security and Immigration
Compliance Act, [H:18](#)
Hague Convention and, [H:14-15](#)
Illegal Immigration Reform and Enforcement
Act, [H:13](#)
international kidnapping and, [H: 14](#)
interpreters for, [H:16](#)
National Center for Missing and
Exploited Children and, [H: 15](#)
*Resources for Battered Refugee and
Immigrant Women in Georgia*, [H:20-21](#)
sentencing and, [H: 9](#)
undocumented, [H:6](#), [H:11](#)
visas and, [H:9](#), [H:5](#)
work and, [H:7](#)
immigration, [H:3-4](#)
immigration attorney, [H: 16](#)
immigration laws, [H: 3-22](#)
incarceration, [3:41](#)
incest, [4:7](#)
Income Deduction Order, [N:5](#)

I-94 and non-immigrants, [H:5-6](#)
in judicio, [3:29](#)
injury, [4:24](#)
In Re Harvey, [3:39](#)
Institute of Continuing Judicial Education, [G:5](#)
International Child Abduction Remedies
Act, [H: 14](#)
International Women's House, [Resources:4](#)
interpreters generally, [2:16](#)
foreign language and, [H: 16](#)
intervention programs generally, [3:15-20](#)
batterer and, [3:15-20](#)
mandatory family violence and, [4:17](#)
waivers and, [3:30](#)
intimidation, [1:7](#), [3:17-18](#), [A:2-8](#), [K:8](#)
intimate partners generally, [B:2](#)
Brady Gun Act, [3:22](#)
definition of violence and, [K:8](#)
guns and, [4:21](#)
violence, [1:3](#), [B:2-7](#), [I:3-4](#)
Intimate Partner Violence, [N:2](#)
Intimate terrorism, [A:5](#)
investigations and ex parte applicants, [D:1](#)
involuntary manslaughter, [4:3](#)
isolation, [K:8](#)
Iyer, Sunita, [H:22](#)

J

Jaffe, Peter, [3:5](#)
jealousy, [A:6-7](#)
Jewish Family and Career Services, [H:21](#)
Johnson, M., [A:2](#), [A:3](#), [A:5](#), [K:5](#)
joint counseling, [3:16-17](#)
joint custody, [3:5](#), [J:3](#), [N:3](#)
Journal of Emergency Medicine, [4:10](#)
judges generally, [A:9-12](#)
bail and, [4:21-25](#)
Georgia Protective Order Registry
Website for, [M:3-4](#)
guardian ad litem and, [J:3-7](#)
juvenile court, [3:25](#), [H:11](#), [J:4](#)
juvenile immigrants and, [H:11](#)
mediation and, [K:16-19](#)
protection order and, [F:1](#)
Judicial Compliance Hearings, [S:2-5](#)

K

Karnani, Nisha, [H:22](#)
Karr-Morse, Robin, [3:5](#)
Keilitz, Susan L., [1:1](#)
Khant, Monica M., [H:22](#)
kidnapping, [1:6](#), [4:3-4](#), [H:14-15](#)
King, Mary, [M:4](#)

Klugman-Rabb, Jodi, [O:5](#)
Kunce-Field, Julie, [G:3](#)
Kyriacou, D., [A:4](#)

L

law enforcement officers
ex parte applicants and, [D:1](#)
forms and, [M:3](#)
Georgia Protective Order
Registry and, [3:37](#), [M:3](#)
protective orders and, [G:4](#)
Lawful Permanent Resident, [H:3-4](#)
lay advocate, [2:4](#)
*Legal Momentum Immigrant
Women Program*, [H:22](#)
lethality factors generally, [A:9-10](#), [B:2-7](#)
alcohol and, [B:5-6](#)
depression and, [B:5](#)
drugs and, [B:5-6](#)
efforts to leave and, [B:5](#)
guns and, [B:4](#)
harassment, [B:5](#)
increase in violent attacks and, [B:3](#)
indicators as, [B:2](#), [B:5](#)
practical application, [B:2](#), [B:6-7](#)
strangulation and, [B:3](#)
suicide and, [B:5](#)
threats to kill and, [B:4](#)
unemployment, [B:5](#)
Levey, Lynn S., [1:3](#)
limited contact orders, [3:2](#)
Limited English Proficiency, [H:16](#)
links, [3:36](#)
local victim assistance funds, [2:16](#)
Logan, T.K., [1:1](#), [1:9](#)
Loughlin, Greg, [G:5](#)
Lumpkin County, [E:4](#)

