

FEDERAL DOMESTIC VIOLENCE LAWS

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SELECTED FEDERAL LAWS

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994

18 U.S.C. § 921. Definitions

(a) As used in this chapter

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that state. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

. . .

(17)(A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

. . .

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates, or has cohabited with the person.

(33) (A) Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that--

(I) is a misdemeanor under Federal, State, or Tribal law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim

(B)(I) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless--

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by

a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

. . .

1.) U.S. v. Hayes, (07-608) 55 U.S. - (February 24, 2009). The United States Supreme Court held that the definition of a “misdemeanor crime of domestic violence” contained in 18 U.S.C. 921(a)(33)(A) imposes two requirements “first, the crime must have, ‘as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon.’; second, it must be ‘committed by’ an intimate partner which specifies the domestic relationship with the victim. The definition does not require that the predicate offense statute include as an element the existence of that domestic relationship. Instead, it suffices for the U.S. Government to charge and prove a prior conviction that was in fact for “an offense . . . committed by” the defendant against an intimate partner or other domestic victim as defined in 18 U.S.C. 921(a)(33)(A).

2.) U.S. v. Brailey, C.A. 9 (WA.) 2005, 408 F.3d 609. Defendant was convicted of possession of a firearm by a person who had been convicted of a misdemeanor crime of domestic violence. Defendant never lost his civil rights under State law as a result of his State misdemeanor conviction and thus did not have his civil rights restored within the meaning of the exception in Federal law governing the offense of being a prohibited person in possession of a firearm.

3.) U.S. v. Frechette, D.Me. 2005, 372 F.Supp.2d 669. Defendant was charged with possession of a firearm after having previously been convicted in a state court of a misdemeanor crime of domestic violence. The question of whether the defendant knowingly and intelligently waived his right to a jury trial in the predicate state court prosecution was to be evaluated using the law of that jurisdiction. The court found that the defendant did not knowingly and intelligently waive his right to a jury trial under Maine law when he plead no contest where a group of defendants was advised of their trial rights in a mass arraignment and the defendant was not individually advised of his rights to a jury trial; thus, the offense could not serve as the predicate for the instant offense.

4.) U.S. v. Kirchoff, C.A. 8 (MO) 2004, 387 F.3d 748. Defendant was convicted of possession of firearms by a person who had been convicted of a misdemeanor crime of domestic violence. Defendant’s civil rights had not been taken away, under Missouri law, and thus could not have been restored following his conviction for domestic assault, so as to preclude his conviction for possession of a firearm by a person who had been convicted of a misdemeanor crime of domestic violence.

5.) U.S. v. Pfeifer, C.A. 8 (S.D.) 2004, 371 F.3d 430, rehearing and rehearing en banc denied August 6, 2004. Defendant knowingly and intelligently waived counsel on a misdemeanor assault charge by telling the judge that he wished to proceed without a lawyer after being advised of his counsel rights and repeatedly asked if he wished to waive them and after being advised, by reference, to discussion defendant had overheard with a preceding defendant, as to other rights that the defendant would be waiving by pleading guilty, and thus the misdemeanor assault conviction could serve as a predicate offense for the charge of possessing a firearm after being convicted of a misdemeanor crime of domestic violence. Further, the fact that the defendant was not advised that the guilty plea to the misdemeanor assault might adversely affect in the future his ability to possess a firearm did not render the plea “unknowing” and “unintelligent”.

6.) U.S. v. Cuervo, C.A. 8 (Iowa) 2004, 354 F.3d 969. Even though defendant was married and living with his wife, his secretary who was also his partner in a long term extra marital affair was deemed by the court to be “a person similarly situated to a spouse” so that the misdemeanor conviction of assault prohibited defendant from possessing a firearm or ammunition pursuant to federal law.

7.) U.S. v. Jennings, C.A. 4 (S.C.) 2003, 323 F.3d 263, certiorari denied 2003, 540 U.S. 1005, 124 S.Ct. 531, 157 L.Ed.2d 412. A defendant who was convicted of a misdemeanor crime of domestic violence but who never had his civil rights taken away could not have had them “restored” so as to exempt him from prosecution of the offense of possession of a firearm after conviction of a misdemeanor crime of domestic violence.

8.) U.S. v. Medicine Eagle, D.S.D. 2003, 266 F.Supp.2d 1039. South Dakota’s disorderly conduct conviction satisfied the requirements of the federal statute prohibiting possession of a firearm after being convicted of a misdemeanor crime of domestic violence, and therefore dismissal of the indictment for the federal offense was not warranted; the disorderly conduct conviction was a misdemeanor crime of domestic violence as shown by the arresting officer’s affidavit of probable cause which alleged that the defendant struck the victim, and by defendant’s acknowledgment, and his factual basis statement in state court, that he hit the victim.

9.) U.S. v. Wegrzyn, C.A. 6 (Mich.) 2002, 305 F.3d 593, rehearing denied (1/6/03). Upon the successful completion of a Michigan probationary sentence for misdemeanor domestic violence, the defendant was no longer considered ineligible to possess a firearm under federal statute, in light of the federal statute’s exception for persons whose civil rights have been restored.

10.) U.S. v. Meade, C.A. 1 (Mass.) 1999, 175 F.3d 215. The federal statute defining “misdemeanor crime of domestic violence,” for purposes of statute prohibiting person convicted of such crime from possessing firearms, did not require the predicate offense to have domestic relationship elements; accordingly, defendant’s past conviction, under Massachusetts law, for assault and battery upon his wife qualified as a misdemeanor crime of domestic violence, even though Massachusetts statute did not require a familial relationship between the party as an element of the state crime. Statute prohibiting person who is subject to a judicial anti-harassment or anti-stalking order from possessing firearms that has been shipped or transported in interstate commerce did not violate the Tenth Amendment, reserving to states those powers not vested in the federal sovereign, because statute did not in any way intrude upon the state court proceedings, or upon the authority of this state or its agents to administer their domestic relations laws in a manner they saw fit.

