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PREFACE

During my 25 years of domestic violence work in Georgia I have witnessed many changes: laws protecting victims of this unique crime have vastly improved, communities are more aware of the problem and its impact on every facet of society. Federal funding for domestic violence was increased and new resources were developed. Now that funding is drying up and those same resources are being cut.

With fewer resources to turn to, individual knowledge of this unique crime, regardless of the discipline in which one practices, becomes more critical for victim safety. Our willingness to self-educate outside our own area of expertise is paramount. The Domestic Violence Benchbook provides that opportunity.

This is the fourth year we have had this forum to share our collective knowledge. We can now base our decisions on the same body of solid information that has been researched and authored by a multitude of experts from Georgia. We can provide safety and judicial consistency for victims of domestic violence no matter where they reside in Georgia.

The 2008 edition of the Georgia Domestic Violence Benchbook represents the work of judges, prosecutors, law professors, shelter advocates, psychologists, attorneys, students, and Family Violence Intervention Program providers at the state and local levels. The name has been shortened to reflect the wider audience for this state reference.

By knowing what roles others play, what we can expect from each other, and how we each fit into the broader effort, by making decisions consistent with the law and dynamics of this crime, we can narrow the safety gaps for families living in terror.

To insure the Benchbook remains a valuable resource we need your help. If in the course of your work you come across additional material or research that expands our collective knowledge or, while using it, you discover content inaccuracies, please let me know. It is truly a work in progress - your contributions insure its continued value and usefulness.

Please share your wisdom. Together we can make a difference.

Nancy Hunter
Project Manager

SafeSolutions, Inc.
www.safesolutions.ws

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 Bench Book 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

Judge Adamson's reflections written for the second edition still hold true.

REFLECTIONS ON THE IMPACT OF THE FIRST EDITION

The release of this second edition of the Superior Court Domestic Violence Benchbook stimulates these reflections on the impact of the first edition:

The elevated level of attention to the subject, the response from judges of courts who deal with domestic violence and the increased dialog between groups interested in the problem exceeds our wildest dream.

The responses from many of our users and reviewers of the first edition have been instrumental in bringing about improvements in accuracy, content and finish to this second edition. While there are still gaps to fill and new ideas to develop we are now convinced that we have launched a serious effort, which will improve our ability to handle domestic violence cases in our courts.

While we are elated with these results, we are keenly aware that this effort only helps to define the problem as it is addressed in our existing system. Hopefully at some point these efforts and the discussions which follow will help bring needed changes to our system of handling domestic violence cases in our courts.

As you read, review or use this second edition reflect upon this thought. We administer an adversarial system of justice, which will never fully function without legal representation of parties. Ask yourself and your legislative representatives this question. Are legitimate victims of domestic violence less deserving of the protections accorded by legal representation than the DUI defendant and the alleged perpetrator of domestic violence who is on trial in the misdemeanor criminal courtroom down the hall?

Robert W. Adamson
Committee Chair
(2006)

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.). Another 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.

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).**

(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, Paragraph E - Types 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 in Domestic Violence Cases)

B. **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.

C. 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).

D. **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 intimated 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)

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).

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*, 603 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). 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). 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).

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), or freedom of travel, *Delgado v. Souders,* 334 Or. 122, 46 P.3d 729 (2002).

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 **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).

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).

2.1.4 **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 such cases, Uniform Superior Court Rule 24.2 requires each party to prepare and file a financial affidavit, in a form substantially similar to one reproduced in the rule and, effective January 1, 2007. But, effective July 1, 2008 the child support schedules apply but the parties do not have to attach the worksheets and schedules.

B. 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.

C. 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. Before July 1, 2001, petitioners under the family violence or stalking protective order statutes had to pay fees for the filing and service of protective orders.

B. Under present law, however, 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 in Domestic Violence Cases, Appendix C - Identifying and Responding to Domestic Violence in Domestic Relations Cases 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.

D. 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.

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*, 2008 Ga. App. LEXIS, 662 S.E.2d 195 (May 2, 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 had issued a family violence protective order that restained 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). 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 <u>not</u> request that a restraining order be issued against the petitioner, and the court shall not issue or approve such an order, <u>unless</u> the respondent has filed a verified counter petition against the respondent sooner than three days before the final hearing. *See Williams v. Jones*, 2008 Ga. App. LEXIS, 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 - Identifying and Responding to Domestic Violence in Domestic Relations Cases)

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)(3).

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)

(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)

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. Effective January 1, 2007, 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. Beginning July 1, 2008 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/.
   (a) Prior to January 1, 2007 at least one case suggested that a court is not required to use those guidelines. In *Baca v. Baca*, 256 Ga. App. 514, 568 S.E.2d 746 (2002), the court of appeals affirmed a child support award, without reviewing it for compliance with the child support guidelines.
   (b) Prior to January 1, 2007,"OCGA § 19-6-15 applied only to final verdicts or decrees, and this case involves a temporary protective order. . . .OCGA § 19-6-14. . . pertains to an award of temporary support pending a final divorce, [and] does not contain such method for calculating support, but merely states that the trial court may grant as alimony a sum sufficient for the support of the children of the parties. *Id* at 519.
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.

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) <u>sole or joint title</u>: the court has clear authority to order that the party receive possession.

(i) <u>inchoate interests</u>: 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) <u>tenancy</u>: 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) <u>invitee status</u>: 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. **Personal 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, personalty 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:**
1. 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.
2. 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/FVIP.htm.

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 <u>in favor of</u> the prevailing party.
2. The language "either party" does not justify an award of fees <u>against</u> 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/TPOstatement.rtf

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. C**hild 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. C**hild 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*, 2123 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).
   (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).

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. at 207; 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*, 2008 Ga. App. LEXIS 722 (June 24, 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.*

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:

(1) 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.

(2) 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).
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) *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) *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) *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).
   (a) False Imprisonment, a felony, involves the unlawful restraint of another in violation of his or her personal liberty. (*See* Section 4.1.1.B., Unlawful Restraint, above.)

(b) *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) *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) *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).

(2) *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).

(3) *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).

(4) *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).

(5) *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).
   (a) 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., Criminal Damage to Property, above.)
   (b) *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).
   (c) *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) *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) *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 in Domestic Violence Cases.)

(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).
      (a) 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., criminal trespass, above.)
      (b) *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).
      (c) *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**.

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."
   1. **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**]."

2. **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."

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. *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).
2. *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).
3. *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."

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**."

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."

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**."

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).

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.

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. *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).
2. *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."

3. *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/domestic/index.htm 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. *Quick v. State*, 166 Ga. App. 492, 494 (1983) (any arrest that is constitutional under federal law is also permissible under Georgia law, even if not specifically authorized by this code section).

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]henever 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).

D. *McCauley v. State*, 222 Ga. App. 600, 601 (1996) (exigent circumstances may authorize police to make a warrantless entry into a home following a report of domestic violence).

E. *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 in Domestic Violence Cases)

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 Section 16-13-31, relating to trafficking in cocaine, methamphetamines, or marijuana;
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 be bailable 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 in Domestic Violence Cases)

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. Several of these commonly recurring evidentiary issues are summarized below.

5.1 Sufficiency of Evidence

5.1.1 **No Corroboration Required.**

A. O.C.G.A. § 24-4-8 provides that "[t]he testimony of a single witness is generally sufficient to establish a fact."

1. *Simmons v. State*, 285 Ga. App. 129, 130 (2007)(victim's testimony on direct examination was adequate, standing alone, to sustain the conviction).
2. *Atkins v. State*, 243 Ga. App. 489, 490 (2000) (Georgia law does not require corroboration of a child molestation victim's testimony).

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).
   (c) *Causey v. State*, 215 Ga. App. 723, 723-724 (1994) (defendant confessed that he argued with his wife and "bounced her off the wall").
3. 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).

4. 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").

5. 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).

(f) *Causey v. State*, 215 Ga. App. 723, 725 (1994) (State permitted to introduce a

videotape of defendant's wife in her permanent vegetative condition to establish extent of her injuries in this aggravated battery case).

6. Police officer observations.
   (a) *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).
   (b) *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).
   (c) *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).
7. 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).
8. 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).
9. 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**.

2. 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."

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."

(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 Brown v. State*, 278 Ga. 810, 811 (2005). *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).

(b). *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).

(c) *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).

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."

(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.

(a) Only if affirmative charges of recent fabrication, improper influence, or improper motive are raised during cross-examination is a witness's veracity placed in issue so as to permit the introduction of a prior consistent statement. *See Woodard v. State*, 269 Ga. 317, 320 (1998).

(b) *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).

(c) *Cuzzort v. State*, 254 Ga. 745 (1985) (a daughter's prior consistent out-of-court statement accusing her father of sodomizing her was admissible where her veracity was at issue and where she testified under oath and was subjected to cross examination).

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."

(a) 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).

(b) Admissible as substantive evidence.

(1) *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).

(2) *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).

(3) *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).

(c) 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."

(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) <u>Statements made to police officers</u>.

(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) *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).

(4) *Jenkins v. State*, 278 Ga. 598, 605 (2004) (police interrogations as delineated in *Crawford* include "structured police questioning").

(5) *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) *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*).

(2) *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).

(3) *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).

(d) Harmless Error.

(1) *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).

(2) *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).

(3) *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) *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) <u>Statements not offered to prove the truth of the matter asserted (i.e., non-hearsay).</u>

(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) *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) <u>Prior in-court testimony subjected to cross-examination.</u>

(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) *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).

(4) 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) *Gresham v. Edwards,* 281, Ga. 881 (2007) (the right to confrontation is a trial right, thus *Crawford* is not applicable to preliminary hearings.)

(ii)- *Banks v. State*, 277 Ga. 543, 544 (2004) (admission of hearsay for the purpose of establishing probable cause does not violate the constitutional right of a defendant to confront the accusing witnesses, because guilt or innocence is not the issue for determination).

(iii) *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).

(iv)- *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.).
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).
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. *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).

2. *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).
3. *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).
4. *McTaggert 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).
5. *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. **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 in Domestic Violence Cases.)

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:

(a) 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 **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."

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)).
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."

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).

C. **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).

D. **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).

E. **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."

5.5.2. **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."

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*, __ Ga. __ (5)(July 7, 2008).

B. **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.

1. *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).

C. **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).

D. **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).

5.5.3. **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."

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."

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."

5.6.2 **Expert's Qualifications**.

A. *Moorer v. State*, 290 Ga. 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) <u>Valid scientific principles or techniques</u>.

(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.)

(a) *Moorer v. State*, 290 Ga. 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).

(b) *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).

(c) *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"**.

10. *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).

C. **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)).

D. **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).

C. **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).

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).

A. APPENDIX A - DYNAMICS OF DOMESTIC VIOLENCE

In contrast to crimes of violence among strangers, domestic violence cases tend to show up repeatedly on the court's docket in cases between the same parties, but with increasing severity of violence. Competent judicial decisions require a thorough understanding of the what, why, who, and when of domestic violence cases (Ganley, 1997) as well as strategies for how to manage them. Failure to achieve this understanding can severely damage the lives of the victim, the children, the offender, and even the judge and other court personnel.

The authors of a recent retrospective medical study advise that domestic violence "a cause of major morbidity and mortality, which is fourfold more common than breast cancer, cannot be ignored." (Thompson et.al., 2006)

Despite many new laws to help battered women and their children, most criminal justice research has focused on police response and very little on the courts. However, as more attention is paid to the court response, what abused women seeking justice have known for quite awhile appears to be true; judges play a critical role in the safety of women and children living with violence (Ptacek, 1999).