M

Mathis, Richard D., [3:5](#)
McAlister-Groves, Betsy, [O:4](#), [O:6](#)
McGrath, Kerry, [H:22](#)
mediation generally, [3:30-31](#), [K:2-15](#)
guidelines for, [3:17](#)
improvements to, [K:5-6](#)
mediators, [K:2-19](#)
screening for, [K:9-12](#)
medical report cases, [5:2](#)
medication, [D:2](#), [I:3-4](#), [I:25-30](#)
Meloy, J. Reid, [1:8](#)
Mental Health Professionals generally, [I:3](#), [J:5](#),
[N:2](#),
evaluators as, [I:3-4](#)

mental illness generally, [I:2-30](#)
Acquired Immune Deficiency
Syndrome and, [I:16](#)
alcoholism and, [I:17-19](#)
Alzheimer's disease and, [I:16-17](#)
anorexia nervosa, [I:19-20](#)
anxiety disorders and, [I:8-13](#)
biological clock disorders and, [I:22](#)
bipolar disorder and, [I:7-8](#)
bulimia and, [I:20-21](#)
court evaluations and, [I:3](#)
dementia and, [I:15-17](#)
depression and, [I:5-7](#)
eating disorders and, [I:19-21](#)
electroconvulsive therapy and, [I:7](#)
generalized anxiety disorder and, [I:9](#)
hypersomnia and, [I:22](#)
insomnia and, [I:21](#)
lithium and, [I:8](#)
manic-depressive illness and, [I:7-8](#)
medications used in psychiatry and, [I:25-29](#)
mental health professionals chart and, [I:30](#)
mood disorders and, [I:4-8](#)
obesity and, [I:20-21](#)
obsessive-compulsive disorder and, [I:11-13](#)
panic disorder, [I:9-11](#)
paraphilia and, [I:23-24](#)
parasomnias and, [I:22](#)
schizophrenia and, [I:13-15](#)
seasonal affective disorders and, [I:7](#)
sexual disorders and, [I:22-24](#)
sexual dysfunctions and, [I:23](#)
sleep disorders and, [I:21-22](#)
substance abuse and, [I:17-19](#)
military jurisdiction, [2:2](#)
Mills, Linda, [A:2](#), [A:11](#)
minors, [3:4-9](#)
misdemeanor crimes generally, [4:8-11](#), [E:10](#)
bail and, [4:22](#)
battery as, [4:14](#)
contact violation as, [G:4](#)
federal firearms prohibitions and, [E:9](#)
Misdemeanor Crimes of Domestic
Violence, [4:8-11](#), [E:9](#)
monitoring, [G:3-7](#)
motions, [2:13](#)
murder, [4:2-3](#), [B:2-6](#)

N

*National Center for Missing and
Exploited Children*, [H:22](#)
National Center for Missing and
Exploited Children, [H:15](#)
National Center for State Courts, [1:1](#)
National Council of Juvenile and

Family Court Judges, [G:4](#)
Model Code, [3:5](#)
National Crime Information
Center Network, [3:35](#), [M:2-3](#)
database and, [L:1](#)
protection orders and, [3:36](#), [3:37](#), [L:1](#)
National Instant Criminal Background Check
System, [E:7](#)
Nolo contendere, [4:15](#), [E:10](#)
no-contact orders, [3:1-2](#)
noncompliance
consequences for, [G:4](#)
orders and, [3:19-20](#)
*Noncompliance Notification and Show
Cause Order Form*, [G:6](#)
Non-immigrant, [H:2-3](#)
non-resident respondent, [2:1](#)
notices, [5:21](#)