18 U.S.C. § 922. Unlawful acts

. . .

(d) 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--

. . .

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B) (I) 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; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

. . .

(g) It shall be unlawful for any person--

. . .

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C) (i) 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; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

. . .

1.) U.S. v. Hayes, (07-608) 55 U.S. - (February 24, 2009). The United States Supreme Court held that the definition of a "misdemeanor crime of domestic violence" contained in 18 U.S.C. 921(a)(33)(A) imposes two requirements "first, the crime must have, 'as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon.'; second, it must be 'committed by' an intimate partner which specifies the domestic relationship with the victim. The definition does not require that the predicate offense statute include as an element the existence of that domestic relationship. Instead, it suffices for the U.S. Government to charge and prove a prior conviction that was in fact for "an offense . . . committed by" the defendant against an intimate partner or other domestic victim as defined in 18 U.S.C. 921(a)(33)(A).

2.) U.S. v. Miles, (W.D.La.) 2006 WL 1044143. On June 30, 2004, Judge Teat of the Second Judicial District Court for the Parish of Jackson issued a temporary restraining order (TRO) pursuant to Louisiana R.S. 46:2131 which prohibited Miles from, among other things, harassing his second wife. Miles was served with the TRO by the East Baton Rouge Parish Sheriff's Office; on the bottom of the TRO was a notice of a Rule to Show Cause scheduled for August 6, 2004 at the Jackson Parish Courthouse in Jonesboro, Louisiana. Miles failed to appear at the August 6, 2004; a protective order meeting the requirements of 18 U.S.C. 922(g)(8) was signed on August 13, 2004 with an expiration date of February 13, 2006. On June 20, 2005 Miles was arrested after deputies responded to a 911 call placed by Miles' ex-wife; the investigation by deputies allegedly revealed that Miles had fired a firearm six times in close proximity to his former wife. A criminal history check revealed that Miles was under a protective order and the case was recommended for Federal prosecution. Miles argues that the prosecution is inappropriate as Miles was never served with the protective order. Defendant need only have notice of the hearing and an opportunity to be heard at

the hearing; there is no requirement that the defendant have notice of the issuance of the protective order.

3.) U.S. v. Young, C.A. 9 (Wash.) 2006, 458 F.3d 998. The court reversed the acquittal of the defendant finding that the definition of “hearing” apparently excludes certain types of restraining orders such as those issued ex parte and without notice. However the court did not find any basis in the statute for requiring that the restraining order issue after a proceeding with all the due process protections of a criminal trial. A hearing requires only actual notice and opportunity to be heard. The court further found that the statute does not require notice of the fact that a restraining order would issue, nor does it require any other form of “advance” notice. “Indeed, Congress chose to modify “notice” with “actual” rather than “advance” implying that it did not intend to require “advance” notice.” The court went on to define “opportunity to participate” not to be “actual” participation but only the mere “opportunity” to participate.

4.) U.S. v. Coccia, C.A. 1 (Mass.) 2006, 446 F.3d 233. Defendant was convicted of possession of a firearm while subject to a domestic restraining order. Defendant maintained that his conviction was in error because the Pennsylvania Domestic Abuse Order did not use the same verbiage as required in the statute, namely “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”. The First Circuit Court of Appeal looked to the reasoning and conclusion of the Fourth Circuit in U.S. v. Bostic, 168 F.3d 718 (4th Cir. 1999) which found that an order directing the defendant to “refrain from abusing” his wife satisfied the requirements of 18 U.S.C. 922 (g)(8)(C)(ii).

5.) U.S. v. Rogers, C.A. 10 (Utah) 2004, 371 F.3d 1225. The defendant was indicted for possession of a firearm while subject to a protection order and possession of a firearm after a misdemeanor domestic violence conviction. The Tenth Circuit Court of Appeals reversed the trial court’s holding and found that possession of a firearm while subject to a protection order and possession of a firearm following a misdemeanor conviction of domestic violence are in fact “crimes of violence” for purposes of the Bail Reform Act; therefore, the government was entitled to a detention hearing upon its request. The court went on to say that the dangerousness of guns and their adaptability to use in a violent crime is why congress has prohibited their possession by individuals subject to a domestic protection order or convicted of a misdemeanor crime of domestic violence. Without possession of guns, such persons are far less capable of committing acts of violence. In addition, the court found that the prohibitions set out in U.S.C. 922(g)(8) and (9) seek to protect society in general and the intimate partners of persons with a background of domestic violence in particular, by reducing the risk of violence that may result in the possession of guns by persons with a proven propensity for violence.

6.) U.S.v. Pfeifer, C.A. 8 (S.D.) 2004, 371 F.3d 430, rehearing and rehearing en banc denied. The statute criminalizing possession of a firearm after being convicted for a misdemeanor crime of domestic violence did not violate the Ex Post Facto Clause when applied to the defendant who committed the predicate offense prior to the enactment of the weapons offense; the prohibited conduct, possession of a firearm, occurred after the enactment of the statute. See also U.S. v. Mitchell, C.A. 4 (Va.) 2000, 209 F.3d 319 certiorari denied 121 S.Ct. 123, 531 U.S. 849, 148 L.Ed. 2d 78; U.S. v. Gillies, C.A. 1 (Mass.) 1988, 851 F.2d 492, certiorari denied 109 S.Ct. 147, 488 U.S. 857, 102 L.Ed. 2d 119.

7.) U.S. v. Lippman, C.A. 8 (N.D.) 2004, 369 F.3d 1039. The Eighth Circuit Court of Appeals affirmed a North Dakota trial court’s holding that the defendant did not need to know of the law prohibiting his possession of the firearm, nor did the defendant need to intend to violate it when the defendant was subject to a domestic violence restraining order. In addition, the Eighth Circuit upheld the trial court’s holding that “hearing” on a petition for a restraining order and “opportunity to participate” as required to support a conviction for possession of a firearm by an individual subject to a domestic violence restraining order, are not arcane legal terms incomprehensible to the general public and no further definition is needed for the jury.

