



## Domestic Violence

©2010 eNotes.com, Inc. or its Licensors. Please see [copyright information](#) at the end of this document.

- [Background](#)
- [History of Police Responses to Domestic Violence](#)
- [Recent Federal Legislation](#)
- [State Legislation](#)
- [Civil and Other Proceedings](#)
- [Domestic Violence and the Workplace](#)
- [Domestic Violence and Firearms](#)
- [Stalking](#)
- [Battered Women's Syndrome](#)
- [Identifying Signs of Domestic Violence](#)
- [Additional Resources](#)
- [Organizations](#)

### Background

DOMESTIC VIOLENCE consists of acts committed in the context of an adult intimate relationship. It is a [CONTINUANCE](#) of aggressive and controlling behaviors, including physical, sexual, and psychological attacks, that one adult intimate does to another. Domestic violence is purposeful and instrumental behavior directed at achieving compliance from, or control over, the abused party. It is one of the most under-reported crimes in the United States, and the Department of Justice in 1998 estimated that there are between 960,000 and four million domestic incidents each year. In 1994, the Bureau of Justice Statistics estimated that about 92 percent of domestic violence cases involve female victims.

Legal definitions of domestic violence are usually delineated by the relationship between the parties and by the nature of the perpetrator's abusive behaviors. For example, the relationship may be a current spouse, a former spouse, a family member, a child, parents of a child in common, unmarried persons of different genders living as spouses, intimate partners of the same gender, dating relationships, and persons offering refuge. Such definitions recognize that victims may not be exclusively women, and domestic assaults may not just occur between heterosexual couples. The types of behavior frequently encountered in domestic violence are physical attacks, sexual attacks, psychological abuse, and the destruction of property or pets.

### History of Police Responses to Domestic Violence

Police responses to domestic violence have historically been clouded by notions, for example, the idea that a wife is the "property" of a husband and he has the right to carry out whatever behavior is necessary to "keep her in line." This idea and others like it reflect attitudes held by the greater society. Further aggravating the situation was the perception that domestic violence is not "real police work," and such disputes are private matters that should be kept within the household. Prior to 1980, when domestic situations were brought to the attention of police, calls were often diverted by dispatchers, given a lower priority, or officers responded to the scene and departed again as quickly as possible without achieving any type of meaningful intervention. Laws such as the "rule of thumb" (whereby it was legal for a husband to beat his wife with a stick not wider

than his thumb) were still on the books until very recent times.

Prior to the 1980s, the practice of police agencies was to use mediation in domestic incidents. But ironically, much of this so-called mediation was done only when only one spouse was present. Several prominent court cases helped change legislation. In 1972, Ruth Bunnell was killed as a result of police non-intervention. The case of [WRONGFUL DEATH](#) against the City of San Jose was dismissed in the California Court of Appeals but received much publicity. In 1985, a jury verdict awarded \$2.3 million in favor of plaintiff Tracy Thurman who sued the Torrington, CT, police department after they repeatedly failed to arrest her abusive husband (*Thurman v. City of Torrington*, 1985). Her husband eventually caused her serious bodily injury.

Another landmark case is currently being heard in the California courts system. In 1996, Maria Macias was killed by her estranged husband after an order of protection was not enforced by the Sonoma County Sheriff's Department. The victim had requested help from the department on 22 occasions. The lower courts held that women have a constitutional right to safety and [EQUAL PROTECTION](#), and the Sonoma County Sheriff's Department provided inadequate police protection based on the victim's status as a woman and a victim of domestic violence. The case is due to be heard in April, 2002 in the Appeals Court of California (99-15662).

Beginning in the late 1980s, there were many attempts to change the way police departments intervened in domestic violence situations. Inspired by Sherman's Minneapolis experiment, many police agencies adopted preferred or mandatory arrest policies. Arrest both acknowledges that society views domestic violence as a criminal offense and also provides immediate safety for the victim. Accompanying these new arrest policies were civil proceedings (discussed below).