A. Definition

Domestic violence is a pattern of assault and coercive behaviors, attitudes, and expectations, including physical, sexual, verbal and psychological attacks, as well as economic coercion, that adults and adolescents use against their intimate partners. (*See* Types of Abuse in this Appendix) Specifically (Ganley, 1997):

1. Domestic violence differs from stranger violence in that it consists of a variety of behaviors, some criminal and some not, but all of which indicate a pattern of abusive control.
2. Domestic violence is not an isolated event, but a pattern of abusive episodes used to control the victim.
3. Perpetrators often commit acts that appear aimed at children, property, or pets, which are used to control or punish the intimate partner.
4. Research with heterosexual couples indicates that a woman's motivation for using physical force is almost always in self-defense, whereas men use physical force to ascertain power and control.
5. The consequences of domestic violence are often lethal, with one-third of all female homicide victims in the United States being killed by a husband or boyfriend.
6. Domestic violence occurs in all ethnic and racial groups. Although some defendants may argue that the use of violence of a husband against his wife is accepted in their culture, this behavior clearly violates the human rights of victims from any cultural group, in addition to the provisions in U.S. laws.
7. Domestic violence affects women with disabilities at even higher rates than the general population. According to a study conducted by the

Center for Research on Women with Disabilities, approximately 62% of women with disabilities will experience emotional, physical, or sexual assault at some point during their lives (Gilson, 2001). Women with disabilities are found to experience abuse for a longer duration, are more likely to be abused by a greater number of perpetrators, report a higher number of health care workers and attendants as the perpetrators, and have fewer options for escaping the abuse.

B. Causes

1. **It is learned behavior.** Domestic violence behaviors are learned through observation, beginning in childhood and later through reinforcement from communities and societies that condone violence as a means of control. This occurs, for example, when the legal system fails to hold the offender accountable. Violent behavior is repeated because it works to control the victim through fear and intimidation. Because it is learned behavior, it can be changed in perpetrators who have the motivation to take responsibility for their violence and learn new ways of interacting with their partner and children. A strong court that holds batterers accountable can serve as a strong motivation for positive change (Ganley, 1997).
2. **It is not anger.** Domestic violence is not "out of control" behavior caused by angry feelings. Violence is directed, together with other controlling tactics such as threats, gifts, promises, isolation, and financial restraints, to establish authority over or to punish victims – overwhelming, their partner and children. Typically, the abuser does not use these tactics against bosses, co-workers, other family members or friends, thus demonstrating the specific target of his violence and rendering "anger management" as a misguided solution.
3. **It is not substance abuse.** Despite their frequent co-occurrence, substance abuse is NOT a cause of domestic violence. Many batterers have never used alcohol or other drugs and many substance abusers do not batter their partner. As a result, substance abuse is not an excuse for domestic violence. However, it is relevant because it can increase the lethality of the violent behavior and must be considered in safety issues for the victim, children, and community. (*See* Appendix B – Assessing for Lethality in Domestic Violence Cases) Experts indicate that changing domestic violence behavior in the presence of substance abuse is impossible, so concurrent treatment or in-patient substance abuse treatment followed by mandatory attendance at a batterer intervention is advisable.
4. **It is not the victim.** Research shows that there is no psychological profile or demographic characteristic for battered women. In addition, studies have shown that victim's behavior cannot alter the perpetrator's behavior. It is not any trait, behavior, or fault of the victim, but the attitudes and beliefs of the perpetrator that cause domestic violence.
5. **In regard to women with disabilities**, this population is perceived by society as not engaging in romantic or intimate relationships. Instead, they are perceived as asexual, not desiring love or sex, and rarely involved

in committed relationships. Therefore, when they do report incidents of abuse, they are frequently disbelieved.

C. Potential Escalation

1. **The Georgia Fatality Review Project** (2007) found several important patterns when they combined their four years of study cases:
   a) **firearms** were used in over half of the deaths studied,
   b) 53% of the perpetrators were suicidal (defined by threats, attempts, ideation or completion.)
   c) In almost all of the reviewed cases victims had indicated a desire to separate from their abuser just prior to the homicide.

   The chances of domestic violence escalating into homicide increase significantly when the perpetrator believes that the victim is leaving the relationship, due to the potential loss of control over the victims. This is also the same period of time when judges are most likely to encounter the parties for divorce proceedings (*See* Appendix C – Identifying and Responding to Domestic Violence in Domestic Relations Cases), criminal charges, and protection orders. Professionally competent judicial action to promptly separate the parties, remove weapons (*See* Appendix E – Firearms), issue protection orders, put children in a safe setting (*See* Appendix D- Checklist for Ex Parte Applicants), provide adequate family support, set strict conditions of bond, and swiftly enforce any violations, may literally mean life or death during this high danger period.
2. **Cultural implications.** In the case of victims from immigrant and refugee communities that hold strong traditional beliefs regarding marriage and family roles and obligations, their decision to leave a violent partner may be seen as an affront to his entire family and a cause for shame within their community. The woman may be shunned, thus making it impossible to obtain support at a time when the potential for harm may be escalating.
3. **Different reasons for killing.** **"**It is important to note that while domestic violence death statistics include both female and male victims, men and women commit murders for very different reasons. Women primarily kill their partners in self-defense or in retribution for prior acts of violence, while men commonly kill in response to the woman's attempt to leave the abusive relationship" (Kelly, 1998) (Stuart et.al., 2006) There is no difference between women in abusive relationships who kill their abusers and those who do not. The difference is in the behavior of the abuser. In Angela Browne's (1987) famous study, abusers in the homicide group used alcohol and drugs more frequently, they assaulted more frequently and their partners suffered more severe injuries. The men in the homicide group raped or sexually assaulted and threatened to kill their partners more often than the control group. They also abused their children more often. (See Appendix B – Assessing for Lethality in Domestic Violence Cases)

D. Perpetrators

1. **No single profile.** Research indicates that domestic violence perpetrators do not fit into a single personality category or psychological profile. Only by hearing evidence and evaluating facts can a judge determine whether violence has occurred and who the perpetrator is. But some information about common behavior patterns and attitudes is included below to help the court in its work of fact-finding**,** decision-making, and determining the most effective interventions. (Ganley, 1997)
2. **A gender-based crime.** Most men do not batter, but most batterers are men. National crime statistics show that about 95% of spouse-abuse victims are women. Violence by women against their partners is often self-defense. Generally, the frequency and severity of male violence are far more serious than female aggression. Courts must determine the primary aggressor in each case and treat domestic violence seriously regardless of who is at fault.
3. **From abusive homes.** Male children brought up in abusive homes are three times more likely to be batterers than boys from non-violent homes; if the violence is severe they are ten times more likely to become batterers. (Suedfeld, 1990)
4. **Minimize, deny, lie, blame.** Some perpetrators minimize and deny domestic violence, and believe their own denials rather than admit to themselves that they are abusers. Others lie to avoid the consequences or blame others – especially the victim – for their own behavior. These behaviors are similar to the ones judges see in substance abusers. Judges should keep proceedings focused on the alleged perpetrator's behavior and not the surrounding circumstances or justifications.
5. **From cultures in which domestic violence is not a crime.** Many men from immigrant and refugee communities are genuinely surprised when they are arrested for battering their partner. Legal sanctions often serve as the first step in their acquisition of knowledge and skills regarding non-violent behaviors and attitudes.
6. **A need to control.** Domestic violence abusers have a great need to be in control, and are experienced in the techniques of control. They tend to use children as one of the tools for controlling their partners. They believe they will not be held accountable for beating their partners. And they believe they are still in control, even in the courtroom.
7. **Jealous and possessive.** Extreme jealousy and possessiveness are common among batterers and are used as reasons for monitoring, isolating, stalking, and other obsessive behaviors.
8. **Nice guys.** Some perpetrators are witty, charming, and intelligent, which makes it hard for their victims or the courts to believe they will continue to be violent. It is advisable to focus on the behavior, not on the personality.
9. **English fluency and access to legal counsel.** Men from immigrant and refugee communities often have a much higher level of English fluency and more economic resources than their partners, facts that they may use to their advantage within the criminal justice system.

10. **Serial batterers.** Many researchers have found that batterers tend to move from one victim to another. Even if through the intervention of the justice system a batterer leaves the current victim alone, the community, the court system, and other victims are likely to encounter the same individual again in the absence of a successful batterer intervention treatment.
11. Domestic violence generally refers to violence caused by an intimate partner, but many **women with disabilities rely on caregivers or personal assistants who perpetrate abuse**. Caregivers provide support services that are very personal in nature, such as bathing, eating, and dressing (Sobsey & Doe, 1991), and many women may be reluctant to report abuse by paid caregivers due to fear of reprisal or losing their support services completely.

E. Types of Abuse

When the general public thinks about domestic violence, they usually think 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 the 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 devises, 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 to control the mother by using the children as spies, threatening to kill, hurt or kidnap the children, physical and/or sexual abuse of the children, and threats 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 into 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 or having her exit blocked, being held down.
   e) The batterer, 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 2/3 of the women in their study who were physically assaulted, were also raped by their abuser. 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:

a) Insulting or criticizing to undermine the victim's self-confidence. This includes public humiliation as well as actual or threatened rejection.

b) 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.

c) Using reality distorting statements or behaviors that create confusion and insecurity in the victim like 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 crazy making behaviors like hiding the victim's keys and berating her for losing them.

d) Consistently disregarding, ignoring, or neglecting the victim's requests and needs.

e) Using actions, statements or gestures that attack the victim's self-esteem and self-worth with the intention to humiliate.

f) Telling the victim that she is mentally unstable or incompetent.

g) Forcing the victim to take drugs or alcohol.

h) Not allowing the victim to practice her religious beliefs, isolating her from the religious community, or using religion as an excuse for abuse.

i) 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 seeing whom 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 to leave the relationship. By keeping the victim socially isolated the batterer is keeping her from contact with the world that might not reinforce his perceptions and beliefs. Isolation often begins as an expression of his love for her with statements

like 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 nonessential items (drugs, alcohol, stereo equipment, hobbies).

F. Victims

1. **No profile.** The greatest predictor of whether an individual will be abused is gender: just being female. Victims of domestic violence do not fit into any personality profile and do not differ from non-battered women until they have been abused. They do not necessarily come from abusive homes or prior abusive relationships. The sole determinant of whether they are abused is the perpetrator. (Ganley, 1997) (Zorza, 1994) (Zorza, 2002)
2. **Isolation and denial.** Victims have often been severely isolated in their relationships to the point where they have no family or other outside support to help them escape. They are told the justice system will do nothing for them and if their first contact to seek help is an unhelpful

police officer or dismissive judge, they will believe it. They may minimize the abuse, or even deny it, either to avoid retaliation or because they blame themselves. The fewer the community resources available and the greater the barriers erected by the justice system to provide help, the more likely it is for a victim to stay put and reject criminal prosecution of the abuser or other legal remedies.

3. **Cultural issues.** Women from immigrant and refugee groups may be totally unaware about the ways in which U.S. law protects them from domestic violence. Even those who are aware of the protections available**,** many are reluctant to call the police due to past experience with law enforcement in their countries of origin. There is also a great deal of confusion between the role of police and courts and that of the immigration authorities, which may further prevent them from accessing these remedies.
4. **Staying may be the safest option.** The primary reason given by victims of domestic violence for staying with their abuser is the realistic fear of getting hurt or killed. This fear is justified: in 75% of spouse assault, the parties are already separated. (Ganley, 1997) In almost all of the cases reviewed over the last three years, Georgia victims had made some indication of their desire to separate from their abuser (Georgia Domestic Violence Fatality Review Project, 2006.)
5. **Reluctant witnesses.** Most domestic violence victims with sufficient support and resources follow through with court proceedings. However, often victims are reluctant to participate in court proceedings for a variety of reasons, including promises or threats from the perpetrator, financial pressures, or lack of confidence that the legal system can protect them. The court needs to recognize that a victim's reluctance to cooperate may be survival behavior and not disrespect for the court.
6. **Suicide.** Victims traumatized by another person and not by an act of fate, destiny or natural disaster, experience deeper and more complex symptoms (Sharhabani-Arzy et. al. 2003) (Diagnostic and Statistical Manual IV – TR, 2000) Correct diagnosis is important as abuse victims suffering from PTSD have an elevated risk of suicide. (Sharhabani-Arzy et. al 2003) Twenty-five percent (25%) of completed female suicides are attributed to battering (Bachman & Saltzman, 1995).
7. **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.
8. **The myth of false allegations.** The overwhelming majority of women who report abuse are telling the truth. Even more women do not report the abuse, and most abused women do not disclose their victimization, even in cases in which this information would be of vital use to them. Obviously,

it is important to check out varying accounts to ensure that no one is accused falsely of violence. Research, however, continues to indicate that the problem of underreporting of domestic violence is of much greater concern than the problem of false accusations. (Jaffe, 1996)

9. From childhood on, **individuals with disabilities** are not provided with the same information related to personal safety as others are. Those who participate in special education are often not included in programs designed to teach personal safety, or may not provide information in a way that is accessible or comprehensible to them. As adults, domestic violence programs do not routinely conduct educational outreach in community settings in which women with disabilities are unlikely to participate. Many victims with disabilities, therefore, do not understand that what is happening to them is considered abusive, or how to report the abuse or escape from it.

