The Federal Domestic Violence Laws and the Enforcement of These Laws

Margaret S. Groban

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# The Federal Domestic Violence Laws and the Enforcement of These Laws

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## Overview

In 1994, the Congress of the United States, as part of the Crime Bill, enacted legislation empowering the federal government to participate in the fight against domestic violence. This legislation, called the Violence Against Women Act (VAWA), recognized that "violence against women is a crime with far-reaching, harmful consequences for families, children and society" (Domestic and Sexual Violence Data Collection, A Report to Congress under the Violence Against Women Act, 1 [NIJ Research Report 1996]). To combat this violent crime problem, VAWA created federal domestic violence crimes to be prosecuted by the Department of Justice. Consistent with this federal initiative, the Crime Bill also amended the Gun Control Act to include domestic violence-related crimes. Congress reaffirmed its commitment to fight domestic violence crimes by the enactment in the fall of 1996 of additional federal domestic violence crimes in both VAWA and the Gun Control Act.
Historically, the federal government has generally lacked jurisdiction over many domestic violence crimes. These crimes, however, pose a serious problem in our communities. Accordingly, while domestic violence remains primarily a matter of state and local jurisdiction, both VAWA and the Gun Control Act provide federal tools to prosecute domestic violence offenders in certain situations involving firearms or interstate travel or activity.

This chapter provides a concise summary of the federal offenses/statutes now available in both VAWA and the Gun Control Act to prosecute domestic violence offenders in the federal courts. It also provides a summary of selected prosecutions under each statute and a checklist of offenses. These statutes strive to achieve the Congressional goal to "treat violence against women as a major law enforcement priority, take aim at the attitudes that nurture violence against women, and provide the help that survivors need" (S.Rep. No. 102-197, at 34-35, 1991). Through enforcement of these available laws, the Department of Justice can and will assist state and local jurisdictions in their efforts to combat domestic violence.

The Violence Against Women Act

Interstate Travel to Commit Domestic Violence, 18 U.S.C. §2261

18 U.S.C. § 2261(a)(1)

It is a federal crime for a person to travel interstate (or to leave or enter Indian country) with the intent to injure, harass, or intimidate that person's intimate partner when in the course of or as a result of such travel the defendant intentionally commits a violent crime and thereby causes bodily injury. The law requires specific intent to commit domestic violence at the time of interstate travel. The term "intimate partner" includes a spouse, a former spouse, a past or present cohabitant (as long as the parties cohabitated as spouses), and parents of a child in common. The intimate partner definition does not include a girlfriend or boyfriend with whom the defendant has not resided unless protected by state law. There must be bodily injury for prosecution under this statute.

18 U.S.C. §2261(a)(2)

It is also a federal crime to cause an intimate partner to cross state lines (or to leave or enter Indian country) by force, coercion, duress, or fraud during which or as a result of which, there is bodily harm to the victim. This subsection does not require a showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress, or fraud. As in subsection 2261(a)(1), the defendant must intentionally commit a crime of violence during the course of or as a result of the travel and there must be bodily injury to the spouse or intimate partner.

Interstate Stalking, 18 U.S.C. §2261A

As of September 23, 1996, it is a federal crime to cross a state line with the intent to injure or harass another person, if in the course of or as a result of such travel, the defendant places such person in reasonable fear of the death of, or serious bodily injury to, that person or a member of that person's
Immediate family. The law requires specific intent to violate this subsection at the time of interstate travel. "Immediate family" includes a spouse, parent, sibling, child, or any other person living in the same household and related by blood or marriage. It is also a federal crime to "stalk," as it is defined in Section 2261A, within the special or maritime jurisdiction of the United States. This includes Indian reservations and military bases.

**Interstate Travel to Violate an Order of Protection, 18, U.S.C. §2262**

**18 U.S.C. §2262(a)(1)**

This law prohibits interstate travel (or travel into and out of Indian country) with intent to violate a valid protection order that forbids credible threats of violence, repeated harassment, or bodily injury. To establish a violation of this statute, the Government must demonstrate that a person had the specific intent to violate the protection order at the time of interstate travel and that a violation actually occurred. This statute does not require an intimate partner relationship--although this relationship may be required by the state or other governmental body issuing the order--nor does it require bodily injury.