8.) U.S. v. Hartsock, C.A. 1 (Me.) 2003, 347 F.3d 1. In a federal prosecution for possession of a firearm by a person with a misdemeanor conviction for a crime of domestic violence, the government has the burden to prove the

existence of the underlying conviction. The defendant bore the initial burden of producing evidence regarding an exception to the offense of possession of a firearm by a person convicted of a misdemeanor crime of domestic violence where defendant was convicted without counsel and without having knowingly and intelligently waived counsel; the defendant, not the government, bears the burden of persuasion for proving an affirmative defense that is provided by the exception.

9.) U.S. v. Banks, C.A. 5 (Tex.) 2003, 339 F.3d 267. The Fifth Circuit Court of Appeals reversed a Texas trial court and held that the restraining order against the defendant was entered after a “hearing” as required to support a subsequent charge of possession of a firearm while subject to a restraining order. The defendant had actual notice of the hearing and an opportunity to participate and the only reason that evidence was not introduced was because the defendant consented to the protective order.

10.) U.S. v. Belless, C.A. 9 (Mont.) 2003, 338 F.3d 1063. Defendant did not knowingly and intelligently waive his Sixth amendment right to counsel before pleading guilty to a misdemeanor domestic assault charge in state court, and thus the state conviction could not support the federal conviction for possession of a firearm following conviction for a misdemeanor domestic violence crime, when the defendant was never informed of the dangers and disadvantages of proceeding without counsel, nor provided with any warnings apart from the mailed written waiver of counsel.

11.) U.S. v. Shelton, C.A. 5 (Tex.) 2003, 325 F.3d 553. Causing bodily injury necessarily includes the element of use of physical force and the domestic relationship is not required to be an element of the predicate offense. Further, the court rejected the defendant’s contention that the statute requires knowledge that it was unlawful to possess a firearm after having been convicted of a misdemeanor crime of domestic violence.

12.) U.S. v. Jennings, C.A. 4 (S.C.) 2003, 323 F.3d 263, certiorari denied. A defendant who is convicted of a misdemeanor crime of domestic violence but who never had his civil rights taken away could not have had them “restored” so as to exempt him from prosecution for the offense of possessing a firearm after conviction of a misdemeanor crime of domestic violence.

13.) City of Cleveland v. Carpenter, Ohio App. 8 (12/18/03). Defendant was arrested and eight firearms seized pursuant to Ohio state law and was subsequently convicted of a crime which met the federal definition of a “misdemeanor crime of domestic violence.” Defendant sought release of the eight firearms seized by the police at the time of arrest. The Court of Appeals for the Eighth District of the State of Ohio affirmed the trial court’s decision to deny the defendant’s request since to return the firearms to the defendant would be a violation of federal law which prohibits the disposal of any firearm or ammunition to any person who has been convicted in any court of a misdemeanor crime of domestic violence.

14.) U.S. v. Spruill, C.A. 5 (Tex.) 2002, 292 F.3d 207. The protective order against husband’s harassing or threatening of wife, issued under state family code’s “agreed order” provision without any setting of hearing date or hearing, without parties’ appearing before judge, and without husband’s representation by counsel, did not satisfy “issued after a hearing” requirement of federal criminal statute governing possession of gun while subject to protective order, and thus could not support conviction under that statute, regardless of the fact that husband could have requested hearing during his discussion with assistant district attorney preceding his signing of order.

15.) U.S. v. Emerson, C.A. 5 (Tex.) 2001, 270 F.3d 203, rehearing and rehearing en banc denied 281 F.3d 1281, certiorari denied 122 S.Ct. 2362, 536 U.S. 907, 153 L.Ed.2d 184. The statute under which it is unlawful for any person who is subject to a court order prohibiting the use, the attempted use, or threatened use of physical force against an intimate partner or child to use or possess a firearm in or effecting interstate commerce does not require the court in which the criminal prosecution is brought to examine the record before the court which entered the predicate order, and acquit if the evidence before that court which entered the predicate order was not sufficient to sustain such a finding.

16.) U.S. v. Napier, C.A. 6 (Ky.) 2000, 233 F.3d 394. The statute proscribing possession of firearms while subject to a domestic violence order did not violate the Fifth Amendment as applied on ground that defendant did not in fact receive notice of the prohibition; where defendant was notified of the proceedings that lead up to issuance of a domestic violence order and did in fact attend those hearings, whose status alone, as one subject to a domestic violence order, was sufficient to preclude from claiming a lack of fair warning with respect to the requirements of the statute, regardless of whether he received or read those orders, which contained bold face warnings of the firearm prohibition.

17.) U.S. v. Hancock, C.A. 9 (Ariz.) 2000, 231 F.3d 557, certiorari denied 121 S.Ct. 1641, 532 U.S. 989, 149 L.Ed.2d 500 (2001). The government was not required under the due process clause to provide publicity to inform defendant of the enactment of the statute prohibiting possession of a firearm after having been convicted of a misdemeanor crime of domestic violence, even if defendant was the first in his judicial district to go to trial under statute, and, even if there were such a requirement, the statute satisfied it in that it received substantial publicity.