G. The Children.

In an international study of 21 industrialized countries, the US ranked last in the health and safety of its children (United Nations Children's Fund, 2007).

1. **Teaching children violent ways.** Domestic violence is learned behavior. Research shows that witnessing violence in one's family of origin is a more consistent predictor of future violence than being the victim of child abuse. A study found that 82% of abusive husbands had grown up in violent homes. Domestic violence tends to get passed from one generation to the next. Today's batterers probably learned such behavior as children in their own homes. Consequently, children raised in violent families who do not receive intervention tend to experience domestic violence in their adult lives. (Ganley, 1997) (Suedfeld, 1990)

   The Georgia Domestic Violence Fatality Review Project (2006) found that in 44% of the cases reviewed children were present at the scene of the fatality.

2. **Look for child abuse also.** Fifty percent (50%) of men who frequently assault their wives also abuse their children (Strauss & Gelles, 1990).
3. **Physical and emotional harm.** The ways in which children are harmed in violent homes are numerous: abused to coerce the victim into submission; injured accidentally during a beating; abducted or used as custody pawns; interrogated about the victim's activities; or blamed by the perpetrator as the reason for the violence.
4. **Long-term effects of domestic violence.** The impact of domestic violence is most harmful when our children are most vulnerable - in the womb and the first two years of life. This is the time when the interplay between the developing brain and the environment affect who our children become. Intelligence, trust and empathy; the life-long pattern of one's ability to think, feel and relate to others is formed during this critical time (Karr-Morse & Wiley, 1997).

Children who witness domestic violence often suffer intense fear, impaired self-esteem, self-blame, anxiety, and depression. They are at high risk for delinquency. As adolescents, they are more likely to commit sexual assault, more likely to abuse alcohol and other drugs, more likely to commit crimes against others, and more likely to commit suicide.

H. Community

1. **Business losses.** 96% 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 exceed $5.8 billion each year, nearly $4.1 billion of which is for direct medical and mental health care services.
2. **Other economic losses.** Additional costs include: increased costs of raising harmed children, the costs of homeless shelters and foster care facilities, time spent by law enforcement in answering the high rate of domestic violence calls and the subsequent time spent in prosecuting, trying, imprisoning and monitoring violent domestic abusers.

I. Judges

1. **Professional competence.** Judges and magistrates pride themselves on the professional competence they demonstrate in the justice system. In the field of domestic violence this comes from study. It is a brand new topic in American jurisprudence; almost all law, legal writing, and scientific research in this area have been developed in the last two decades. Voluntary personal education can help judges achieve the level of professional competence to face the life and death decisions domestic violence cases present.
2. **All eyes on the judiciary.** Almost every major institution in American law and society is now on record as recognizing the damage that domestic violence does to families, communities, and the economy. Widely noted is the historic failure of the justice system to acknowledge domestic violence as a serious crime or to recognize the barriers that the legal system itself places between victims of domestic violence and safety. All signs point to the crucial role the judiciary must play to correct these failures.
3. **A judicial philosophy.** Cleveland Municipal Court Judge Ronald B. Adrine, a nationally recognized expert in the field, suggests a judicial philosophy of domestic violence that includes as its goals: (a) a just result; (b) safety for the victim; (c) offender accountability, and (d) elimination of recidivism. He sees the primary tools available to a judge as (a) self-education (b) consistent application of policy (c) jail; and (d) a coordinated community response.
4. **No gender unfairness results.** Aggressive community work against domestic violence has had very positive results. A comprehensive study

of crime statistics between 1976 (about the time the U.S. began changing laws to better protect women from violence) and 1999, showed a 24% decrease in the rate of women being murdered by their partners, and a dramatic decrease of 69% in the rate of men being murdered by their partners. It appears that women, when given other options (safe houses, protection orders, criminal complaints, etc.), take those avenues instead of killing to end their abuse (Dugan, 1999).

5. **Ethical concerns.** There is no inherent conflict between the role of a judge as neutral arbiter and the role of a judge in opposing domestic violence. All crimes are unacceptable and part of a judge's role is to communicate this message to those in the community who violate the law. It should be a goal of all judges to improve the legal system and to serve the ends of justice, which in the domestic violence field can include the following measures:
   a) Self-education on domestic violence helps a judge maintain judicial competence [Code of Judicial Conduct, Canon 3 (B) (2)].
   b) Reducing the barriers in the judicial system for domestic violence victims to obtain lawful relief is part of a judge's administrative responsibility [Code of Judicial Conduct, Canon 3, (C) (1)].
   c) Judges are required to maintain impartiality in adjudicative responsibilities; judges are also charged with performing those duties without bias or prejudice, including gender bias or prejudice against domestic violence victims [Code of Judicial Conduct, Canon 3 (B) (5)].
   d) Judges are permitted within reasonable limit to work for improvement of the law, the legal system, and the administration of justice, making the legal system more accessible and effective for some of those it has ignored in the past [Code of Judicial Conduct, Canon 4].
6. **Equal access to court services.** One of the main barriers to women from immigrant and refugee communities to access court services is the language barrier created by the absence of certified court interpreters. Survivors from these communities consistently report a lack of understanding of court proceedings, expectations, and mandates, due to the lack of interpreters in their language. (*See* Appendix H – Immigrants and Refugees.) Stereotypes about individuals with disabilities still abound and too often criminal justice professionals are unwilling to find a victim with a disability a credible witness. As part of judges' goals to serve the ends of justice, they have a strong role to play in ascertaining equal access to all victims of domestic violence.
7. **Community cooperation.** Since a court's efforts to protect victims and hold abusers accountable will be most effective if coordinated with the actions of other community service providers, local courts are encouraged to participate with and take leadership in those coordination efforts. (Herrell & Hofford, 1990) (Kelly, 1994)

J. Safety Tools

1. **Lethality factors.** Police, psychologists, domestic violence fatality review committees and other family violence experts have identified certain behaviors or "Lethality factors" that may threaten victim safety, child safety, and/or court security. (*See* Appendix B – Assessing for Lethality in Domestic Violence Cases) Judicial officers may want to consider these lethality factors in protection order decisions (*See* Appendix C –Identifying and Responding to Domestic Violence in Domestic Relations Cases), counseling requirements (*See* Appendix G – Family Violence Intervention Programs and Appendix I – Mental Illness and the Court), substance abuse screening/ treatment decisions, custody determinations (*See* Appendix C, Paragraph C.1 -Custodial Arrangements and Appendix J – Guardians Ad Litem In Family Violence Cases), visitation scheduling (*See* Appendix C, Paragraph C.2 - Visitation Arrangements), and court safety planning
2. **Batterer intervention treatment.** Batterer intervention treatment programs, mandated now in the State of Georgia, can enhance the safety of the victim and can change attitudes of abusers to prevent a lifetime of trouble. It is unrealistic to assume batterers will spontaneously change, so treatment orders are key tools for decreasing domestic violence. It is essential that perpetrators be mandated to programs that are culturally and linguistically competent for each individual. (*See* Appendix G - Family Violence Intervention Programs and Appendix H - Immigrants & Refugees)
3. **Supervised visitation centers.** Local courts are encouraged to identify a safe place for supervised visitations, and for supervised child drop-off and pick-ups. Such centers are powerful community resources for protecting both children and adult victims from harm.
4. **Safety plan.** A safety plan is a specifically designed program tailored to the circumstances of each individual victim of domestic violence to improve their chances of survival. Hence, the plan is not devised for the benefit of the judicial system. Sometimes prudent safety planning requires leaving an abuser immediately; sometimes it requires waiting for a safer time. Sometimes it requires aggressive prosecution of legal options – sometimes not. The victim is in the best position to judge safety issues. Judges can support safety planning in two ways:
   a) By demonstrating an understanding of victims who decide that their own safety requires asking the court to dismiss protection orders, declining to cooperate in prosecution, or refusing to appear in court.
   b) By asking all victims if they have a safety plan, and referring them to expert resources if they do not. (Adrine &Ruden, 2000). For an assessment that an individual can complete to begin to assess her own danger level, see Appendix B, Paragraph I - Danger Assessment Tool for Victims.

5. **Task forces.** A court may be fully committed to ending domestic violence, yet cannot succeed without the coordinated efforts of law enforcement, prosecutors, social service agencies, shelters, advocacy groups, and other community resources. In those communities where such efforts have been successful, judges have played a key role in convening a local task force.

We wish to thank Mike Brigner, author of the Ohio Domestic Violence Benchbook and the Family Violence Prevention Center at the Ohio Office of Criminal Justice Services who graciously allowed us to adapt the Dynamics section of their benchbook.

B. APPENDIX B - ASSESSING FOR LETHALITY IN DOMESTIC VIOLENCE CASES

"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. 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. "Intimate partners" are defined as spouse, ex-spouse, boyfriend, girlfriend, ex-boyfriend or ex-girlfriend.

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 that the extent to which the criminal justice system and victim service organizations focus on these risk factors we will see a reduction not only in intimate partner homicides but other homicides as well.

A. History of Violence (Block, 2003)

1. The great majority of female homicide victims had been abused by their partners in the last year. Three risk factors identified in this category as indicating the greatest risk for future lethal violence are:
   - **Timing**. No matter how severe the most recent act of violence, the occurrence of an incident within the last 30 days is a high risk factor for the woman being killed or of killing her abuser.
   - **Frequency.** When the abusive partner increases the frequency of his violent acts, this poses a high risk of lethal violence to the victim and to the abuser.
   - **Severity and Type of Violence.** Women who were killed, as well as, women who killed their abusive partners, were much more likely to have sought help than other severely abused women not involved in homicide. An abuser's past attempt to strangle his partner is a risk factor for severe or deadly violence.

2 It is important to note that for a substantive minority of women, the life-threatening or fatal incident was the first act of physical violence against them. Of the cases studied in the last four years by the Georgia Domestic Violence Fatality Review Project, 87% of calls to the police prior to the homicide had no major injury documented in law enforcement reports. In 64% of prior calls, no visible injuries to victims were documented. Therefore it is important for the court to know that while serious and visible injury is a predictor of future, and possibly lethal violence, it will not always be present in cases where victims are later killed. A good lethality assessment cannot rely solely on the presence of physical violence or serious injury. In these situations the risk factors are different. Even if there is no history of physical violence, research suggests that the following risk factors are still potential indicators of lethality:

a) The partner was particularly controlling of her daily activities or extremely jealous. In 40 percent of the murders of a woman whose killer had not previously physically abused her, jealously was the cause of a motivating factor in the deadly assault.
b) The abusive partner used drugs.
c) The partner was violent outside the home.
d) The abusive partner was suicidal. (Campbell et al, 2003)
e) The court needs to be aware of these risk factors because, as this study demonstrates, even the first incident can be fatal.
f) Jacqueline Campbell and other researchers have found that forced sex of a female significantly increases her risk of intimate partner homicide.

The court needs to be aware of these risk factors because, as the above study demonstrates, even the first incident can be fatal.

B. Guns and Threats to Kill

The Danger Assessment Study (Campbell et al, 2003) found that women who were "threatened or assaulted with a gun or other weapon were 20 times more likely than other women to be murdered.