### Recent Federal Legislation

The 1994 Violence Against Women Act (VAWA), with additions passed in 1996, outlined grant programs to prevent violence against women and established a national domestic violence hotline. In addition, new protections were given to victims of domestic abuse, such as confidentiality of new address and changes to [IMMIGRATION](#) laws that allow a battered spouse to apply for permanent residency.

According to the VAWA Act, a domestic violence [MISDEMEANOR](#) is one in which someone is convicted for a crime "committed by an intimate partner, parent, or [GUARDIAN](#) of the victim that required the use or attempted use of physical force or the threatened use of a deadly weapon" (Section 922 (g)[9]). Under these guidelines, an intimate partner is a spouse, a former spouse, a person who shares a child in common with the victim, or a person who cohabits or has cohabited with the victim.

Another area this act addresses is interstate traveling for the purposes of committing an act of domestic violence or violating an order of protection. A convicted abuser may not follow the victim into another state, nor may a convicted abuser force a victim to move to another state. Previously, orders of protection issued in one [JURISDICTION](#) were not always recognized in another jurisdiction. The VAWA specifies full faith and credit to all orders of protection issued in any civil or criminal proceeding, or by any Indian tribe, meaning that those orders can be fully enforced in another jurisdiction. Forty-seven states have now passed legislation that recognizes orders of protection issued in other jurisdictions. Three states, Alaska, Montana, and Pennsylvania, require that an out of state order be filed with an in state jurisdiction before the order can be enforced.

There are several landmark cases that have been decided under these new interstate provisions. For example, in the *United States v. Rita Gluzman* (NY), the [DEFENDANT](#) traveled from New Jersey to New York with the intention of killing her estranged husband. The weapons she took with her were used in the murder.

## Encyclopedia of Everyday Law: Domestic Violence

Gluzman was convicted for this crime. In the **UNITED STATES V. MARK A. STERKEL** (1997), the defendant was convicted of interstate **STALKING** after traveling from Utah to Arizona to threaten his former boss.

The VAWA also allows victims of domestic abuse to sue for damages in civil court. However, this part of the VAWA was recently overturned by the U. S. Supreme Court in *Brzonkala v. Morrison* (2000) in which the court held that Congress did not have the authority to implement such a law.

Another goal of the VAWA was to influence state legislators, particularly in regard to arrest policy for domestic situations. In order to receive Federal funding, states must adopt certain responses. The Act reads: VAWA 1994: (1) To implement mandatory arrest or pro-arrest programs and policies in police departments, including mandatory arrest programs and policies for protection order violations (Part U, **SEC. 2101**). This act has had a profound effect on state laws governing domestic abuse.

### State Legislation

Until about ten years ago, many states still had laws that required an officer to witness an **ASSAULT** before making an arrest. Today, officers in all states can arrest someone they suspect has committed a domestic assault without having witnessed the event. The majority of states have adopted preferred arrest policies which require police to either arrest one or both parties at the scene, or write a report justifying why an arrest is not made. Arrest policies do differ by jurisdiction even in the same state. Some states, such as New York, Wisconsin, and Minnesota, have adopted mandatory arrest policies which dictate that an officer must make an arrest at a domestic situation. Such policies were adopted after it was realized how serious domestic situations could be for the victims and their children. An arrest is usually made after the following conditions have been satisfied:

- There is **PROBABLE CAUSE** of a crime;
- The suspect and the victim fit the definition of having a domestic relationship;
- The suspect's alleged act fits the definitions of domestic assault;
- There is reason to believe that the domestic abuse will continue if the suspect is not arrested and/or there **EVIDENCE** of injury;
- The incident was reported within 28 days of occurrence.

Usually, if any of these conditions is not satisfied, the officer may use his or her discretion in deciding whether to make an arrest. Although different states have variations on definitions of domestic violence, most are similar to the following example.

MINNESOTA: 1) domestic abuse means physical harm, bodily injury, or assault; 2) the infliction of fear of imminent physical harm, bodily injury, or assault or; 3) terrorist threats or criminal sexual conduct (518B.01).