18.) U. S. v. Jones, C.A. 9 (Cal.) 2000, 231 F.3d 508. Statute which prohibits a person who is subject to a domestic violence restraining order from possessing a firearm does not violate the Commerce Clause, as the statute contains a jurisdictional element explicitly requiring a nexus between the possession of firearms and interstate commerce. See also U.S. v. Baker, C.A. 6 (Ky.) 1999, 197 F.3d 211, certiorari denied 120 S.Ct. 1262, 528 U. S. 1197, 146 L.Ed.2d 117 (2000); see also U. S. v. Wilson, C.A. 7(Ill.) 1998, 159 F.3d 280, rehearing and suggestion for rehearing en banc denied, certiorari denied 119 S.Ct. 2371, 527 U.S. 1024, 144 L.Ed.2d 774 (1999); see also U.S. v. Pierson, C.A. 5 (Tex.) 1998, 139 F.3d 501, certiorari denied 119 S.Ct. 220, 525 U.S. 896, 142 L.Ed.2d 181 (1998).

19.) U. S. v. Kafka, C.A. 9 (Wash.) 2000, 222 F.3d 1129. To obtain a conviction for possession of a firearm by the defendant while under a domestic violence restraining order, the government must prove that defendant “knowingly” violated the statute; however, the knowledge requirement only applies to the act of possession, and not to the prohibition on possessing firearms.

20.) U.S. v. Boyd, C.A. 10 (Kan.) 2000, 211 F.3d 1279. The statute prohibiting the possession, by a person convicted of a misdemeanor crime of domestic violence, of a firearm that had been shipped or transported in interstate or foreign commerce did not violate Commerce Clause or Tenth Amendment.

21.) U.S. v. Beavers, C.A. 6 (Mich.) 2000, 206 F.3d 706, certiorari denied 120 S.Ct. 1989, 529 U.S.1121, 146 L.Ed.2d 815 (2000). Statute prohibiting a person previously convicted of misdemeanor domestic violence from possessing a firearm did not violate due process by failing to require government to prove, as element of the offense, that defendant knew that his possession of firearm was illegal, despite defendant’s contention that statute was a highly technical one that could ensnare individuals engaged in apparently innocent conduct; defendant’s conviction on a domestic violence offense sufficiently placed him on notice that government might regulate his ability to own or possess a firearm.

22.) U.S. v. Reddick, C.A. 10 (Okla.) 2000, 203 F.3d 767. Defendant’s due process rights were not violated when he was convicted of possession of a firearm while under a domestic violence restraining order even though restraining order against him failed to advise him of, and he lacked knowledge of, existence of federal law prohibiting such possession.

23.) Gillespie v. City of Indianapolis, C.A. 7 (Ind.) 1999, 185 F.3d 693, certiorari denied 120 S.Ct. 934, 528 U.S. 1116, 145 L.Ed.2d 813. Because Congress engaged in a valid exercise of its Commerce Clause power when it enacted provisions of the federal gun control act prohibiting police officers convicted of misdemeanor crimes of domestic violence from possessing firearms in or affecting commerce, it followed that Congress did not violate the Tenth Amendment by intruding upon an area of authority reserved to the states.

24.) U.S. v. Lewitzke, C.A. 7 (Wis.) 1999, 176 F.3d 1022, certiorari denied 120 S.Ct. 267, 528 U.S 914, 145 L.Ed.2d 223 (1999). Statutory ban on firearm possession by those previously convicted of a misdemeanor crime of domestic violence was rationally related to legitimate government interest in protecting the public, particularly potential victims of domestic violence, from grievous harm that could be inflicted by firearms, and therefore did not violate

equal protection, even though a ban extended to domestic violence offenses committed in the distant past and did not apply to persons convicted of other types of misdemeanors who could also present a threat to society if armed; Congress could reasonably believe that individuals previously convicted of domestic violence offenses could again resort to violence and that, in the event they did so, access to firearms would increase the risk of grave harm.

25.) Fraternal Order of Police v. U.S., C.A.D.C.1999, 173 F.3d 898, certiorari denied 120 S.Ct .324, 528 U.S. 928, 145 L.Ed.2d 253 (1999). Amendments to the gun control act under which domestic violence misdemeanants were prohibited from possessing government-issued firearms, while domestic violence felons were not, did not violate equal protection, in as much as Congress could reasonably have believed that existing laws and practices adequately dealt with the problem of issuance of official firearms to felons.

26.) U.S. v. Smith, C.A. 8 (Iowa) 1999, 171 F.3d 617. The charging instrument in a prior assault case against defendant, as well as the written statement provided by the defendant at his initial appearance, both of which indicated that he grabbed his wife by the throat, pushed her down, and kept her from leaving the area of the elevator, established use of force required for assault conviction to qualify as "misdemeanor crime of domestic violence," within the meaning of the statute prohibiting possession of firearms by persons convicted of such crime, even though the assault statute did not require use of force as an element. Exception to the statute prohibiting firearm ownership by defendant convicted of a misdemeanor crime of domestic violence, following restoration of civil rights lost as a result of the original domestic violence conviction, did not violate equal protection rights of defendant whose predicate offense was a misdemeanor which did not result in the loss of civil rights; there was no invidious discrimination, as defendant could receive benefits of exception by obtaining pardon under state law, and it was rational for Congress to extend the firearm ban to those convicted of misdemeanors when physical force was used involving domestic relationships, relying on state law to determine who would fit within the exception.

27.) National Association of Government Employees, Inc. v. Barrett, N.D.Ga. 1997, 968 F.Supp. 1564, affirmed 155 F.3d 1276, rehearing and suggestion for rehearing en banc denied 189 F.3d 487 (1999). The statute prohibiting anyone convicted of a misdemeanor crime of domestic violence from possessing or receiving a firearm did not violate equal protection on the grounds that all misdemeanants should be subject to prohibition. Because this statute prohibiting anyone convicted of a misdemeanor crime of domestic violence from possessing a firearm was a valid exercise of Congress Commerce authority, it could not violate the Tenth Amendment.

18 U.S.C. § 924. Penalties

. . .

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (l), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

. . .

18 U.S.C. § 925. Exceptions: Relief from disabilities

(a) (1) The provisions of this chapter, except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

. . .