1. Women whose partners threatened to kill them were 15 times more likely to be murdered. In over half of the cases reviewed by the Georgia Domestic Violence Fatality Review Project, threats to kill the primary victim were documented prior to the homicide. These threats cannot be dismissed as mere words, they must be taken seriously by victims and service providers alike.
2. When a gun was in the home, women were 6 times more likely to be killed by their abuser than other women in abusive relationships.
3. The research findings also suggest that abusers who possess guns "tend to inflict the most severe abuse."
4. Georgia follows this national trend; "Of all the deaths studied over the past four years, the majority have been committed with firearms." (Georgia Domestic Violence Fatality Review Project, 2007)

C. Relationship Variables (Campbell, 2003)

"Risk Factors for Femicide" investigated relationship variables that increase the risk of homicide.

1. Separating or attempting to separate from a jealous/highly controlling abuser increased a woman's risk of becoming a homicide victim nine-fold.
2. In almost all the homicide cases reviewed in Georgia over the past 4 years, victims had indicated a desire to separate from their abusers just prior to the homicide-whether filing for a protective order, moving out and getting an apartment, or talking with family about leaving him. (Georgia Domestic Violence Fatality Review Project, 2007)
3. A child living in the home who is not the abuser's biological child, doubled the risk of homicide.

D. Unemployment

Campbell (2003) found the abuser's lack of employment to be the strongest environmental risk factor for intimate partner homicide; increasing the risk fourfold. Any kind of grief or loss on the part of the abuser, i.e., job, death in the family, loss of relationship with victim and/or children are important factors to pay attention to when assessing for lethality.

E. Alcohol and Drug Use

When Sharps et al (2003) studied the connection between alcohol and drug use during and in the year leading up to an intimate partner homicide they found the following:

1. Amazingly high levels of alcohol and drug use were seen in males who murdered or attempted to murder their partners.
2. In the year prior to the homicide or life-threatening abuse of their female partner, 80% of the male abusers were problem drinkers.
3. Homicide and attempted homicide abusers were described as drunk every day or as a problem drinker or drug user.
4. 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.

F. Women's Response to Intimate Partner Violence (Block, 2003)

Most women try to leave an abusive relationship.

1. Three-fourths of homicide victims tried to leave their abuser and 85 percent of women who experienced severe abuse had left or tried to leave the relationship.
2. If leaving does not end the violence, it may become more severe than for those women who never tried to leave. Unfortunately there are those who still continue to ask, "Why doesn't she just leave"? In 45 percent of female homicides, her attempt to leave the abuser was the precipitating factor for violence. In Georgia, an even higher percentage of victims

made some move towards independence prior to the homicide. This can be defined by concrete steps such as filing a protective order or "breaking up" but it can also be seen in the victims' other steps towards gaining independence such as making plans to leave or changing her employment status. (*See* Paragraph C.2 above).

3. In this study, almost every abused woman sought formal or informal help after a violent incident. However, a fifth of Latina/Hispanic women suffering a life-threatening incident did not seek any type of help at all.

G. Stalking

Of the cases reviewed in the Georgia Domestic Violence Fatality Review Project, 41% of homicide victims were stalked by their abuser prior to their murder. In many of these cases, stalking escalated after separation.

H. Abused Women Who Kill (Block, 2003)

Abused women who killed their abusive partners differed dramatically from other abused women.

1. The abuse they suffered was more severe and increasing in frequency.
2. They had fewer resources available to them such as a job or education.
3. They were in more traditional relationships; that is they were married with children and had been in the relationship longer.
4. Abused women who killed their abusive partners were much more likely to have called the police after they had been abused. Lesbian women abused by their female partners were much less likely to call the police than women abused.

I. Danger Assessment Tool for Victims

An assessment tool developed by Campbell in 1988 can help women appraise the danger posed by their partner. Campbell's "Danger Assessment" can be found at http://www.son.jhmi.edu/research/homicide/danger.htm It should only be used in conjunction with an immediate referral to a victim advocate who can assist in the development of a safety plan and make appropriate referrals to local service providers.

The Local Resources section of this benchbook is included to provide the court with easy access to these important referrals within their own area. The Domestic Violence Task Force in each Judicial Circuit can easily assist the court in completing this section.

J. Prevention

The majority of women 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 are suggestions and are by no means a comprehensive list.

1. Be aware that by seeking a temporary protective order, an abused woman is signaling that her situation could be serious in spite of the lack of previous documentation.
2. When interviewing a TPO petitioner know the indicators that signal an increased risk for homicide and ask the petitioner the appropriate questions to determine that risk.
3. In cases of very high risk (where a women is planning to leave a very jealous and controlling partner with whom 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.
4. 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. Across 47 States, they found an inverse correlation between family homicide rates and States mandating firearm restrictions during a protective order.
5. 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.
6. Have a list of local resources to give every victim of intimate partner violence who seeks to file a temporary protective order.

K. Summary of Lethality Indicators

1. **History of Violence:**
   a) A history of physical violence particularly an act of violence within the last 30 days
   b) Violence increasing in frequency
   c) Victim attempting to separate from the abuser**
   d) Any past attempt to strangle or choke
   e) Forced sex of female partner
2. **Extreme jealousy and controlling her daily behavior**
3. **Abusive partner is suicidal****
4. **Guns and Threats to Kill**
   a) Threatened or assaulted with a gun or other weapon
   b) Threatened to kill
   c) Presence of a gun in the home**
5. **Unemployment**
6. **Alcohol and Drug Use**
   a) Amazingly high use of drugs and alcohol
   b) 80% were problem drinkers
   c) Described as drunk every day or as a problem drinker or drug user
   d) 2/3 used drugs or alcohol or both at the time of the assault
7. **Stalking**

***The Georgia Domestic Violence Fatality Review Project (2007) found these factors to be most compelling in the homicide cases studied between 2004 - 2007.*

C. APPENDIX C - IDENTIFYING AND RESPONDING TO DOMESTIC VIOLENCE IN DOMESTIC RELATIONS CASES

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.

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 and a full Safety Focused Parenting Plan.

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).

Screening for common domestic violence patterns.

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

B. 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, Page 2, first paragraph), 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.

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). Bruch (2001) extensively repudiates the theory of Parental Alienation Syndrome on multiple counts.

3. **Divorce Action Restraining Orders**.
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.

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.

4. 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 requires the parties to negotiate which is simply fertile ground for conflict and future litigation.

C. 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) 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.

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 of financial status of the victim by not making payments as required by the Order.

D. Safety Focused Parenting Plan.

_____COUNTY SUPERIOR COURT
STATE OF GEORGIA

_____,	)	
Plaintiff,	)	Civil Action
	)	Case Number _____
	)	
	)	
_____,	)	
Defendant.	)	

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:	( ) Mother	( ) Father	( ) Joint
	d/o/b:	( ) Mother	( ) Father	( ) Joint
	d/o/b:	( ) Mother	( ) Father	( ) Joint
	d/o/b:	( ) Mother	( ) Father	( ) Joint
	d/o/b:	( ) Mother	( ) Father	( ) 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	( ) mother	( ) father	( ) joint
Non-emergency health care	( ) mother	( ) father	( ) joint
Religious upbringing	( ) mother	( ) father	( ) joint
Extracurricular activities	( ) mother	( ) father	( ) joint
_____	( ) mother	( ) father	( ) joint
_____	( ) mother	( ) father	( ) 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

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

A. Firearms And Temporary Protective Orders

A person who is subject to a qualifying protection order under federal law is generally prohibited from possessing any firearm or ammunition.[2] Violation of this prohibition while the order is in effect is a federal offense punishable by up to ten years in prison.[3]

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.

I. HEARING

- ♦ Defendant/Respondent received **actual notice** and had an **opportunity to participate.**

II. INTIMATE PARTNER

Plaintiff/Petitioner is an **intimate partner** of the Respondent, (18 U.S.C. § 921(a)(32)); that is:

- ♦ 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.

III. RESTRAINS FUTURE CONDUCT

- ♦ 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.

IV. CREDIBLE THREAT OR PHYSICAL FORCE

- ♦ 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.

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[2] This section also restricts adjudicated abusers from shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition. 18 U.S.C. §922(g)(8)

[3] U.S.C. §924(a)(2).

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.[4] 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.

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[4] O.C.G.A. §19-13-3(b) states: "Upon filing of a verified petition in which petitioner alleges with specific facts that probably 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.]

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.

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 25 of the standard Twelve Month Order form (2008) to confirm that the parties have the relationship required for federal law to apply.[5] 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 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.

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[5] 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)."

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 25 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: www.fbi.gov/hq/cjisd/nics/index.htm.
      NICS e-check: 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."[6]
b) In each year from 1980 to 2000, 60% to 70% of batterers who killed their intimate partners used firearms.[7]
c) When domestic violence abuse involves a firearm, the victim is 12 times more likely to die than in incidents not involving a firearm.[8]
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)
e) Also in Georgia, at the time of this writing (9/10/08), there have been twelve (12) domestic homicides in DeKalb County. Eleven (11) of those deaths were the result of firearms. (Ramsey, B., *Preventing Homicides: Strategies for Removing Firearms"* presentation at the Georgia Commission on Family Violence, 15th Annual Statewide Family Violence Conference, September 2008)

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[6] Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, NIJ Journal, Nov. 2003, at 15,16, 18.
[7] Emily F. Rothman, et.al., *Batterers' Use of Guns to Threaten Intimate Partners*, 60 J. Am. Med. Women's Ass'n 62 (2005).
[8] 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.[9] 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.[10]

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.**

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[9] 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).

[10] Eight circuits, including the Eleventh Circuit, have found that an intimate partner relationship does not have to be an element of the crime. See, United States v. Chavez, 204 F. 3d 1305, 1313-14 (11th Cir. 2000). See also, United States v. Heckenliable, 446 F. 3d 1048 (10th Cir. 2006); United States v. Belless, 338 F. 3d 1063 (9th Cir. 2003); White v. DOJ, 328 F. 3d 1361 (Fed. Cir. 2003); United States v. Shelton, 325 F. 3d 553 (5th Cir. 2003); United States v. Barnes, 295 F. 3d 1354 (D.C. Cir. 2002); United States v. Meade, 175 F. 3d 215 (1st Cir. 1999); United States v. Smith, 171 F. 3d 617 (8th Cir. 1999). One circuit, the Fourth Circuit, has recently held that an intimate partner relationship must be an element of the crime. United States v. Hayes, 482 F. 3d 749 (2007). The U.S. Supreme Court has accepted cert to resolve this split. 170 L. Ed. 2d 512 (2008).

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 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.[11] 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

[11] 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).

9. **It is recommended that the court address the issue of firearms in a misdemeanor case involving domestic violence.**
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. *(See subsection 8 above)*.
   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 Sections 9 and 10 above)*.

12. **Firearm Statistics:**
a) "When a gun [is] in the house, an abused woman [is] 6 times more likely than other abused women to be killed."[12]
b) In each year from 1980 to 2000, 60% to 70% of batterers who killed their intimate partners used firearms.[13]
c) When domestic violence abuse involves a firearm, the victim is 12 times more likely to die than in incidents not involving a firearm.[14]
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)
e) Also in Georgia, at the time of this writing (9/10/08), there have been twelve (12) domestic homicides in DeKalb County. Eleven (11) of those deaths were the result of firearms. (Ramsey, B., *Preventing Homicides: Strategies for Removing Firearms"* presentation at the Georgia Commission on Family Violence, 15th Annual Statewide Family Violence Conference, September 2008)

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

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[12] Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, NIJ Journal, Nov. 2003, at 15,16, 18.
[13] Emily F. Rothman, et.al., *Batterers' Use of Guns to Threaten Intimate Partners*, 60 J. Am. Med. Women's Ass'n 62 (2005).
[14] 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

Form A

IN THE MAGISTRATE COURT OF _____ COUNTY

STATE OF GEORGIA
State of Georgia
v.