O

orders
duration of, [3:32-34](#)
enforcement of, [3:19-20](#)
forms for, [3:37](#)
language and, [E:6-7](#)
service of, [3:31-32](#)
Orloff, Lesley E., [1:3](#)

P

Parental Alienation Syndrome, [N:2](#)
Perpetrators, [A:2-4](#)
personal jurisdiction, [2:1](#)
personal property, [3:13-14](#)
persons
felonies against, [4:2-8](#)
misdemeanors against, [4:8-11](#)
Petition for Citation of Contempt, [N:5](#)
petitioners
contempt and, [3:40-41](#)
court and, [2:4-5](#), [3:6](#)
employer protective order
petitioners (continued)
and, [1:12-14](#), [3:23](#)
ex parte relief and, [2:4-7](#)
family violence order
and, [1:2](#), [1:7-8](#), [3:24-25](#)
fees for, [2:4](#), [H:12](#)
financial affidavit and, [2:3-4](#)
forms for, [2:4](#)
Georgia Protective Order Registry
and, [M:2-3](#)
Hague Convention and, [H:14-15](#)
hearings and, [2:15](#)

joint counseling and, [3:16-17](#)
military and, [2:2](#)
payment of money and, [2:3-4](#)
protection order information sheet for, [F:1](#)
remedies and, [3:1](#), [3:23-25](#)
repeat, [2:5-6](#)
restraining, [3:4](#)
stalking protective order
and, [1:9-11](#), [3:24](#)
violence and, [1:3-7](#)
petitions generally, [2:3-4](#)
answers to, [2:12](#)
dismissal of, [2:11](#), [2:14](#)
ex parte applicants and, [D:1-2](#)
ex parte orders and, [2:4](#)
denial of ex parte relief [2:6](#)
filing of, [2:6](#)
hearing schedule for, [2:11](#)
pet abuse, [B:4](#)
physical abuse/violence, [A:6](#), [B:3](#)
physical force, [A:2-4](#), [E:3](#), [E:11](#), [E:12](#)
physical safety, [3:3](#), [E:3](#), [E:5](#), [E:12-13](#)
police officers, [3:37](#)
police reports, [D:1](#)
Post Traumatic Stress Disorder, [1:9](#)
pre-hearings, [2:11-14](#)
See also hearings
presumption of constitutionality, [1:14](#)
prevention, [B:2](#), [B:6-7](#)
privilege generally, [Q:2](#)
criteria for extension, [Q:8](#)
federal caselaw, [Q:8](#)
federal rule, [Q:7-8](#)
psychotherapist-patient, [Q:6-7](#)
privileges, [5:32-34](#)
probable cause, [2:5](#)
probation, [4:16-17](#)
probation officers, [3:37](#)
property generally, [3:9-15](#)
crimes, [4:11](#)
criminal damage to, [4:8](#)
damage of, [1:5](#)
eviction of, [3:12-13](#)
ex parte applicants and, [D:1-2](#)
personal, [3:13-14](#)
property generally (continued)
third parties rights to, [3:12](#)
property crimes, [4:7-8](#)
prosecuting attorneys, [3:37](#)
protection, [3:1-4](#), [3:22](#), [M:2](#)
children and, [O:2-5](#)
protection order information sheet, [F:1](#)
Protective Order Registry, [M:2-3](#)
protective orders generally, [3:34-37](#)
Brady Gun Act, [3:22](#)
contempt and, [3:38-42](#)