ATF memorandum addressing the gun control act exception, 18 U.S.C. §925(a)(1) dated 2/12/01. The bureau of Alcohol, Tobacco and firearms (ATF) interprets Section 925(a)(1) to provide that the gun control act does not prohibit a person subject to a disabling restraining order from receiving or possessing a firearm for use in performing official duties on behalf of a federal, state, or local law enforcement agency. The exception applies to an officer's receipt or possession of a firearm, as long as the officer is authorized or required to receive or possess that firearm in his/her official duty. The authorization must be by statute, regulation, or official departmental policy. This exception applies not only to a department-issued firearm, but to a firearm purchased by an officer if the officer is authorized or required to purchase his/her own service weapon and the firearm is possessed for use in performing official duties. For law enforcement officers who, under departmental policy, are never "off duty" and therefore are authorized or required to carry their service weapon at all times, the exception applies to their service weapon at all times. However, the exception does not apply for officers who are "off duty" at the end of a shift, and are not authorized by statute, regulation, or official departmental policy to possess their duty weapon for the purpose of performing official duties. The exception does not apply to a firearm possessed by a law enforcement officer in his/her personal capacity. Therefore, federal law would be violated if an officer subject to a disabling restraining order receives or possesses a firearm in a personal capacity. While the gun control act permits an officer who is the subject of a disabling restraining order to receive or possess a firearm in the course of his/her official duties, state or local laws may be more prohibitive. Moreover, individual law enforcement agencies may adopt rules that are more stringent than the prohibition imposed by the gun control act.

1.) U.S. v. Booker, D.Me., 2008, 570 F.Supp. 2d 161. The district court held that the second amendment, which guarantees to an individual the right to bear arms, did not preclude the federal criminal statute prohibiting possession of a firearm by a person previously convicted of a misdemeanor crime of domestic violence.

2.) U.S. v. Baker, C.A. 7 (Ill.) 2006, 438 F.3d 749. The statutory defense of law enforcement's authority to carry a firearm applies to members of the armed services and law enforcement agencies, not civilians who might otherwise be prohibited from carrying firearms, to do so in connection with their public responsibilities.

3.) Gillespie v. City of Indianapolis, C.A. 7(Ind.) 1999, 185 F.3d 693, certiorari denied 120 S.Ct. 934, 528 U.S. 1116, 145 L.Ed.2d 813. Because Congress engaged in the valid exercise of its Commerce Clause power when it enacted provisions of the federal gun control act prohibiting police officers convicted of misdemeanor crimes of domestic violence from possessing firearms in or affecting commerce, it followed that Congress did not violate the Tenth Amendment by intruding upon an area of authority reserved to the states.

4.) Fraternal Order of Police v. U.S., C.A.D.C. 1999, 173 F.3d 898, certiorari denied 120 S.Ct. 324, 528 U.S. 928, 145 L. Ed.2d 253 (1999). Congress acted within its power under the Commerce Clause in enacting a statute which barred domestic violence misdemeanants from possessing firearms, including government-issued firearms, given requirement that government satisfy statute's jurisdictional element in prosecuting violation by proving that defendant possessed firearms in or affecting commerce.

42 U.S.C. § 3796gg-4 Grants to Combat Violent Crimes Against Women

42 U.S.C. § 3796gg-4. Rape exam payments (restriction of funds)

(a) Restriction of funds

(1) In general

A State, Indian tribal government, or unit of local government, shall not be entitled to funds under this subchapter unless the State, Indian tribal government, unit of local government, or another governmental entity incurs the full out-of-pocket cost of forensic medical exams described in subsection (b) of this section for victims of sexual assault.

. . .

(e) Judicial notification

(1) In general

A State or unit of local government shall not be entitled to funds under this subchapter unless the State or unit of local government--

(A) certifies that its judicial administrative policies and practices include notification to domestic violence offenders of the requirements delineated in section 922(g)(8) and (g)(9) of Title 18, and any applicable related Federal, State, or local laws; or

(B) gives the Attorney General assurances that its judicial administrative policies and practices will be in compliance with the requirements of subparagraph (A) within the later of--

(I) the period ending on the date on which the next session of the State legislature ends; or

(ii) 2 years.

(2) Redistribution

Funds withheld from a State or unit of local government under subsection (a) of this section shall be distributed to other States and units of local government, pro rata.

42 U.S.C. § 3796gg-5. Costs for criminal charges and protection orders

(a) In general

A State, Indian tribal government, or unit of local government, shall not be entitled to funds under this subchapter unless the State, Indian tribal government, or unit of local government--

(1) certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, 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, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction; or

(2) gives the Attorney General assurances that its laws, policies and practices will be in compliance with the requirements of paragraph (1) within the later of--

(A) the period ending on the date on which the next session of the State legislature ends; or

(B) 2 years after October 28, 2000.

(b) Redistribution

Funds withheld from a State, unit of local government, or Indian tribal government under subsection (a) of this section shall be distributed to other States, units of local government, and Indian tribal government, respectively, pro rata.

(C) Definition

In this section, the term "protection order" has the meaning given the term in section 2266 of Title 18.

VIOLENCE AGAINST WOMEN ACT

18 U.S.C. § 2261. Interstate domestic violence

(a) Offenses.--

(1) Travel or conduct of offender.--A person who travels in interstate or foreign commerce or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(2) Causing travel of victim.--A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(b) Penalties--A person who violates this section or section 2261A shall be fined under this title, imprisoned--

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

(6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in Section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year

or both fined and imprisoned.