_____
Defendant

Warrant or Warrantless
Arrest or Citation

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	_____	Photo Cost:	_____	Drug Assessment:	_____
POPIDF:	_____	Joshua's Law:	_____	Crime Lab Fee:	_____
Plus 10%	_____	Victim's Fund:	_____	Restitution:	_____
Jail Staffing:	_____	Brain & Spinal		Public Defender Fee:	_____
Victims Assistance:	_____	Injury Trust Fund:	_____	Probation User Fee:	_____
Mandatory assessment on all fines.		**Total Amount Due**:	_____		

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)

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

	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	***Yes. Certification is administered by the Georgia Commission on Family Violence (GCFV) and the Georgia Department of Corrections (GDC.)***
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.	***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.***
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	***$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.***
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.

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 C – Paragraph B. - 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

f) policies to regularly use the Georgia Protective Order Registry.

g) Ensure that law enforcement officers know that prompt service of TPOs on respondents is a top priority.

h) 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 –A Model Tracking Protocol

Statement of Purpose:

In order to monitor, track, and enforce the requirement in O.C.G.A. § 19-13-16(a) for respondents' mandatory participation in a certified Family Violence Intervention Program (FVIP) whenever a 12-month protective order is issued, the Georgia Commission on Family Violence has promulgated this Protocol for adoption in judicial circuits. While this Protocol was developed to ensure compliance with O.C.G.A. § 19-13-16(a), it has the potential to be used to enhance compliance with other conditions of TPOs as well. The Appalachian, Western, and Eastern Circuits are currently among the circuits that are piloting this Protocol.

Adoption of this Protocol is not mandated but is encouraged. The Protocol contemplates and permits local adaptations in recognition of differing systems and resources across the state.

Statement about Judicial Compliance Hearings:

Judicial compliance hearings are preferred as a part of this Protocol. Where they are possible and practical, judicial compliance hearings have proven to an effective mechanism for tracking and enforcing civil protective order conditions in courts in Georgia and in other parts of the country. Any section of this Protocol that is not consistent with the practice of judicial compliance hearings may be modified locally.

Model Protocol:

1. **Local Domestic Violence Task Force Identifies Key Personnel**
   a) Local strengths vary tremendously across Georgia. Under this Protocol, local Domestic Violence Task Forces will identify a Designated Court Officer and a Contempt Officer based upon the resources available within their community.
   b) The Designated Court Officer will track respondents' compliance with FVIP conditions ordered in protective orders. The Designated Court Officer could be a Clerk, ADA, VWAP advocate, Pre-Trial Bond Condition Officer, Sheriff, DHR-certified shelter, State probation office or private probation company, among other options.
   c) The Contempt Officer will bring contempt charges for noncompliance with the FVIP condition of an order. The Contempt Officer must be an attorney in order to file a rule nisi to trigger a hearing. The District Attorney's Office, Georgia Legal Services, or pro-bono attorneys are options.
2. **Default Option**: If no Local Domestic Violence Task Force exists in a Circuit, the Chief Judge will assign the Designated Court Officer and Contempt Officer.
3. **Multi-Copy Tracking Form** (Created with AOC's Court Services Division.)
   a) Upon the issuance of a 12-month protective order, the respondent acknowledges receipt of the Multi-Copy Tracking Form and the respondent's affirmative duty to register both initiation and completion of a certified FVIP with the Designated Court Officer identified on the form. The judge is to sign the Multi-Copy Tracking Form and the respondent should be served with it, whenever possible, in court.
   b) The Multi-Copy Tracking Form will be color-coded for ease of use. The white copy stays with the Court; the yellow copy is sent to the Designated Court Officer; and the pink and gold copies are given to the respondent with instructions to present the gold copy to the FVIP where he enrolls within 14 days.
   c) Within 21 calendar days of receipt of the Multi-Copy Tracking Form, the respondent must return an enrollment notice from a certified FVIP on the FVIP's letterhead to the Designated Court Officer. In addition, the respondent is responsible for notifying the Designated Court Officer upon completion or termination from the FVIP.
   d) FVIPs must consider the Designated Court Officer to be the referral source of the FVIP participant. Therefore, the FVIP is responsible for notifying the Designated Court Officer identified on the Multi-Copy Tracking Form upon the respondent's enrollment, completion or termination, and at other times as

required by GDC's FVIP Rules and Standard Operating Procedures.

4. **Designated Court Officer Notifies Contempt Officer of Noncompliance**
   a) The Designated Court Officer monitors compliance. If the respondent does not show proof of enrollment in an FVIP within 30 calendar days or is terminated for noncompliance, the Designated Court Officer notifies the Contempt Officer with the attached Noncompliance Notification and Show Cause Order Form (created with AOC's Court Services Division.)
5. **Contempt Officer Brings Contempt**
   a) The Contempt Officer must be an attorney. Upon obtaining evidence that he or she deems sufficient, the Contempt Officer will request a Show Cause hearing and bring contempt charges for noncompliance with a condition of a court's order. Prior to the hearing, the Contempt Officer will have the respondent served by a sheriff's deputy or by certified mail, return receipt requested. (*See* Section 3.5.5 - Contempt and Section 3.5.6 - Criminal Violation for civil and criminal sanctions)

Contact: Kirsten Rambo, Director, Georgia Commission on Family Violence at 404-657-3412
Or David Asher Burk, FVIP Certification Manager at 404-463-0122.

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

D. Multi-Copy Tracking Form

COUNTY: _____

CASE NO: _____

_____, Respondent

The Respondent above has been adjudged by a lawful protective order issued in the above referenced case number on the _____ day of _____, 20___ at _____ a.m./p.m. in the _____ County Courthouse _____ to have violated the Family Violence Act, at O.C.G.A. § 19-13-1 *et seq.*, by committing family violence.

THEREFORE, IT IS HEREBY ORDERED THAT:

- Pursuant to O.C.G.A. § 19-13-16(a), the Respondent must enroll in and complete a certified Family Violence Intervention Program (FVIP) authorized and operated in accordance with O.C.G.A. § 19-13-15. A list of certified FVIPs has been provided to the Respondent by this Court. In addition, a complete list of certified FVIPs is available at www.dcor.state.ga.us under the Georgia Commission on Family Violence tab.

- ***Within 21 calendar days of receipt of this Order***, the Respondent must enroll in a certified FVIP. The Respondent must present the Gold Copy of this form to the certified FVIP.

- ***Within 30 calendar days of receipt of this Order***, the Respondent must return a notice of enrollment from the FVIP on letterhead to this Designated Court Officer:

  _____
  _____
  _____
  _____

- Certified FVIPs are responsible for notifying the above Designated Court Officer of the Respondent's FVIP enrollment status and compliance with this Order;

- Failure to enroll in and complete a certified FVIP may result in a Show Cause contempt hearing. A finding of contempt may result in arrest and incarceration for noncompliance with this Order.

By signing this document I, _____, hereby acknowledge receipt of this Order and FVIP information, and I agree to comply.

_____ _____
Signature Date

Respondent Information: _____
_____

_____
Judge

E. Noncompliance Notification and Show Cause Order Form

COUNTY: _____

CASE NO: _____

_____, Respondent

On the _____ day of _____, 20___, the above named Respondent was ordered by the _____ County Superior Court to enroll in a certified Family Violence Intervention Program (FVIP) for violating the Family Violence Act, pursuant to O.C.G.A. § 19-13-1 *et seq*. The above named Respondent is in:

☐ **Non-Compliance**

The Respondent has failed to comply with the order entered by this court and the guidelines of the certified Family Violence Intervention Program and it is hereby recommended that the Respondent appear before this court for a show cause hearing. The Respondent has willfully disregarded the order of the court, specifically as follows:

_____
_____
_____
_____

This the _____ day of _____, 20_____.

_____

ORDER

Having reviewed the compliance statement, it is hereby ordered that the above named Respondent be served a copy of this order and appear before the court on the _____ day of _____, 20_____ at _____a.m./p.m., in the _____ County Courthouse at _____ for a show cause hearing to determine compliance.

This the _____day of _____, 20_____.

_____
Superior Court Judge

F. State Certified Family Violence Intervention Programs

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

http://www.gcfv.org/FVIP.htm

H. APPENDIX H - IMMIGRANTS AND REFUGEES

A. Introduction to Immigrants and Refugees

Domestic Violence affects all populations, including foreign nationals. For foreign nationals experiencing domestic violence, there are several important factors that courts must consider to ensure their rights and safety. Immigration status, or lack thereof, can be used as a tool of family violence. Be aware that the violence does not have to be between intimate partners but may include extended family, parents, and in-laws. 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.

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 ensure that the batterer does not try to use 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.

B. Basic Immigration Terminology and Documentation

1. **Lawful Permanent Resident LPR (i.e. has "green card")** - Able to reside in the United States on a permanent basis. May engage in employment and travel in and out of U.S. freely (unless convicted of certain crimes) but may not vote in U.S. elections.
2. **Conditional Permanent Resident** – Provisional permanent residence via green card filing based on marriage to a U.S. Citizen. This status lasts two years at which time the conditional status can be removed by an additional filing and interview process.
3. **Nonimmigrant** - A person coming to the United States for a temporary period who fits into specifically defined categories under the Immigration & Nationality Act. Some of the non-immigrant categories are students, tourists, treaty investors, foreign government officials, visitors for business, etc.
4. **Asylee/Refugee** - A person granted status in the United States based upon their being unable or unwilling to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Usually can apply for permanent residence later.
5. **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 because of extraordinary and temporary political or physical conditions there.

6. **Visa Waiver Program** - A program under which nationals of countries with which the United States has certain agreements can 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, these visa holders cannot extend or change to another status once entered the United States under this program.
7. **Employment Authorization Document (some times referred to as a "work-permit")** –A U.S. Citizenship and Immigration Services (USCIS) document, Form I-688B, evidencing the right of certain foreign nationals to accept employment while in the United States.
8. **Visa** – An official endorsement, obtained from 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. There are both immigrant visas and non-immigrant visas. A visa does not grant the bearer the right to enter the United States; it merely allows one to attempt to seek admission at a port of entry.
9. **I-94** – An Arrival-Departure Record; a small white card stapled into the passport of non-immigrants and certain other foreign nationals upon admission into the U.S. 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 even be longer than the period during which the visa itself is valid.

   It is important to understand that ***it is always the I-94, and not the visa in the passport, that determines a non-immigrant alien's 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.
10. **FOIA** – Individuals may file a Freedom of Information Act Request, or FOIA request, to obtain copies of documents filed with USCIS or other immigration offices. Unfortunately, obtaining a response to a FOIA request can take a very long time.
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 by immigration applications that are pending.

C. Work authorization eligibility

1. There is no single document in U.S. immigration law that is a "work permit."
2. Citizens, nationals, and lawful permanent residents of the United States are authorized to be employed in the United States.

   Some non-immigrant visa categories include, as an incident of their status, employment authorization in the United States either with or without limitation to a particular employer or after application and approval from

the USCIS for authorization to be employed. Not all non-immigrants, however, are eligible for employment authorization.

Virtually all employment authorization for non-immigrants or undocumented aliens (where authorized) is limited as to time. Moreover, most employment authorization for non-immigrants is limited as to nature of employer and employment. Other foreign nationals physically present in the United States may have the right to apply for an Employment Authorization Document (EAD).

D. Grounds of Deportability

Certain arrests, charges and convictions can significantly impact foreign nationals' ability to remain in the U.S. Dual arrests and convictions, in the context of domestic violence, may lead to victims being deported, sometimes to countries where the victim will have little or no access to counseling, support, or court/police protection. Deportation of a batterer may have detrimental affects 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 can be used to remove or deport someone from the U.S. 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
   b) U.S. Citizenship and Immigration Services and the Immigration Courts look to the entire record of conviction
   c) 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. **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
   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 (USCIS and Immigration Courts look to the original sentence ordered, not what is actually served)

(iii) Theft Offense for which term of imprisonment at least 1 year (USCIS and Immigration Courts look to the original sentence ordered, not what is actually served)

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

4. **Controlled Substance Convictions**
   a) Violation of any law or regulation relating to a controlled substance
   b) Other than a single offense involving 30g or less of marijuana
5. **Firearms Convictions**
   a) Conviction under any law of purchasing, selling, using, owning, possessing or carrying (or attempting to do same) a firearm or destructive device.
6. **Crimes of Domestic Violence**
   a) Crime of Domestic Violence, Crime of Stalking
   b) Crimes of Child Abuse, Child Neglect or Child Abandonment
   c) Violation of Protective Orders

E. Sentencing Considerations

1. A sentence to confinement is considered confinement for immigration purposes, even if probated.
2. Twelve-month confinement sentence can make a misdemeanor crime an aggravated felony under immigration law (even if no time 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 a spouse of the person 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.