**18 U.S.C. §2262(b)(1)**

It is also a federal crime to cause a spouse or intimate partner to cross state lines (or leave or enter Indian country) by force, coercion, duress, or fraud during which or as a result of which, there is bodily harm to the victim in violation of a valid order of protection. This subsection does not require a showing of specific intent to cause the spouse or intimate partner to travel interstate. It does, however, require proof that the interstate travel resulted from force, coercion, duress or fraud. The Government must also prove that a person intentionally injured an intimate partner in violation of a protection order during the course of or as a result of the forced or coercive travel. This subsection, unlike corollary Section 2262(a)(1), requires an intimate relationship between the parties.

The Department of Justice recognizes that under both §2262(a)(1) and (a)(2), law enforcement may be unable to verify the validity of a protection order at the time of arrest. The national data center from which law enforcement and prosecutors will be able instantaneously to verify protection orders will be of enormous benefit to federal authorities in the prosecution of criminal cases under Section 2262. Until such time as this registry is in place and fully operational, law enforcement should consult with the U.S. Attorney in their district for guidance in these cases.

To assist in prosecution under Section 2262 it is necessary to examine the protection orders currently issued in the relevant jurisdiction. For example, in Maine, the Protection-from-Abuse Order did not conform to the language of Section 2262 and made no provision for a judicial finding that the defendant posed a credible threat of violence, repeated harassment, or bodily injury. To correct this statutory deficiency, the U.S. Attorney's Office in the District of Maine, with the support of key members of the state legislature, proposed legislation that would bring the State into conformity with the VAWA provisions. The legislation received no opposition and passed the Legislature on May 30, 1997. The law went into effect on September 19, 1997.
Penalties

Penalties for violations of Sections 2261, 2261A, and 2262 hinge on the extent of the bodily injury to the victim. Terms of imprisonment range from 5 years for bodily injury to life if the crime of violence results in the victim's death.

Firearm Offenses

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

It is illegal for a person to possess a firearm while subject to a court order restraining such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. The protection order must have been issued following an evidentiary hearing in which the defendant had notice and an opportunity to appear. The protection order must also include a specific finding that the defendant represents a credible threat to the physical safety of the victim, or must include an explicit prohibition against the use of force that would reasonably be expected to cause injury. The statutory language of Section 922(g)(8), in addition to the language of Section 2262, provides additional justification for review of a jurisdiction's protection order form to determine if they conform with the federal requirements. Again, refer any questions about the applicability of this statute to the United States Attorney's Office in that district.

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

It is also illegal to transfer a firearm to a person subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner. A violation of Section 922(d)(8) must be knowing. Proof concerning knowledge on the part of the supplier may be difficult to establish absent a fully operational central registry for protection orders.

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

The restrictions of Sections 922(d)(8) and (g)(8) do not apply to firearms issued by governmental agencies to a law enforcement officer or military personnel so long as the officer or military personnel is on duty. Personal firearms do not fall within this exemption nor may these personnel possess officially issued firearms when off duty.

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

As of September 30, 1996, it is illegal to possess a firearm after conviction of a misdemeanor crime of domestic violence. This prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date. A qualifying misdemeanor domestic violence crime must have as an element the use or attempted use of physical force or the
threatened use of a deadly weapon. For example, a conviction for a misdemeanor violation of a protection order will not qualify, even if the violation was committed by a violent act, if the statute does not require the use or attempted use of physical force or the threatened use of a deadly weapon. The U. S. Attorney’s Office can determine which misdemeanor convictions qualify.

In addition, the statute contains due process requirements regarding counsel and jury trials. Absent compliance with these due process requirements, the misdemeanor conviction will not qualify as a domestic violence conviction for purposes of Section 922(g)(9). Moreover, a person may be able to possess a firearm if the conviction has been expunged or set aside.

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

It is also illegal to transfer a firearm to a person convicted of a misdemeanor crime of domestic violence. A violation of Section 922(d)(9) must be knowing. Assistance in satisfying this requirement is provided by amendment of the Brady statement to require a purchaser of a firearm to state that he or she has not been convicted of a misdemeanor crime of domestic violence.