1.) U.S. v. Lankford, C.A. 5 (Tex.) 1999, 196 F.3d 563. The Violence Against Women Act (VAWA) section prohibiting interstate domestic violence did not exceed the scope of Congress' authority under the Commerce Clause, as VAWA regulated the use of channels of interstate commerce, namely, the interstate transportation routes through which persons and goods move. See also U.S. v. Gluzman, C.A. 2 (N.Y.) 1998, 154 F.3d 49, certiorari denied 119 S.Ct. 1257, 526 U.S. 1020, 143 L.Ed.2d 353; U.S. v. Bailey, C.A. 4 (W.Va.) 1997, 112 F.3d 758, certiorari denied 118 S.Ct. 240, 522 U.S. 896, 139 L.Ed. 2d 170, appeal from denial of habeas corpus 172 F.3d 864.

2.) U.S. v. Helem, C.A. 4 (N.C.) 1999, 186 F.3d 449, certiorari denied 120 S.Ct. 595, 528 U.S. 1053, 145 L.Ed.2d 494. The defendant satisfied the "in the course of or as a result of that conduct" requirement of the offense of interstate domestic violence under the Violence Against Women Act by beating his wife in their apartment before removing her from the state so that her condition would not be seen.

3.) U.S. v. Hornsby, C.A. 5 (Tex.) 1996, 88 F.3d 336. The sentencing court properly applied the kidnapping sentencing guideline as the most analogous guideline provision in sentencing the defendant for the crime of interstate domestic violence, which did not have an applicable guideline; since the defendant choked the victim, placed her in her automobile and drove her out of state, kidnapping guideline was most closely analogous to the defendant's crime, as it took into account violence, bodily injury, and abduction across state line. **NOTE:** This case was decided prior to the amendment to this section providing for applicable sentences.

18 U.S.C. § 2261A. Interstate stalking

Whoever--

(1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or

(2) with the intent--

(A) to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate, or cause substantial emotional distress to a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or

(B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to --

(I) that person;

(ii) a member of the immediate family (as defined in section 115) of that

person; or

(iii) a spouse or intimate partner of that person;

uses the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (I) through (iii) of subparagraph (B);

shall be punished as provided in section 2261(b) of this title.

U.S. v. Al-Zubaidy, C.A. 6 (Mich.) 2002, 283 F.3d 804. The statute setting forth the offense of interstate stalking was within Congress' authority under the Commerce Clause.

18 U.S.C. § 2262. Interstate violation of protection order

(a) Offenses.--

(1) Travel or conduct of offender.--A person who travels in interstate or foreign commerce, or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) Causing travel of victim.--A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties.--A person who violates this section shall be fined under this title, imprisoned--

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

or both fined and imprisoned.

1.) U.S. v. Von Foelkel, C.A. 2 (N.Y.) 1998, 136 F.3d 339. The statute that criminalized crossing state line with the intent to violate a protection order and then violating it was a valid exercise of Congress' authority under the Commerce Clause, and thus did not violate the Tenth Amendment, as the statute prohibited only those violations of protection orders that involved use of channels and instrumentalities of interstate commerce. See also U.S. v. Wright, C.A. 8 (Neb.) 1997, 128 F.3d 1274, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 1376, 523 U.S. 1053, 140 L.Ed.2d 524.

2.) U.S. v. Casciano, C.A. 2 (N.Y.) 1997, 124 F.3d 106, certiorari denied 118 S.Ct. 639, 522 U.S. 1034, 139 L.Ed.2d 618. Evidence was sufficient to convict defendant of crossing a state line with intent to engage in conduct in violation of a protection order; defendant appeared to have repeatedly contacted victim by telephone and electronic mail and subsequently crossed a state line and came within 100 yards of the victim, all of which contradicted portions of the protection order that protected the victim from "repeated harassment."

18 U.S.C. § 2263. Pretrial release of defendant

In any proceeding pursuant to section 3142 for the purpose of determining whether a defendant charged under this chapter shall be released pending trial, or for the purpose of determining conditions of such release, the alleged victim shall be given an opportunity to be heard regarding the danger posed by the defendant.

18 U.S.C. § 2264. Restitution

(a) In general.--Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) Scope and nature of order.--

(1) Directions.--The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) Enforcement.--An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) Definition.--For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for--

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and
- (F) any other losses suffered by the victim as a proximate result of the offense.

(4) Order mandatory.--(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of--

(I) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(C) Victim defined.--For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

U.S. v. Hayes, C.A. 2 (N.Y.) 1998, 135 F.3d 133. Pursuant to the Violence Against Women Act, the District Court properly took into account the losses incurred by defendant's former wife (victim) as a result of defendant's conduct extending back to the time the former wife obtained protection orders when the court determined the amount of restitution to order against the defendant; the defendant pleaded guilty to crossing a state line to violate the orders of protection. Congress' inclusion of expenses that would date back to the acquisition of protection orders, as well as the statute's broad language requiring full restitution, indicated the intent that costs included not be limited to those incurred after the proscribed activity occurred. The court included the former wife's claim for six hundred dollars (\$600.00) in monthly rent based on her need to stay with her parents as a result of the defendant's behavior, even though the wife did not claim to have actually incurred such expense. The wife's parents' contribution to the expense of securely housing the former wife and her son did not preclude inclusion of reasonable housing costs in the restitution order.

18 U.S.C. § 2265. Full faith and credit given to protection orders

(a) Full faith and credit.--Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.

(b) Protection order.--A protection order issued by a State, tribal, or territorial court is consistent with this subsection if--

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(C) Cross or counter petition.--A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if --

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) Notification and registration.--

(1) Notification.--A State, Indian tribe, or territory according full faith and credit to an order by a court of another state, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) No prior registration or filing as prerequisite for enforcement.--Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

(3) Limits on internet publication of registration information – A state, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration or filing of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(e) Tribal court jurisdiction.--For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

18 U.S.C. § 2265A. Repeat offenders

(a) Maximum term of imprisonment.--The maximum term of imprisonment for a violation of this chapter after a prior domestic violence or stalking offense shall be twice the term otherwise provided under this chapter.