criminal violation of, [3:42-43](#)
employer, [1:12-13](#)
enforcement of, [G:3-4](#)
family violence, [1:2-8](#), [J:2](#)
firearms and, [3:2-4](#)
foreign, [3:36](#)
Georgia and federal statute on, [3:37-38](#)
monitoring and enforcing, [G:3-5](#)
number of Georgia, [M:2](#)
prevention of abuse and, [1:1](#), [B:2](#), [B:6-7](#)
procedures and provisions of, [2:3](#)
stalking and, [1:9-12](#), [1:14-15](#)
temporary, [B:6-7](#), [G:3-5](#)
transmittal and entry of, [3:35](#)
protective order cases, [2:15](#)
 consent agreements and, [3:27-29](#)
protective order statute, [2:2-3](#), [2:7-8](#)
protective services, [J:2-5](#)
protocol, [3:31](#)
psychiatric services, [3:15-16](#)
psychological abuse, [1:7](#)
 See also abuse types
psychological evaluation and
 treatment, [4:16](#)
psychological services, [3:15-16](#)
Ptacek, James, [D:2](#)
public order, [4:8](#)

Q

Qualified Domestic Relations Order, [N:6](#)

R

RAKSHA, Inc., [H:21](#)
Rao, Rathi, [H:22](#)
rape, [4:6-7](#)
reckless conduct, [4:4](#)
Refugee Family Services, [H:21](#)
refugees, [2:16](#), [H:12](#), [H:20](#)
relationships generally, [1:2-3](#)
 abusive, [B:2](#),
 definition of intimate partner, [B:2](#)
 offender/victim, [4:1-2](#)
relationships generally (continued)
 women in abusive, [B:2-6](#)
remedies, [3:23-30](#)
 consent and, [3:28-29](#)
 equitable powers and, [3:25-27](#)
 judicial discretion and, [3:23-27](#)
Rennison, Callie Marie, [3:2](#)
res gestae, [5:10](#)
Resources
 local, [Resources:1-2](#)
 State and National, [Resources:3-9](#)

respondents
 admissions by, [3:28-29](#)
 counseling and, [3:15-17](#)
 employer protective order and, [1:13](#)
 family violence order and, [1:2-3](#), [1:7](#)
 firearms and, [E:4](#)
 Georgia Protective Order Registry
 and, [M:1-4](#)
 guns and, [3:2-3](#)
 hearing and, [2:16](#)
 orders outside of Georgia and, [3:37-38](#)
 restraining orders and, [3:3](#)
 stalking protective order and, [1:9-11](#)
Restitution, [R:2-6](#)
restraining orders generally, [1:9](#), [2:13](#)
 divorce and, [1:15](#)
 Georgia Law and, [3:2](#)
 firearms and, [3:3](#)
 no-contact orders and, [3:1-2](#)
 stalking and permanent, [4:16-17](#)
 stay-away orders and, [3:1](#), [4:17](#)
 violation of, [3:42](#)
 See also protective orders
Right to privacy, [Q:3](#), [Q:9](#)
Rothman, Emily, [E:8](#), [E:13](#)
Rule Nisi, [2:6](#)

S

safety, [A:11-12](#), [E:8](#), [F:1](#)
 See also lethality generally
 Safety Focused Parenting Plan, [N:8-17](#)
Saltzman, Linda E., [3:3](#), [4:21](#)
screening, [C:1](#), [K:9-12](#)
search warrant, [4:20](#)
second offenses, [4:14-15](#)
self defense, [4:19](#), [5:26-27](#)
sentences, [4:13-18](#)
settlements, [3:27-30](#)
sexual abuse, [A:7](#)
sexual crimes, [4:6-8](#)
shelter
 advocates, [Q:6-9](#)
 certification, [Q:6](#)
 confidentiality, [Q:2-9](#)
Sharps, P., [B:5](#)
sheriffs, [3:37](#)
show cause. *See* noncompliance
showings, [5:22-24](#)
siblings, [4:13-15](#)
Silverman, J.G., [1:3](#)
Simmons, C., [B:4](#)
simple assault generally, [1:4](#)
 case offenses as, [4:8-9](#)
 sentencing and, [4:13](#)
simple battery generally, [1:4](#)