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

The official use exemption does *not* apply to Sections 922(d)(9) and 922(g)(9). This means that law enforcement officers or military personnel who have been convicted of a qualifying domestic violence misdemeanor will not be able to possess or receive firearms for any purpose, including the performance of official duties. Additional questions about this statute should be referred to the U. S. Attorney and/or to the Alcohol, Tobacco & Firearm Office in your jurisdiction.

**Penalties**

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

**Other Relevant Statutes**

**Full Faith and Credit to Orders of Protection, 18 U.S.C. §2265**

This civil law provides that a civil or criminal domestic protection order issued by a court in one state or Indian tribe shall be accorded full faith and credit by the court of another state or tribe, and is to be enforced as if it were the order of the court of the second state or tribe. This law applies to permanent, temporary and ex parte protection orders that comply with the statute's requirements. To comply, the protection order must have provided the defendant with reasonable notice and an opportunity to be heard, in a manner consistent with due process. This law does not apply to mutual protection orders if (a) the original respondent did not file a cross- or counter-petition seeking a protective order or (b) if such a cross- or counter-petition was filed, but the court did not make specific findings that each party was entitled to such an order.
Amendment of the Brady Statement, 18 U.S.C. §922(s)

The Brady statement requirements were amended as of September 30, 1996, to include a statement that the recipient of the firearm has not been convicted in any court of a misdemeanor crime of domestic violence. The Brady statement still does not require that the firearm recipient state whether he or she is currently subject to a valid protection order. The recipient will be compelled to fill out, at the time of receipt of the firearm(s), an ATF form requiring certification that he or she is not subject to a valid protection order.

Right of Victim to Speak at Bail Hearing, 18 U.S.C.§2263

The victim of a VAWA crime has the right, a right that need not be exercised, to be heard at a bail hearing with regard to the danger posed by the defendant. Depending upon the basis of the case, the U. S. Attorney's Office may move for pre-trial detention of the defendant.

Other Victims' Rights, 42 U.S.C. §10606(b)

All federal crime victims, including a domestic violence victim, have the right to:

- Be treated with fairness and respect for the victim's dignity and privacy
- Be reasonably protected from the accused offender
- Be notified of court proceedings
- Be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial
- Confer with attorney for the Government in the case
- Restitution
- Information about the conviction, sentencing, imprisonment, and release of the offender

Restitution, 18 U.S.C. §2264

In a VAWA case, the Court must order restitution after conviction to reimburse the victim for the full amount of losses. These losses include costs for medical or psychological care, physical therapy, transportation, temporary housing, child care, lost income, attorney's fees, costs incurred in obtaining a civil protection order, and any other losses suffered by the victim as a result of the offense. In a conviction under the Gun Control Act, the court may order restitution.
Self-Petitioning for Battered Immigrant Women and Children, 8 U.S.C. §1154

VAWA specifically provides that battered and abused spouses and children of citizens and lawful permanent residents may self-petition for independent legal residency. This statute prevents citizens or residents from using the residency process as a means to exert control over an alien spouse or child. This statute allows victims to remain in the United States independent of their abusive husbands/parents.

Conclusion

The federal domestic violence statutes provide powerful weapons for U.S. Attorney's Offices around the country to assist state and local law enforcement in their fight against domestic violence. Increased awareness of these federal laws will allow the Department of Justice to work in a collaborative manner with our state and local counterparts in our efforts to reduce one of our nation's most serious crime problems.

Appendices

Summary of Federal Domestic Violence Prosecutions

Interstate Domestic Violence: 18 U.S.C. §2261

18 U.S.C. §2261(a)(1)

It is a federal crime to cross state lines and injure an "intimate partner." The injury must be physical and the defendant must have intended to commit the crime when crossing the state line.

Example: United States v. Rita Gluzman (S.D. New York). The defendant was convicted of traveling from New Jersey to New York with her co-defendant to murder her estranged husband. The defendant brought the ax and hatchet with her to New York and these weapons were used to commit the murder. On April 30, 1997, Gluzman was sentenced to life without parole.

18 U.S.C. §2261(a)(2)

It is a federal crime to force or coerce an "intimate partner" to cross state lines if the force or coercion leads to physical harm to the victim.