(b) Definition.--For purposes of this section--

(1) the term "prior domestic violence or stalking offense" means a conviction for an offense-

(A) under section 2261, 2261A, or 2262 of this chapter; or

(B) under State law for an offense consisting of conduct that would have been an offense under a section referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States, or in interstate or foreign commerce; and

(2) the term "State" means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

18 U.S.C. § 2266. Definitions

In this chapter:

(1) Bodily injury.--The term "bodily injury" means any act, except one done in self-defense, that results in physical injury or sexual abuse.

(2) Course of conduct.--The term "course of conduct" means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

(3) Enter or leave Indian country.--The term "enter or leave Indian country" includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.

(4) Indian country.--The term "Indian country" has the meaning stated in section 1151 of this title.

(5) Protection order.--The term "protection order" includes --

(A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

(6) Serious bodily injury.--The term "serious bodily injury" has the meaning stated in section 2119(2).

(7) Spouse or intimate partner.--The term "spouse or intimate partner" includes--

(A) for purposes of--

(I) sections other than 2261A --

(I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and

(ii) section 2261A --

(I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or

(I) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

(8) State.--The term "State" includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

(9) Travel in interstate or foreign commerce.--The term "travel in interstate or foreign commerce" does not include travel from 1 state to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

(10) Dating partner- The term "dating partner" refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of - -

(A) the length of the relationship; and

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

18 U.S.C. § 3771. Crime victims' rights

(a) Rights of crime victims.--A crime victim has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.

(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.

(5) The reasonable right to confer with the attorney for the Government in the case.

(6) The right to full and timely restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(b) Rights afforded. --

(1) In general -- In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(2) Habeas corpus proceedings. --

(A) In general. -- In a federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in

paragraphs (3), (4), (7), and (8) of subsection (a).

(B) Enforcement. --

(I) In general. -- These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).

(ii) Multiple victims. -- In a case involving multiple victims, subsection (d)(2) shall also apply.

(C) Limitation. -- This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus proceedings arising out of a State conviction, and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.

(D) Definition. -- For purposes of this paragraph, the term "crime victim" means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative.

(C) Best efforts to accord rights.--

(1) Government.--Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

(2) Advice of attorney.--The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) Notice.--Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

(d) Enforcement and limitations.--

(1) Rights.--The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) Multiple crime victims.--In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) Motion for relief and writ of mandamus.--The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) Error.--In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) Limitation on relief.--In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if--

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 10 days; and

(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

(6) No cause of action.--Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) Definitions.--For the purposes of this chapter, the term "crime victim" means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

(f) Procedures to promote compliance.--

(1) Regulations.--Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) Contents.--The regulations promulgated under paragraph (1) shall--

(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

PARENTAL KIDNAPPING PREVENTION ACT

28 U.S.C. § 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term—

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(C) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction

because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (I) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (I) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if--

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.

1.) Miller-Jenkins v. Miller-Jenkins, 276 Va. 19, 661 S.E.2d 822, 2008 WL 2312687. The biological mother of a child filed a petition to establish parentage and for declaratory relief, seeking declaration that she was the sole parent of the child and an adjudication of any parental rights claimed by her same-sex partner to be void. The district court issued a ruling stating that the mother was the sole biological and natural parent of the child and that mother's same-sex partner had no claims of parentage or visitation rights over the child. The same-sex partner appealed. The same-sex partner registered a Vermont Custody Order and mother appealed. The Virginia Supreme Court held that the law of the case doctrine precluded the biological mother from appealing the Court of Appeals reinstatement of the Vermont Child Custody Order that granted mother's former same-sex partner visitation rights with the child.

2.) A.K. v. N.B., 2008 WL 2154098. Natural mother of a child filed a petition for temporary custody of the child which resulted in an ex parte order granting her temporary sole custody. Thereafter, following a

hearing, judgment was entered ruling that the California Court, which had previously entered an order determining that both natural mother and her former female partner were parents of the child, lacked subject matter jurisdiction over the matter, that natural mother was the child's sole parent, and that natural mother's former partner had no visitation rights with respect to the child. The former partner filed a motion seeking relief from the judgment. The Alabama Court of Civil Appeals held that the California Court had jurisdiction to determine the former partner's visitation rights with the child under the Parental Kidnaping Prevention Act (PKPA) and California's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and that the PKPA prevented the Alabama trial court from entering a judgment concerning visitation rights between the child and the former partner.

3.) Atkins v. Atkins, 623 So.2d 239 (La.App. 2 Cir. 1993). The Parental Kidnapping Prevention Act "PKPA" preempts the Uniform Child Custody Jurisdiction Act (UCCJA) in the event of concurrent jurisdiction. Although the Parental Kidnapping Prevention Act only applies directly to modification proceedings, it also indirectly governs initial custody determinations.

4.) Fuge v. Uiterwyk, 613 So.2d 717 (La.App. 4 Cir. 1993), writ denied 619 So.2d 574. The provisions of the Federal Parental Kidnapping Prevention Act did not prevent Louisiana from modifying a Florida visitation and support order pursuant to its jurisdiction under the Uniform Child Custody Jurisdiction Act; Florida courts had deferred to Louisiana's jurisdiction and Louisiana was children's home state at the commencement of the instant proceedings.

5.) Nielsen v. Nielsen, 472 So.2d 133 (La.App. 5 Cir. 1985). Louisiana, the State in which the initial child custody decree was issued, had continuing jurisdiction to determine custody of a child domiciled with the mother in Texas.

6.) Ingram v. Ingram, 463 So.2d 932 (La.App. 2 Cir. 1985). Louisiana lacked jurisdiction under the Parental Kidnapping Prevention Act to modify a child custody provision of a Texas divorce decree where Texas continued to have jurisdiction. Louisiana District Court could deny jurisdiction of a proceeding to modify child custody even though the initial decree was issued in a Louisiana court and the father continued to reside in Louisiana, where Texas was the child's home state at the time of the modification proceeding, Texas had closer connections with the child and the mother, and substantial evidence concerning the child was readily available in Texas.