### Civil and Other Proceedings

There are several available civil options that can provide for the safety of victims of domestic assaults and their families, such as an order of protection or a judicial ex parte order. All 51 states have allowances for orders of protection. An order of protection can prohibit the abuser from contacting, attacking, striking, telephoning, or disturbing the peace of the victim; force the abuser to move from a residence shared with the victim; order the abuser to stay at least 100 yards away from the victim, his or her place of residence, and place of employment; order the abuser to attend counseling; and prohibit the abuser from purchasing a

firearm. Orders of protection may also include a provision for the safety of children and others living in the home.

An ex parte order requires the abusive cohabitant to temporarily vacate the premises. Issued only after the battered spouse seeks it, this order is sometimes referred to as a temporary [RESTRAINING ORDER](#). In most states, a cohabitant refers to a person who has a sexual relationship with the victim and has lived with the victim for at least 90 days during the year prior to the order being filed. A victim who is threatened with imminent harm or has already been harmed by the abuser and/or already has an order of protection against the abuser has no other legal remedy than to seek a restraining order. In most states, an attorney is needed to get a restraining order.

Violation of an order of protection is the equivalent of [CONTEMPT](#) of a court order. In many states, police policy is to arrest violators automatically. A violator can also be fined and jailed and may be charged with a misdemeanor or a [FELONY](#).

## Domestic Violence and the Workplace

Domestic violence can reach beyond the home and into the workplace. Although a victim may leave the home and go to a shelter or change her or his address, the abuser usually knows where the victim works. Not only do abusers harass their partners at work, domestic violence can lead to missed days of work because of injuries or court appearances. Federal and state legislation has recently been amended so that victims of domestic violence are not penalized by employers for missed work.

At the Federal level, LABOR LAW Section 593 (1) states that when a victim of domestic violence voluntarily terminates his or her job, he or she is eligible for unemployment benefits. The Penal Law, Section 215.14, passed in 1996, makes it a crime to penalize an employee who has been a victim or a witness to a criminal offense and who must attend court. Further, both state and federal guidelines mandate that employers maintain a safe work environment.

## Domestic Violence and Firearms

Under the 1994 VAWA Act, it is illegal for individuals who have been convicted of a domestic-violence related incident or who have an order of protection against them, to possess a firearm. Specifically, federal law prohibits the shipping, transporting, possessing, or receiving firearms or ammunition. Military and law enforcement personnel are not exempt from this law, even if they carry weapons when they are on duty. Questions about this policy should be directed to local branches of the Alcohol, Tobacco and Firearms (ATF) Office.

It is illegal for a person to possess a firearm while subject to a court order restraining such a person from harassing, stalking or threatening an intimate partner or the child of an intimate partner (18 U.S.C. 922 (g) [8]). It is also illegal to transfer a firearm to a person subject to a court order that restrains such a person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner (18 U.S.C. 922 (d) [8]).

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 (18 U.S.C. 922, (g) [9]).

Further, The **GUN CONTROL** Act of 1994, which was amended in 1996, also makes it illegal to possess a firearm and/or ammunition if the individual is subject to an order of protection or if the individual has been convicted of a misdemeanor domestic assault.

## Stalking

Domestic situations may also involve stalking of the victim by the estranged partner. Stalking usually involves repeated threatening or harassing behaviors, such as phone calls, following or shadowing a person, appearing at a person's home or place of employment, vandalizing property, and any other activity that makes a person fear for his or her safety. Stalking laws vary greatly from state to state, with some requiring a minimum of two acts or other proof that the event was not an isolated occurrence, and others specifying that the threat of harm must be imminent. Some states also include activities such as lying-in-wait, surveillance, and non-consensual communication.