case offenses as, [4:9](#)
sentencing and, [4:13-14](#)
situational couple violence, [A:5](#), [A:10](#)
Sixth Amendment, [4:15](#)
slap, [4:1](#)
Southworth, Cynthia, [P:4](#)
Special Immigrant Juvenile Status, [H: 11-12](#)
spouse, [K:8](#), [K:12](#)
spousal support, [3:14-15](#)
stalking generally, [1:4-5](#), [1:9-11](#), [4:11](#)
 bail and, [4:22-23](#)
 cases and, [B:4](#)
 case offenses as, [4:11](#)
 counseling and, [3:15-16](#)
 cyberstalking, [P:2-6](#)
 firearms and, [E:5](#)
 harassing and, [1:10](#), [4:4-5](#)
 imprisonment and, [G:5](#)
 restraining orders and, [3:43](#)
stalking orders, [3:21-23](#), [E:5-6](#)
stalking protective order registry, [4:12](#)
stalking protective orders generally, [3:31-33](#)
 denial of ex parte relief [2:6](#)
 jurisdiction for, [2:1](#)
 pre-hearing, [2:11](#)
 protection and, [2:14](#)
 remedies for, [3:1](#)
 restraining order and, [1:9](#)
 statute, [2:3](#)
Standards, [1:14](#), [3:14](#), [3:26](#)
Stark, Evan, [1:7](#)
State Board of Pardons and Paroles, [3:18](#), [3:37](#)
State of Georgia as employer, [1:13](#)
statute of limitation, [5:25](#)
statutes
 civil protective order, [1:2-14](#)
 family violence, [2:5-6](#)
 protective order, [2:2-3](#), [2:5](#)
stay-away orders, [3:1](#)
Stets, J., [A:3](#)
STOP grant, [4:18](#), [E:7](#), [E:12](#)
Strack, Gael, [4:10](#)
strangulation, [4:10](#), [B:3](#)
Straus, M.A., [1:3](#), [A:3](#), [A:4](#)
structured contact orders, [3:2](#)
 children and, [N:3-4](#)
subject matter jurisdiction, [2:1](#)
suicide, [1:7](#), [B:5](#)
survivor support, [J:2](#)

T

TAPESTRI, [H:20](#)
Tapestri, Inc., [2:16](#)
task forces, [A:12](#)

Taylor, L.R., [A:7](#)
Temple, J.R., [A:7](#)
temporary protective orders, [B:6](#), [G:3-5](#), [J:2](#)
 divorce and, [1:15-16](#), [N:2-3](#)
 firearms and, [E:3-8](#)
 See also protective orders
 and restraining orders
terroristic threats, [4:8](#)
testimonials, [5:11](#)
testimonies, [5:11-14](#)
therapy, [3:17](#)
third parties, [D:1-2](#)
threats generally, [1:8](#), [1:11](#), [1:13](#), [A:9](#)
 guns and, [B:4](#)
 protection orders as, [3:22](#)
Tjaden, Patricia, [K:5](#)
Trafficking Victims Protection Reauthorization Act of 2008, [H:11](#)
twelve-month orders, [E:7](#)