F. Immigration Relief for Battered Women

1. **Violence Against Women Act (VAWA)**
   a) Allows certain abused spouses and children of United States citizens and legal permanent residents to self-petition for legal permanent residence.
   b) Application must include supporting proof of abuse, such as protective orders, indictments, accusations after indictment, police reports, shelter record, counselor's statement.
   c) May be separated or divorced at time of application, as long as marriage was originally entered into in good faith and filing within 2 years of the divorce.
   d) Provides for a method for abused conditional residents to extend their two-year conditional status.

e) For applicants who do not have immigration status, ICE officers are discouraged from making arrests or raids at sensitive locations. Sensitive locations include rape crisis centers, domestic violence centers, domestic violence shelters, supervised visitation centers, family justice centers, a victim service or provider or a community based organization. Also, ICE will not arrest a victim at a courthouse if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking or stalking in which the alien has been battered or subject to extreme cruelty.

2. **T (Trafficking) Visas**
   a) Allows persons who
      (i) have been victims of trafficking, debt bondage or slavery
      (ii) agree to assist in the investigation or prosecution of the traffickers; and
      (iii) would suffer unusual and severe harm if removed from the United States,

      to remain in the United States for up to three years. Application for T visa must include proof of above.
   b) After three years, victim may apply for permanent residence if had T visa for three years, complied with reasonable requests for assistance by law enforcement, and possesses good moral character.
   c) Should consult with an experienced immigration attorney to file for this status.

3. **U status**
   a) This status provides for temporary status for victims of certain crimes and intended to help law enforcement investigate and prosecute certain crimes, such as domestic violence, sexual assault, and trafficking
   b) Children who are victims, and children whose parents are victims, may apply.
   c) Applicant must show that s/he:
      (i) has information about criminal activity
      (ii) is helpful to law enforcement or criminal justice system
      (iii) the crime occurred in the US or violated US law
   d) Judges, law enforcement officers, probation officers, district attorneys, solicitors, and other officials who have an investigative role in the criminal justice system can help with the certification process by verifying that a victim has knowledge of details concerning the criminal activity that has or would assist in the investigation or prosecution of that criminal activity. There is a U visa certification form created for this purpose: Supplement B to Form I-918, available at http://www.uscis.gov. This is the form that the any of the above mentioned parties must prepare to support applicant's U Visa Petition. It is important to keep in mind that the

certification alone will not guarantee U visa approval, but is a critical step in the process.

e) Should consult with an experienced immigration attorney to file for this status.

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

a) An avenue of relief for immigrant children who are undocumented and have been abused, abandoned and neglected by their parents.

b) Provides for legal immigrant status for children who are declared dependent by a juvenile court. The juvenile court must find the child is eligible for long-term foster-care or commit the child to the custody of a state agency due to abuse, neglect or abandonment.

c) The child must be under eighteen and the juvenile court must find that family reunification is not viable.

d) A proceeding needs to occur where the judge in the juvenile court finds that it is not in the child's best interest to return to their home country and that reunification with the natural parents is no longer a viable option.

e) Children the juvenile courts finds dependent, who are assigned guardians or are adopted, are also eligible for this status.

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 an ethnic, social group, or political opinion.

b) Poverty, alone, is not a reason to fear persecution, therefore people coming to the United States solely to get out of poverty or have a financial disadvantage in their home country 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 the applicant, him or herself, must have a personal fear of persecution.

d) The fear may be based on <u>past</u> persecution, or because of a belief of <u>future</u> persecution.

e) Refugees' fear of persecution is determined <u>before</u> they enter the United States, and 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 asylum once they are here. They can either apply affirmatively with Citizenship and Immigration Service, or file their application when in removal proceedings in front of an immigration judge.

g) Once status is received, 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.

G. Hague Convention: International Kidnapping

This is important when there are concerns of children being taken out of the country for visits when there is a history of domestic violence or fears of kidnapping. 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) 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, 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 removing child in fleeing from abuser in the original state.
5. Once criteria of "wrongfulness" is established, i.e., two contracting states and child is under sixteen years of age, the definition of "wrongfulness" then applies:
   a) If removal 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 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.

H. 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. Under Title VI of the Civil Rights Act. Which 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 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 control over any other conflicting provisions of law and shall specifically 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.

I. 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 foreign national domestic violence victims be safe 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 batterer:

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

immigration status is.

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 is approved.
4. Not contact Department of Homeland Security (DHS), the Consulate, or the Embassy about the victim's status. This is useful when batterers 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 batterer's birth certificate or provide a copy of their green card. Oftentimes proof of the batterer's citizenship or permanent resident status is needed.
7. Not remove the children from the court's jurisdiction and/or United States without a court order that the batterer 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 batterer from running off with 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 batterer has been keeping information from the abused 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 are turned over to the battered spouse. Proof of termination of previous marriages is often required.

J. 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 an unintended consequence to battered immigrants because they 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 may have thought 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". We believe that this applies to state funded benefits that most immigrants have not been or are eligible for. However, broadly applying this term may prevent many battered immigrants or children from coming forward to apply for support that they are eligible for. 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.

Original Authors:
Aparna Bhattacharyya
Vidal Cordova
Nisha Karnani
Monica Modi Khant
Kerry McGrath
Rathi Rao

2008 Updates by
Aparna Bhattacharyya
Monica Modi Khant
Nisha Karnani
Sunita Iyer

K. 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
Tapestri Phone: (404) 299-2185 Fax: (770) 270-4184 www.tapestri.org ***Tapestri Men's Program*** Phone: (678) 698-3612	Amharic, Bosnian, Hindi, Farsi, Spanish, Polish, Russian, Vietnamese Korean, Spanish, English	➢ Information about and referrals to services available to battered immigrant women in metro Atlanta area ➢ Multicultural Training in DV ➢ Legal advocacy ➢ Services to victims of human trafficking ➢ 24 weeks violence intervention program ➢ Community education
International Women's House Hotline: (404) 299-1550 Phone: (770) 413-5557 Fax: (404) 299-1466	Arabic, French, Greek, German, Hebrew, Spanish, Russian, English	➢ Shelter for battered refugee and immigrant women and children (max. stay time for residents: 1-3 months)
Caminar Latino, Inc. Phone: (404) 651-1375 www.caminarlatino.org	Spanish	➢ Counseling ➢ Legal advocacy ➢ Support groups for women and children; *Batterers intervention groups for Latino men
RAKSHA, Inc. Helpline: (404) 842-0725 Phone: (404) 876-0670 Toll free: (866) 725-7423 Fax: (404) 876-4525 www.raksha.org	English, Bengali, Hindi, Gujarati and other South Asian languages	➢ Crisis counseling ➢ Legal advocacy/referrals ➢ Support groups and counseling ➢ Community education ➢ Youth services
Refugee Family Services Phone: (404) 299-6217 Fax: (404) 299-6218 www.refugeefamilyservices.org	English, Arabic, Bosnian, Kurdish, Farsi, Russian, Spanish, Somali, Sudanese, Vietnamese	➢ Crisis counseling ➢ Legal advocacy/referrals ➢ Employment assistance ➢ Community education ➢ ESL classes ➢ Driver License Education

AGENCY/PROJECT	LANGUAGES	SERVICES
Jewish Family and Career Services Phone: (770) 677-9322 Fax: (770) 677-9400	Hebrew, Yiddish, English	➢ Crisis counseling ➢ Support groups for women ➢ Community education ➢ Referrals
Refugee Women's Network, Inc. (RWN) Phone: (404) 299-0180 Fax: (404) 296-9118 www.riwn.org	Amharic, Bhutanese, Chinese, Hindi, Nepali, Russian, English	➢ Leadership training, education ➢ Microenterprise program ➢ Health promoter program
Catholic Charities Phone: (404) 885-7454 Fax: (404) 885-7210 www.catholiccharitiesatlanta.org	Spanish, French, English They have access to many other languages through volunteers	➢ Pro-bono Legal assistance in filing VAWA Applications
Georgia Asylum and Immigration Network (GAIN) Phone: (404) 308-9119 Fax: (404) 885-7210 www.law.emory.edu/public-interest/probono-program/opportunities.html#c10213	Hindi, Spanish, English They have access to many other languages through volunteers	➢ Pro-bono Legal representation for asylum and special immigrant juvenile status cases.
Project Liberty ***Atlanta Volunteer Lawyers Foundation (AVLF)*** Phone: (404) 521-0790 Email: tcaldas@avlf.org Aylf.org		➢ In appropriate cases, AVLF further helps secure the petitioner's family by referring her to an AVLF volunteer attorney who will assist in obtaining a divorce from an abusive spouse.

2. **National Resources:**

AGENCY/PROJECT	SERVICES
National Center for Missing and Exploited Children Hotline: 1800THELOST (1-800-843-5678)	➢ For international kidnapping cases.
ASSISTA www.assistaonline.org	➢ For immigration technical assistance
Legal Momentum Immigrant Women Program: (202) 326-0040 http://www.legalmomentum.org/legalmomentum/programs/iwp/	➢ Technical assistance referrals

I. APPENDIX I - MENTAL ILLNESS AND THE COURT

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, Page 1, second paragraph), 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 carbomazepine 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 scrotonin, 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 linger 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 thing – 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
ANTIANXIETY MEDICATIONS	
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	buspirone
ANTIDEPRESSANTS	
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
Trycyclics and tetracyclics *(continued)*	
Tofranil, Tofranil-PM	imipramine
Triavil	perphenazine and
Vivactil	protriptyline
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
HYPNOTICS	
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
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	
Haidol	haloperidol
Dibenzoxazepines	
Clozaril	clozapine
Lexitane	loxapine
Dihydroindolones	
Moban	molindone
Diphenylbutylpiperidine	
Orap	pimozide
Phenothiazines	
Aliphatic	
Thorazine	chlorpromazine
Piperazine	
Prolixin	fluphenazine
Stelazine	trifluoperazine
Trilafon	perphenazine

Trade Name	Generic Name
Phenothiazines (*continued)*	
Piperidine	
Mellaril	thioridazine
Serentil	mesoridazine
Thioxanthenes	
Navane	thiothixene
ATYPICAL ANTIPSYCHOTICS	
Abilify	aripiprazole
Clozaril	clozapine
Geodon	ziprasidone
Risperdal	risperidone
Seroquel	quetiapine
Zyprexa	olanzapine
ANTICHOLINERGIC MEDICATIONS	
Akineton	biperiden
Artane	trihexyphenidyl
Cogenin	benztropine
Kemadrin	procycidine
Symmetrel	amantadine
CHOLINERGIC ENHANCERS	
Acetylcholinesterase inhibitors	
Aricept	donepezil
Cognex	tacrine
Exelon	rivastigmine
Reminyl	galanthamine

Trade Name	Generic Name

MEDICATIONS USED TO TREAT ALCHOLISM 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)	➢ Bachelor's Degree ➢ 4-years Medical School ➢ 1-year Medical Internship ➢ 3-years Adult Psychiatry Residency ➢ Board Certified ➢ 1-2 years Specialized Fellowship (Optional)	➢ Can prescribe medication ➢ Can admit patients to hospitals ➢ Can evaluate medical causes and treatments
Licensed Psychologist (Ph.D.)	➢ Bachelor's Degree ➢ Master's Degree ➢ Ph.D. (5-8 years) ➢ 1 year internship ➢ 1 year post doctoral supervision	➢ Skilled in administering and interpreting psychological tests ➢ Individual, Group & Family Psychotherapy ➢ Can admit patients to hospital
Licensed Master's of Social Work (LMSW)	➢ Bachelor's Degree ➢ Master's Degree in Social Work ➢ 2 years post-graduate training and internship	➢ Interfaces with community programs ➢ Often uses short-term therapies
Licensed Clinical Social Worker (LCSW)	➢ Same as Master's of Social Work, plus: ➢ 4 years post master's experience ➢ 120 hours of supervision	➢ 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)	➢ Bachelor's Degree ➢ Master's Degree (in counseling-related field) ➢ 4 years post master's experience ➢ 200 hours of supervision	➢ Trained in family and group therapy ➢ Uses counseling and psychotherapy techniques
Licensed Professional Counselor (LPC)	➢ Bachelor's Degree ➢ Master's Degree (in counseling-related field) ➢ 4 years post master's experience ➢ 120 hours of supervision	➢ Trained in family and group therapy ➢ Uses counseling and psychotherapy techniques
Psychiatric Nurse (CNS)	➢ 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	➢ 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	➢ Bachelor's Degree ➢ Master's of Divinity ➢ Post Graduate Work for Doctor of Sacred Theology in Pastoral Counseling (optional)	➢ 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

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, Paragraph C - Suggestions for Consideration in Cases Involving Domestic Violence)

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

A. Introduction to Mediation In Cases Involving Family Violence

The use of mediation remains a controversial issue within the domestic violence community. The reality is however, that for a variety of reasons, battered women engage in mediation. In this Third Edition of the Domestic Violence Benchbook, both sides are presented.