In its 1998 research on state codes and stalking, the National Institute of Justice defined stalking as "a course of conduct directed at a specific person that involves repeated visual or physical proximity, nonconsensual communication, or verbal, written, or implied threats, or a combination thereof, that would cause a reasonable person fear," with repeated meaning on two or more occasions. There are three types of stalking: erotomania, which is often committed by a female and is a delusional obsession with a [PUBLIC FIGURE](#) or someone out of the stalker's reach; love obsessional, which involves individuals' stalking someone with whom they think they are in love; and simple obsessional, which is stalking by someone the victim knows. Domestic violence stalking fits into this last category and is usually perpetrated by an ex-spouse or lover, employer or co-worker.

The following examples of state legislation on stalking illustrate differences in definitions of and punishment for stalking.

**DISTRICT OF COLUMBIA:** Stalking refers to more than one incident of willfully, maliciously, and repeatedly following or harassing or without a legal purpose, willfully, maliciously, and repeatedly following or harassing another person with the intent of causing emotional distress or creating reasonable fear of death or bodily injury. Harassment refers to engaging in a course of conduct either in person, by telephone, or in writing, directed at a specific person, which seriously alarms, annoys, frightens, or torments the victim or engaging in a course of conduct either in person, by telephone, or in writing, which would cause a reasonable person to be seriously alarmed, annoyed, frightened, or tormented. Such an offense can be punishable by a fine of not more than \$500 or [IMPRISONMENT](#) of up to 12 months or both (Title 22, Section 504). A second offense occurring within two years can result in a fine of up to \$750 and/or imprisonment for up to one and a half years. A third offense is punishable by a fine of not more than \$1500 and/or imprisonment for up to three years.

**TENNESSEE:** (a)(1) A person commits the offense of stalking who intentionally and repeatedly follows or harasses another person in such a manner as would cause that person to be in reasonable fear of being assaulted or suffering bodily injury or death.

1. "Follows" means maintaining a visual or physical proximity over a period of time to a specific person in such a manner as would cause a reasonable person to have a fear of an assault, bodily injury, or death;
2. "Harasses" means a course of conduct directed at a specific person, which would cause a reasonable person to fear a sexual offense, bodily injury, or death, including, but not limited to, verbal threats, written threats, [VANDALISM](#), or physical contact that was non-consensual;
3. "Repeatedly" means on two (2) or more occasions.

(b) (1) Stalking is a Class A misdemeanor.

In Tennessee, if there is a subsequent violation of this law within a seven-year period, the offense becomes a class E felony. A subsequent violation denotes a class C felony.

## Battered Women's Syndrome

A phenomenon which has received much attention in the realm of domestic violence and particularly with women who kill is battered women's syndrome (BWS), which is a subcategory of post-traumatic stress disorder (PTSD). According to Walker, battered women's syndrome is:

A group of usually transient psychological symptoms that are frequently observed in a particular recognizable pattern in women who report having been physically, sexually, and/or seriously psychologically abused by their male domestic partners.

BWS develops as a battering relationship unfolds. This is typically a three-stage process that includes:

1) small incidents of verbal and minor physical abuse that begin infrequently but increase in frequency; 2) actual acute battering that often causes serious injury needing medical attention; and 3) a cycle where the abuser is contrite to the abused and ultimately teaches the abused to be submissive and passive toward further abuse.

A woman displaying symptoms of BWS may be apathetic toward subjects or activities for which she used to be enthusiastic, she may become involved in drug or alcohol abuse, and she may also experience completely different attitudes and emotions toward her spouse than she did before the abuse began. The importance in knowing about BWS lies in recognizing predictable, psychological effects caused by domestic violence. BWS is now recognized in legislation by many states and is considered when defending battered wives who kill their spouses. BWS is not used as a defense but more as an indication of the defendant's state of mind or as a mitigating circumstance. A reasonable fear of imminent danger (especially used in [SELF-DEFENSE](#)) can be proven using BWS.

## Identifying Signs of Domestic Violence

Montgomery County (MD) Sheriff's Department suggests that the following behaviors may indicate domestic violence to a police officer or dispatcher:

- The victim is very fearful of the partner;
- The victim states that the partner is extremely jealous;
- The victim describes the relationship as full of conflict;
- The victim makes references to being forced to have sexual relations with the partner;
- The victim states police have often been called to the home;
- The victim states that the partner controls everything the victim does.