U

unemployment, [B:5](#)
unlawful violence, [1:13](#)
Uniform Forms, [L:1](#)
 Family Violence Ex Parte Protective Order
 Family Violence Six Month Protective Order
 Family Violence Twelve Month Protective Order
 Family Violence Three Year / Permanent Protective Order
 Stalking Ex Parte Temporary Protective Order
 Stalking Six Month Protective Order
 Stalking Twelve Month Protective Order
 Stalking Three Year / Permanent Protective Order
 Stalking Permanent Protective Order Pursuant to Criminal Conviction
 Dismissal of Temporary Protective Order
 Order for Continuance of Hearing and Ex Parte Protective Order
 Order to Modify Prior Protective Order
Uniform Superior Court, [2:3](#)
Uniform Superior Court Rules
 forms and, [3:37](#), [L:1](#)
 Rule 5.1, [2:13](#)
 Rule 6.2, [2:13](#)
 Rule 6.3, [2:13](#)
 Rule 6.7, [2:13](#)
 Rule 24.1, [2:3](#)
 Rule 24.2, [2:3-4](#), [3:8-9](#)
 Rule 24.5, [2:15](#)
 Rule 24.9, [J:3-7](#)

Rule 31.1, [5:21](#), [5:30](#)
Rule 31.3(B), [5:21](#)
Rule 31.6(A), [5:30-31](#)
Rule 31.6(B), [5:30](#)
U.S. Citizenship and Immigration
Services (USCIS), [H:6](#), [H:11](#), [H:12-13](#)
U.S. Congress, [3:5](#)
United States Constitution, [1:14](#)
U.S. Department of Justice, [1:3](#), [4:18](#), [E:12](#), [H:18](#)
[P:2](#), [Q:2](#), [Q:3](#),
U.S. Department of Labor, [1:12](#)
U.S. State Department, [H:15](#), [H:18](#)
U Visa, [H:10](#), [H:18](#)

V

VAWA, [3:24](#), [4:18](#), [H:9](#)
Confidentiality, [H:18-20](#)
venue, [2:1](#)
Victims' Compensation, [R:4](#)
victims generally, [A:10-11](#)
children as, [O:5](#)
female homicide, [B:2-6](#)
immigrants and refugees
as, [H:13-14](#)
intimate partners as, [B:2-5](#)
legal custodians as, [J:3](#)
mediation and, [K:8-19](#)
pressing charges and, [4:18-19](#)
threats to arrest and, [4:19](#)
violations, [4:11-12](#)
violence generally, [A:2-3](#)
causes of, [A:4](#)
children and, [J:2-8](#)
credible threat of, [1:14](#)
cycle of, [5:41](#)
escalation and, [A:5](#), [B:3](#)
future lethal, [B:2-6](#)
history of, [B:2](#)
mediation and, [K:2-16](#)
perpetrators and, [A:2-3](#)
types of, [A:5-9](#)
See also family violence
Violence Against Women Act, [3:24](#), [4:18](#), [H:9](#),
[H:18](#)
Violence Against Women Act's Full
Faith and Credit Provision, [G:4](#)
visas, [H:5](#), [H:9](#)
visitation
arrangements and, [N:3-5](#)
guardian ad litem and, [J:3](#)

supervised, [N:4](#)
visitation order, [3:5-8](#)
voluntary manslaughter, [4:3](#), [5:27](#)

W

waiver, [3:29-30](#)
wall beat, [4:10](#)
warrants, [D:1](#)
weapons
civil cases and, [E:3-8](#)
exemption for, [E:6](#)
ex parte applicants and, [3:3-4](#), [D:1](#)
firearms as, [3:2-4](#)
See also firearms
Weber, C.V., [B:5](#)
White, J., [A:7](#)
Wigmore, John, [Q:3](#), [Q:9](#)
Wilbur, Lee, [4:10](#)
Wilson, C., [1:3](#)
Wilson, Margo, [2:4](#), [2:12](#)
witnesses generally, [2:15](#)
criminal cases and, [M:2-4](#)
expert, [5:39-43](#)
guardian ad litem as, [J:6](#)
WomensLaw.org, [A:11](#)
Work Authorization Eligibility, [H:5](#)
work permit, [H:7](#)
workplace, [1:12-14](#)

Z

Zahn, Margaret A., [B:2](#)
Zorza, Joan, [2:13](#), [3:4](#)