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. Only domestic relations mediators who have had specialized training in domestic violence mediation and are registered in that category with the Georgia Office of Dispute Resolution may serve as mediators in cases involving domestic violence issues. The Commission's Guidelines are set forth in their entirety in Section B.

The Georgia Commission on Family Violence and the Georgia Coalition Against Domestic Violence, present their joint position on the dangers involved in the use of mediation in Section C. In an attempt to ameliorate the power imbalance inherent in abuse cases and the tendency for victims to not self-report, they also provide a list of safeguards to consider when the court reviews mediated agreements in Section D.

B. Georgia Commission on Dispute Resolution's 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 Violence[1]

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. 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.

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[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.

4. When intake and screening procedures are in place[4] 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 by 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.

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.

[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

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.[15]

(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 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

[15] 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.

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

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

II. 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.

III. 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.

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 of 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

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@gbi.ga.gov
Ms. Mary King at (404) 270-8453 or email: mary.king@gbi.ga.gov

RESOURCES

A. Local Resources

LOCAL DOMESTIC VIOLENCE RESOURCES		
VICTIM SERVICES		
Name of Organization	**Contact Person**	**Telephone number**
National Domestic Violence Hotline – Safe Haven	Will provide local DV resources	1-800-HAVEN 1-800-4283
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		
Other		
Other		
Other		
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://www.georgiacourts.org/agencies/Interpreters/index.html	404-463-6478
Court Appointed Special Advocates, Inc. (CASA)	www.gacasa.org	800-251-4012
Criminal Justice Coordinating Council	www.ganet.org/cjcc	404-657-1956
Family Violence Intervention Programs, State Certification	www.gcfv.org/FVIP.htm	1-404-657-3412
Georgia Association of Chiefs of Police	www.gachiefs.com	770-495-9650
Georgia Bureau of Investigation Georgia's Protective Order Registry	http://www.ganet.org/gbi See Appendix M, Section F	404-244-2600 404-270-8464 404-270-8453
Georgia Coalition Against Domestic Violence	www.gcadv.org	404-209-0280
Georgia Commission on Family Violence	www.gcfv.org	404-657-3412
Georgia Council of Superior Court Judges	www.cscj.org	404-656-4964
Georgia Council on Aging	www.gcoa.org	404-657-5343
Georgia Crime Victims Compensation Program	www.ganet.org/cjcc/victimscomp.html	404-657-1956 1-800-547-0060
Georgia Department of Corrections Pardons and parole Victim services	www.dcor.state.ga.us	 404-656-5651 800-593-9474
Georgia Public Defender Standards Council	www.gpdsc.com/index.htm	800-676-4432
Georgia Legal Services	www.glsp.org	404-206-5175
Georgia Network to End Sexual Assault	www.gnesa.org	404-815-5261

DOMESTIC VIOLENCE RESOURCES

STATE RESOURCES

Name of Organization	Website	Telephone number
Georgia Office of Dispute Resolution	www.godr.org	404-463-3788
Institute of Continuing Judicial Education Domestic Violence Benchbook	www.uga.edu/icje/ www.uga.edu/icje/DVBenchbook.html	706-542-7491
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) Language Line Services	www.languageline.com 800-752-6096	770-413-5557 877-886-3885
Prevent Child Abuse Georgia	http://www.preventchildabusesega.org/html/home.html	Office 404-870-6565 Helpline 800-CHILDREN
Prosecuting Attorneys Council of Georgia Atlanta (main) Albany Macon Savannah	www.pacga.com	 404-969-4001 229-430-3818 478-751-6645 912-748-2843
Raksha Network for South Asians Helpline	www.raksha.org	404-876-0670 404-842-0725
Tapestri Refugee and Immigrant Coalition DV line Atlanta DV outside Atlanta Anti-Human Trafficking Outside Atlanta	www.tapestri.org	 404-299-2185 866-562-2873 404-299-0895 866-317-3733
U.S. Attorney's Offices – Violence Against Women Acts Contacts Northern District Middle District Albany	 www.usdoj.gov/usao/gan/ 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	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 o Violence Against Women	http://www.ndaa.org/apri/programs/vawa/vaw_home.htm	703-549-4253
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/	
Family Violence Prevention Fund San Francisco office Washington DC office Boston office A comprehensive website for FV that provides judges with groundbreaking materials, online resources and guidelines.	http://www.endabuse.org	 415-252-8900 202-682-1212 617-262-5900

DOMESTIC VIOLENCE RESOURCES

NATIONAL RESOURCES

Name of Organization	Website	Telephone number
Legal Momentum New York office Washington DC office Works on a national policy level to eradicate discrimination against victims of violence	www.legalmomentum.org	 212-925-6635 202-326-0040
Minnesota Center Against Violence and Abuse (MINCAVA) Located at the University of Minnesota, this site is an electronic clearinghouse providing access to over 3000 resources.	http://www.mincava.umn.edu	612-624-0721
National Center for Missing and Exploited Children Can assist if there is a fear of child abduction and steps necessary to prevent kidnapping – interstate or outside United States. 24 hr. hotline: Office:	www.missingkids.com	 1-800-THE-LOST 703-274-3900
National Center for State Courts Williamsburg, VA Denver, CO Arlington, VA 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 research articles and a detailed Resource Guide.	www.ncsconline.org	 800-616-6164 800-466-3063 800-532-0204

DOMESTIC VIOLENCE RESOURCES

NATIONAL RESOURCES

Name of Organization	Website	Telephone number
National Council of Juvenile and Family Court Judges – Family Violence Department 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.	www.ncjfcj.org	800-527-3223
National Criminal Justice Reference Service – Spotlight on Family Violence Family violence facts, publications, programs training and technical assistance.	www.ncjrs.gov/spotlight/family_violence/Summary.html	
National Criminal Justice Reference Service 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	http://www.ncjrs.gov/abstractdb/search.asp	
National Domestic Violence Hotline 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.	www.ndvh.org	800-799-SAFE
National Immigration Project of the National Lawyers Guild Protects the rights of non-citizen survivors of domestic violence.	www.nationalimmigrationproject.org	617-227-9727

DOMESTIC VIOLENCE RESOURCES

NATIONAL RESOURCES

Name of Organization	Website	Telephone number
National Organization for Victim Assistance Provides information and training to advocates working with crime victims.	www.trynova.org	703-535-NOVA
National Resource Center on Domestic Violence	www.nrcdv.org	800-537-2238
Stalking Resource Center Information clearinghouse, practitioners network and training.	http://www.ncvc.org	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.	www.usdoj.gov/ovw/	(202) 307-0728
Vera Institute of Justice New York office Washington DC 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.	www.vera.org/review_hearings	212-334-1300 202-347-6776
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 State Court Judges..	http://www.njep-ipsacourse.org	

BIBLIOGRAPHY

Adams, D. (2003). "Treatment Programs for Batterers", *Clinics in Family Practice,* Vol. 5(1), March, 2003.

Adrine, Ronald B. & Ruden, Alexandria M., *Ohio Domestic Violence Law*, 15.6, 2000.

Administrative Office of the Courts, "The Projected Number of Domestic Relations, Pro Se Filings in the Superior Courts of Georgia in Calendar Year 2004", *Research Division*, 2005.

Aiken, J & Murphy, J., "Evidence Issues in Domestic Violence Civil Cases", *Family Law Quarterly*, 34, 43-62, 2002.

Aldarondo and Mederos, "Common Practitioners' Concerns About Abusive Men", *Programs for Men Who Batter*, Civic Research Institute, 2002.

Aldarondo, E. & Mederos, F. (editors), "Common Practitioners' Concerns About Abusive Men"*, Programs for Men Who Batter*, Civic Research Institute, 2002.

American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, Washington, DC, 2000

American Psychological Association, 1996, "The Evidentiary Admissibility of Parental Alienation Syndrome", Report of the APA Presidential Task Force on Violence and the Family, Washington, D.C.

Bachman, R. and Saltzman, L.E., "Violence Against Women: Estimates from the Redesigned Survey", *U.S. Department of Justice, Bureau of Justice Statistics Special Report*, August, 1995.

Block, Carolyn Rebecca, Ph.D., "How Can Practitioners Help an Abused Woman Lower Her Risk of Death?" *NIJ Journal on Intimate Partner Homicide,* Issue #250, 2003

Bowermaster, J., & Johnson, D., "*The Role of Domestic Violence in Family Court Child Custody Determinations: An Interdisciplinary Investigation."* Paper presented at the Fourth International Conference on Children Exposed to Domestic Violence, San Diego, CA. October, 1998.

Bridges, F.S., Tatum, K.M. and Kunselman, J.C., 2008, "Domestic Violence Statutes and Rates of Intimate Partner and Family Homicide: A Research Note", *Criminal Justice Policy Review*, Volume 19, Issue 1, pp. 117-130.

Brigner, M., J.D., "*The Ohio Domestic Violence Benchbook: A Practical Guide for Judges and Magistrates*, Family Violence Prevention Center, Ohio Office of Criminal Justice Services, 1999.

Browne, Angela, Ph.D., "*When Battered Women Kill",* The Free Press, NY, NY, 1987.

Bruch, Carols, 2001, "Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases", *Family Law Quarterly, 35, 527*

Bureau of Labor Statistics, Dept. of Justice, "Domestic Violence Survey", as published by the *Charlotte Observer*, April 22, 1999, p. 3C

Campbell, Jacquelyn C., Ph.D., R.N., "Risk factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study." *American Journal of Public Health*, vol. 93, No. 7, July, 2003.

Campbell, Jacquelyn C., Ph.D., R.N., F.A.A.N., Webster, Daniel, Sc.D., et al, "Assessing Risk Factors for Intimate Partner Homicide", *NIJ Journal on Intimate Partner Homicide,* Issue #250, 2003.

Carlson, B. E. "Children's Observations of Interpersonal Violence". In A.R. Roberts (Ed.) *Battered Women and Their Families*, (pp. 147-167). NY: Springer, 1984.

Carpiano, Richard M., "*Three Steps Forward, Two Steps Back: Personal Health Perceptions and Needs of Female Domestic Abuse Victims and Their Access and Utilization of Health Services*". Minnesota Center Against Violence and Abuse. 1998.

Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, "*Cost of Intimate Partner Violence Against Women in the United States",* Atlanta (GA): 2003.

Court Review, "Special Issue on Domestic Violence*", The Journal of the American Judges Association,* 39, 2, Summer 2002.

DeBecker, Gavin, *The Gift of Fear, Survival Signals that Protect Us from Violence*, Little, Brown and Company, 1997.

DeKeseredy, Walter S., "Sexual Assault During and After Separation/Divorce: An Exploratory Study, National Institute of Justice/NCJRS, 2006.