Police and attorneys should recommend the victim apply for an order of protection if the victim has been abused or threatened, and if either of the following is present:

- The victim fears further abuse;
- The victim needs the abuser out of the home in order to protect herself and/or her family;
- The abuser has threatened to take the children;

## Encyclopedia of Everyday Law: Domestic Violence

- The victim cannot or does not wish to file criminal charges;
- The victim wants the abuser to attend a counseling program;
- The victim wants a period of separation from the abuser but is unsure whether to file for [DIVORCE](#) or [CUSTODY](#) yet;
- Criminal charges are pending and the victim fears for her safety;
- The victim's children have been abused.

### Additional Resources

*The Battered Woman Syndrome*. Leonore E. Walker, Springer, 1984.

*The Federal Domestic Violence Laws and the Enforcement of These Laws*. Margaret S. Groban, Violence Against Women On Line Resources, 2001. <http://www.umn.edu/FFC/chapter5.htm>

*The Impact of Arrest on Domestic Violence*. Eva S. Buzawa and Carl G. Buzawa, American Behavioral Scientist, 1993, 558-574.

*Police Responses to Wife Beating: Neglect of a Crime of Violence*. Stephen E. Brown, Journal of Criminal Justice (1984) 277-288.

*The Scientific Evidence Is Not Conclusive: Arrest Is No Panacea*. Eva S. Buzawa and Carl G. Buzawa. Chapter 21. Issues in Social Intervention. Sage Publications, 1993.

*Stalking and Domestic Violence: The Third Annual Report to Congress under the Violence Against Women Act*. Office of Justice Programs, U. S. Department of Justice, 1998. Available online at: <http://www.ojp.usdoj.gov/vawo/grants/stalk98/welcome.html>.

*Victimology and the Psychological Perspectives of Battered Women*. Lenore E. Walker, Victimology: An International Journal, 8 (1/2), 82-104.

*Violence Against Women*. Bureau of Justice Statistics, U. S. Department of Justice, January 1994.

*Violence Against Women Act of 1994*. Available on-line at <http://www.ojp.usdoj.gov/vawo/laws/vawa/vawa.htm>.

*Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*. U. S. Department of Justice, March 1998.

### Organizations

*American Bar Association Commission on Domestic Violence*  
740 15th Street NW  
Washington, DC 20005-1022 USA  
URL: <http://www.abanet.org>

***Family Violence Department of the National Council of Juvenile and Family Court Judges***

P.O. Box 89507

Reno, NV 89507 USA

Toll-Free: 800-527-3223

URL: <http://www.natioanlcouncilfvd.org>

***Family Violence Prevention Fund***

383 Rhode Island Street, Suite 304

San Francisco, CA 94103-5133 USA

Phone: (415) 252-8900

Fax: (415) 252-8991

URL: <http://endabuse.org>

***Immigrant Women Program of NOW Legal Defense Fund***

1522 K St., NW

Washington, DC 20005 USA

Phone: (202) 326-0004

***National Coalition Against Domestic Violence***

1532 16th St., NW

Washington, DC 20036

Phone: (202) 745-1211

Fax: (202) 745-0088

URL: <http://www.ncadv.org>

***National Domestic Violence Hotline***

P.O. Box 161810

Austin, TX 78716 USA

Toll-Free: 800-799-SAFE

Toll-Free: 800-787-3224

***Safe Work Coalition***

395 Hudson Street

New York, NY 10014 USA

Phone: (212) 925-6635

Fax: (212) 226-1066

URL: <http://www.safeatworkcoalition.org>

**Copyright Notice**

©2010 eNotes.com, Inc.

ALL RIGHTS RESERVED.

No part of this work covered by the copyright hereon may be reproduced or used in any form or by any means graphic, electronic, or mechanical, including photocopying, recording, taping, Web distribution or information storage retrieval systems without the written permission of the publisher.

For complete copyright information, please see the online version of this work:

<http://www.enotes.com/everyday-law-encyclopedia>