Example: United States v. Christopher Bailey (S.D. West Virginia). Bailey severely beat his wife in their home in West Virginia. Despite a bleeding head wound he locked her inside the trunk of his car and drove to Kentucky. Several days later he brought her to a hospital in Kentucky. Because of the delay in treatment, Sonya Bailey is now in a permanent vegetative state. Bailey was convicted of kidnapping and interstate domestic violence and is now serving a life sentence. On May 2, 1997, the Fourth Circuit affirmed Bailey's conviction in United States v. Bailey, 112 F.3d 758 (4th Cir. 1997).

It is a federal crime to cross state lines to stalk or harass. There must be proof that the stalking placed the victim in reasonable fear of death or serious bodily injury.

Example: United States v. Mark A. Sterkel (D. Arizona). The pending indictment charges the defendant with traveling from Utah to Arizona to threaten his former boss and place her in reasonable fear of bodily injury. The complaint described the vulgar threats and profanities written by Sterkel at the Glen Canyon Recreation Area that identified his former boss by name and placed her in reasonable fear that Sterkel would physically attack her. On August 22, 1997, Sterkel pled guilty to the stalking charge.

Interstate Violation of a Protection Order: 18 U.S.C. §2262

- 18 U.S.C. §2262(a)(1)

It is a federal crime to cross state lines and violate a protection order. The protection order must protect the victim against violent threats, repeated harassment, or bodily injury. The defendant must have intended to violate the protection order when crossing the state line.

Example: United States v. Michael Casciano (N.D. New York). A Massachusetts protection order prevented the defendant from stalking or harassing his former girlfriend. When the victim moved to New York, Casciano followed and continued to stalk her and harass her on the telephone. In one night he called her approximately 40 times. Casciano was sentenced to 37 months. The case is currently on appeal to the Second Circuit.

- 18 U.S.C. §2262(a)(2)

It is a federal crime to force or coerce an "intimate partner" to cross state lines if the force or coercion leads to injury in violation of a valid protection order.

Example: United States v. William Romines (W.D. Virginia). Romines went to the home of his ex-wife in Tennessee in violation of a protection order. He threatened to kill her and dragged his ex-wife and their son into a car. He was captured after a high-speed chase in Virginia. The defendant received a 151-month sentence.

Firearm Offenses

- 18 U.S.C. §922(g)(8)

It is a federal crime to possess a firearm while subject to a valid protection order. The protection order must state either that the defendant poses a threat to the physical safety of the victim or that the defendant is not allowed to use any force that would cause injury to the victim. Law enforcement officers are not subject to this law.
Example: United States v. Robert Goben (D. South Dakota). A South Dakota protection order prevented the defendant from harassing or threatening his estranged wife. He was found with a loaded .22 caliber revolver. He was sentenced to 12 months.


It is a federal crime to possess a firearm after conviction of a qualifying state misdemeanor crime of domestic violence.

Example: United States v. William Smith (N.D. Iowa). The pending indictment charges that Smith was convicted of assaulting the mother of his child in 1994. In 1996, he shot the same victim with a .380 caliber pistol. On May 16, 1997, the District Court upheld the constitutionality of this statute and on August 12, 1997, the defendant pled guilty to the Section 922(g)(9) charge.

Checklist of Federal Domestic Violence Statutes/Offenses

Domestic Violence Offenses

• Interstate travel to commit domestic violence: 18 U.S.C. §2261
• Interstate stalking: 18 U.S.C. §2261A
• Interstate travel to violate a protection order: 18 U.S.C. §2262

Firearms Offenses

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

Other Relevant Statutes

• Full Faith and Credit: 18 U.S.C. §2265
• Brady statement: 18 U.S.C. §922(s)
• Right of victim to be heard at bail hearing: 18 U.S.C. §2263
• Other victims’ rights: 18 U.S.C. §10606(b)
Notes

The Federal Bureau of Investigation is the lead federal investigative agency for VAWA violations. The Bureau of Alcohol, Tobacco & Firearms is the lead federal investigative agency for Gun Control Act violations.

The legislation also brought the State into conformity with Section 922(g)(8) of the Gun Control Act. This statute will be discussed, infra.

It is also a federal crime to knowingly transfer or sell a firearm to a person subject to a valid Protection Order (18 U.S.C. §922(d)(8)).

It is also a federal crime to knowingly transfer or sell a firearm to a person convicted of a misdemeanor crime of domestic violence (18 U.S.C. §922(d)(9)).