Dugan, Nagin & Rosenfeld. "Explaining the Decline in Intimate Partner Homicide: The Effects of Changing Domesticity, Women's Status, and Domestic Violence Resources," *Homicide Studies,* 3, 187-214. 1999.

Duhart, Delis T. 2001. "National Crime Victimization Survey: Violence in the Workplace, 1993-1999" U.S. Department of Justice, Bureau of Justice Statistics. Washington, DC. 2001. Retrieved January 9, 2004 http://www.ojp.usdoj.gov/bjs/pub/pdf/vw99.pdf

Family Violence Prevention Fund. "*The Workplace Guide for Employers, Unions and Advocates",* San Francisco, CA. 1998.

Fields, Marjory, 2008, "Getting Beyond "What Did She Do to Provoke Him?": Comments by a Retired Judge, *Violence Against Women*, Volume 14, Issue 1, pp. 93-99.

Ganley, Anne L., Ph.D., "Domestic Violence: The What Why and Who as Relevant to Criminal and Civil Court Domestic Violence Cases", Chapter 2, *Domestic Violence Manual for Judges*, Washington State Gender and Justice Commission. 1997.

"*Georgia Domestic Violence Fatality Review Project, Annual Report 2007*", Georgia Commission on Family Violence and Georgia Coalition Against Domestic Violence.

Gilson, S.F., Cramer, E.P., & DePoy, E. (2001), "(Re)defining abuse among women with disabilities: Enlarging the scope", *AFFILIA* 16, 220-235.

Gondolf, E.W. & Russell, D., "The Case Against Anger Control Treatment Programs for Batterers", *Response*, 9, 2-5. 1986.

Gondolf, Edward W., "*Batterer Intervention Systems, Issues, Outcomes, and Recommendations"*, Sage Publications, Thousand Oaks, London, New Delhi, 2002.

Gottlieb, M., *The Angry Self: A Comprehensive Approach to Anger Management",* New York: Zeig, Tucker & Theisen. 1999.

Groves, Betsy McAlister, "*Children Who See Too Much"*, Beacon Press, Boston, 2002

Herman, Judith Lewis, M.D., "*Trauma and Recovery, the Aftermath of Violence-From Domestic Abuse to Political Terror"*, BasicBooks a division of HarperCollins, 1992.

Herrell, Adele, & Hofford, Meredith, "Family Violence: Improving Court Practice*",* 41, *Juvenile and Family Court Journal* 13, 1990.

Holt, V.H., Kernie, M.A., Lumley, T., Wolf, M.E., Rivara, F.P. "Civil Protection Orders and Risk of Subsequent Police-Reported Violence." *Journal of the American Medical Association*; 288(5): 589-594. 2002.

Hoult, J., "The Evidentiary Admissibility of Parental Alienation Syndrome: Science, Law and Policy", *Children's Legal Rights Journal*, 26 (1), pp. 1-61, Spring, 2006

Hunter, Nancy, M.A., "Critical Timing, Critical Decisions", *The Georgia Prosecutor*, IV, 1, Spring, 2003.

Hunter, Nancy, M.A., "The Psychology of Domestic Violence", *Law Enforcement Training Manual*. VAWA Grant, Georgia Criminal Justice Coordinating Council, 1999.

Jaffe, P.G., Lemon, N.K.D., Poisson, S.E., "Child Custody and Domestic Violence", 18-19, *Sage Publications*. 2003.

Jaffe, Peter, et al., "*Working Together to End Domestic Violence*, Mancorp Publishing, Inc., 1996.

James E. Bailey, MD, MPH, et al., "Risk Factors for Violence Death of Women in the Home," *Archives of Internal Medicine* 157, no. 7, 777-782. 1998.

Johnston, J.R. "High-Conflict Divorce", *Future of Children*, 4, 165-182, 1994.

Karr-Morse, Robin and Wiley, Meredith S., "*Ghosts from the Nursery, Tracing the Roots of Violence"*, Atlantic Monthly Press, 1997.

Kelly, Edwin W., Judge, "The Judge's Role in Domestic Violence Cases*", New Hampshire Bar Journal*, June, 1994.

Kelly, Maria, "Domestic Violence and Guns: Seizing Weapons Before the Court has Made a Finding of Abuse", 23 *Vt. L. Rev*. 361, 1998.

Keilitz, Susan L., Hannaford, Paula L. and Efkeman, Hillery S. "Civil Protection Orders: The Benefits and Limitations for Victims of Domestic Violence*" National Center for State Courts Research Report.* 1997.

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.

Levey, Lynn S., Steketee, Martha Wade & Keilitz, Susan L., "*Lessons Learned in Implementing an Integrated Domestic Violence Court: The District of Columbia Experience*", Project funded by the State Justice Institute (SJI-98-N-016) July, 2000.

Logan, T.K., Shannon, L. and Cole, J., "Stalking Victimization in the Context of Intimate Partner Violence", Violence and Victims, Vol. 22, Issue 6, pp.669-683, 2007

Mathis, Richard D. and Tanner, Zoe, "Effect of Unscreened Spouse Violence on Mediated Agreements", 26, *American Journal of Family Therapy*, 25, 1, 1998.

Meloy, J. Reid, Ph.D., Ed., *The Psychology of Stalking, Clinical and Forensic Perspectives*, Academic Press a division of Harcourt Brace & Company, CA, 1998.

Meloy, J. Reid, Ph.D., "*Violence Risk and Threat Assessment"*, Specialized Training Services, CA, 2000.

Orloff, Leslye E. and Little, Rachel, "*Somewhere to Turn: Making Domestic Violence Services Available to Battered Immigrant Women"*, Manual funded by a Family Violence Prevention and Services grant through the US Department of Health and Human Services, May 1999.

Ptack, James, "*Battered Women in the Courtroom, The Power of Judicial Responses",* Northeastern University Press, Boston, 1999.

Rennison, Callie Marie and Sarah Welchans, "*Intimate Partner Violence 1993-2001",* U.S. Department of Justice. 2003.

Saltzman et al., "Weapon Involvement and Injury Outcomes in Family and Intimate Assaults", *Journal of the American Medical Association*, Vol. 267, No. 22: 3043-3047. 1992.

Shahrokh, Narriman C. and Hales, Robert E., M.D., M.B.A., Eds., "*American Psychiatric Glossary, 8th Edition"*, American Psychiatric Publishing, Inc., Washington, DC and London, England, 2003.

Sharhabani-Arzy, R., Amir, M., Kotler, M. and Liran, R., "Toll of Domestic Violence: PTSD Among Battered Women in an Israeli Sample", *Journal of Interpersonal Violence,* Volume 18, Issue 11, pp. 1335-1346, November 2003.

Sharps, P. Campbell, J.C. et. al. (2003) "Risky Mix: Drinking, Drug Use, and Homicide*",* *NIJ Journal*, Issue #250, pp. 8-13

Silverman, J.G., Raj, A., Mucci, L.A., & Hathaway, J.E. "Dating Violence Against Adolescent Girls and Associated Substance Use, Unhealthy Weight Control, Sexual Risk Behavior, Pregnancy, and Suicidality", *Journal of the American Medical Association*, 286(5), 572-9. 2001.

Sobsey, D., Doe, T. (1991). "Patterns of sexual abuse and assault", *Sexuality and Disability"*, 9 (3), 243-259.

Stark, Evan and Flitcraft, Anne H., "Violence Among Intimates: an Epidemiological Review," *Handbook of Family Violence*, Eds. Van Hasselt, Morrison, Bellack and Hersen, p. 304, Plenum Press, NY, 1988

Strack, Gael and McClane, George, "Detection and Prosecution of Strangulation in Domestic Violence and Sexual Assault Cases", *New York State Office for the Prevention of Domestic Violence Bulletin*, Fall, 2003. Original article may be obtained gstrack@SanDiego.gov

Straus, M.A., "Children as Witnesses to Marital Violence: A Risk Factor for Lifelong Problems Among a Nationally Representative Sample of American Men and Women" *Report of the Twenty-Third Ross Roundtable*. Columbus, OH: Ross Laboratories. 1992.

Straus, M.A. and Gelles, R.J. (eds.), "*Physical Violence in American Families"*, New Brunswick, NJ, Transaction Publishers, 1990.

Stuart, Gregory L., Moore, Todd M., Gordon, Kristina Coop, et.al. (2006). "*Reasons for Intimate Partner Violence Perpetration Among Arrested Women",* Violence Against Women. V. 12, July, pp. 609-621.

Suedfeld, P., "Torture: A Brief Overview", *Psychology and Torture,* pp. 1-11,New York: Hemisphere Publishing, 1990.

Taylor, L.R. and Gaskin-Laniyan N., "Sexual Assault in Abusive Relationships", *National Institute of Justice Journal*, #256, January 2007.

Temple, J.R., Weston, R., Rodriguez, B.F. and Marshall, L.L., "Differing Effects of Partner and Nonpartner Sexual Assault on Women's Mental Health", *Violence Against Women: An International and Interdisciplinary Journal*, V. 13, #3, 285-297, March, 2007.

Thompson R.S., Bonomi A.E., Anderson M., et. al. *"*Intimate Partner Violence: Prevalence Types and Chronicity in Adult Women*", American Journal of Preventive Medicine* 30(6): 447-457, 2006.

UNICEF, The State of the World's Children 2007, Women and Children; The double dividend of gender equality. http://www.unicef.org/sowc07/docs/sowc07.pdf

U. S. Dept. of Justice, Bureau of Justice Statistics, Crime Characteristics. Retrieved May 17, 2005. http://www.ojp.usdoj.gov/bjs/cvict_c.htm

U. S. Dept. of Justice, Bureau of Justice Statistics, Homicide Trends in the United States. Retrieved May 17, 2005. http://www.ojp.usdoj.gov/bjs/homicide/region.htm

U.S. Dept. of Labor, Bureau of Labor Statistics. Census of Fatal Occupational Injuries: Table 4. *Fatal occupational injuries by worker characteristics and event or exposure*, 2003.

Wilson, C., and N. Brewer. 1992. "The Incidence of Criminal Victimization of Individuals with an Intellectual Disability," *Australian Psychologist*, Vol. 27, pp 114-17.

Wilson, Margo & Daly, Martin, "Spousal Homicide Risk and Estrangement", *Violence and Victims*, 8, 3-16, 1993.

Zahn, Margaret A., Ph.D., "Intimate Partner Homicide: An Overview"*, NIJ Journal on Intimate Partner Homicide,* Issue #250, 2003.

Zorza, Joan, J.D., "Women Battering: High Costs and the State of the Law," *Clearinghouse Review*, Special Issue, 1994

Zorza, J., "How Abused Women Can Use the Law to Help Protect Their Children". I E. Peled, P.G. Jaffe, & J.L. Edleson (Eds.) *Ending the Cycle of Violence: Community Responses to Children of Battered Women (*pp. 147-169). Thousand Oaks, CA: Sage. 1995.

Zorza, Joan, "What Is Wrong with Mutual Orders of Protection*?*", *Domestic Violence Report*, 1999.

Zorza, Joan, J.D., *Violence Against Women*, Civic Research Institute, Kingston, NJ, 2002

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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
FVIP	Family Violence Intervention Programs
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
in judicio	a course of legal proceedings

IPV	Intimate Partner Violence
LEP	Limited English Proficiency
LPR	Lawful Permanent Resident
MCDV	Misdemeanor Crimes of Domestic Violence
NCIC	National Crime Information Center Network
NCJFCJ	National Council of Juvenile and Family Court Judges
NCSC	National Center for State Courts
NICS	National Instant Criminal Background Check System
O.C.G.A.	Official Code of Georgia Annotated
PAS	Parental Alienation Syndrome
POR	Protective Order Registry
RWN	Refugee Women's Network, Inc.
SIJS	Special Immigration Juvenile Status
STOP Grant	Services Training Officers Prosecutors Violence Against Women Formula Grant Program (STOP Program)
TPO	Temporary Protective Order
TPS	Temporary Protected Status
U.S.C.A.	United States Code Annotated
USCIS	United States Citizenship and Immigration Services
VAWA	Violence Against Women Act
VWAP	Victim Witness Assistance Program

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