7.) Wachter v. Wachter, 439 So.2d 1260 (La.App. 5 Cir. 1983). Where a sister state was home state of the children at the time the custody proceeding was filed in that state and children had not been abandoned nor did they need emergency protection from abuse, the district court erred in finding that it had jurisdiction to decide custody on its own.

GENERAL PROGRAM OF ASSISTED HOUSING

42 U.S.C. § 1437c-1. Public housing agency plans

(a) 5-year plan

(1) In general

Subject to paragraph (3), not less than once every 5 fiscal years, each public housing agency shall submit to the Secretary a plan that includes, with respect to the 5 fiscal years immediately following the date on which the plan is submitted--

(A) a statement of the mission of the public housing agency for serving the needs of low-income and very low-income families in the jurisdiction of the public housing agency during such fiscal years; and

(B) a statement of the goals and objectives of the public housing agency that will enable the public housing agency to serve the needs identified pursuant to subparagraph (A) during those fiscal years.

(2) Statement of goals

The 5-year plan shall include a statement by any public housing agency of the goals, objectives, policies, or programs that will enable the housing authority to serve the needs of child and adult victims of domestic violence, dating violence, sexual assault, or stalking.

(3) Initial plan

The initial 5-year plan submitted by a public housing agency under this subsection shall be submitted for the 5-year period beginning on October 1, 1999, or the first fiscal year thereafter for which the public housing agency initially receives assistance under this chapter.

. . .

(d) Contents

An annual public housing agency plan under subsection (b) of this section for a public housing agency shall contain the following information relating to the upcoming fiscal year for which the assistance under this chapter is to be made available:

. . .

(13) Domestic violence, dating violence, sexual assault, or stalking programs

A description of--

(A) any activities, services, or programs provided or offered by an agency, either directly or in partnership with other service providers, to child or adult victims of domestic violence, dating violence, sexual assault, or stalking;

(B) any activities, services, or programs provided or offered by a public housing agency that helps child and adult victims of domestic violence, dating violence, sexual assault, or stalking, to obtain or maintain housing; and

(C) any activities, services, or programs provided or offered by a public housing agency to prevent domestic violence, dating violence, sexual assault, and stalking, or to enhance victim safety in assisted families.

. . .

42 U.S.C. § 1437d. Contract provisions and requirements; loans and annual contributions

. . .

(C) Revision of maximum income limits; certification of compliance with requirements; notification of eligibility; informal hearing; compliance with procedures for sound management

Every contract for contributions shall provide that--

...

(3) the public housing agency shall not deny admission to the project to any applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking if the applicant otherwise qualifies for assistance or admission, and that nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking;

...

(e) Leases; terms and conditions; maintenance; termination

Each public agency shall utilize leases which - -

...

(5) require that the public housing agency may not terminate the tenancy except for serious or repeated violation of the terms or conditions of the lease or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence;

(6) provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy; except that: (A) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (B) notwithstanding subparagraph (A) or any Federal, State, or local law to the contrary, a public housing agency may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant and such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing; (C) nothing in subparagraph (A) may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (D) nothing in subparagraph (A) limits any otherwise available authority of a public housing agency to evict a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (E) nothing in subparagraph (A) may be construed to limit the authority of a public housing agency to terminate the tenancy of any tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant's tenancy is not terminated; and (F) nothing in this section shall be construed to

supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking..

. . .

(u) Certification and confidentiality

(1) Certification

(A) In general

A public housing agency responding to subsection (l)(5) and (6) of this section may request that an individual certify via a HUD approved certification form that the individual is a victim of domestic violence, dating violence, or stalking, and that the incident or incidents in question are bona fide incidents of such actual or threatened abuse and meet the requirements set forth in the aforementioned paragraphs. Such certification shall include the name of the perpetrator. The individual shall provide such certification within 14 business days after the individual receives a request for such certification from the public housing agency.

(B) Failure to provide certification

If the individual does not provide the certification within 14 business days after the individual has received a request in writing for such certification from the public housing agency, nothing in this subsection, or in paragraph (5) or (6) of subsection (l) of this section, may be construed to limit the authority of the public housing agency to evict any tenant or lawful occupant that commits violations of a lease. The public housing agency may extend the 14-day deadline at its discretion.

(C) Contents

An individual may satisfy the certification requirement of subparagraph (A) by--

(I) providing the requesting public housing agency with documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional, from whom the victim has sought assistance in addressing domestic violence, dating violence, or stalking, or the effects of the abuse, in which the professional attests under penalty of perjury (28 U.S.C. 1746) to the professional's belief that the incident or incidents in question are bona fide incidents of abuse, and the victim of domestic violence, dating violence, or stalking has signed or attested to the documentation; or

(ii) producing a Federal, State, tribal, territorial, or local police or court record.

(D) Limitation

Nothing in this subsection shall be construed to require any public housing agency to demand that an individual produce official documentation or physical proof of the individual's status as a victim of domestic violence, dating violence, or stalking in order to receive any of the benefits provided in this section. At the public housing agency's discretion, a public housing agency may provide benefits to an individual based solely on the individual's statement or other corroborating evidence.

(E) Preemption

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(F) Compliance not sufficient to constitute evidence of unreasonable act

Compliance with this statute by a public housing agency, or assisted housing provider based on the certification specified in subparagraphs (A) and (B) of this subsection or based solely on the victim's statement or other corroborating evidence, as permitted by subparagraph (D) of this subsection, shall not alone be sufficient to constitute evidence of an unreasonable act or omission by a public housing agency or employee thereof. Nothing in this subparagraph shall be construed to limit liability for failure to comply with the requirements of subsection (1)(5) and (6) of this section.

(2) Confidentiality

(A) In general

All information provided to any public housing agency pursuant to paragraph (1), including the fact that an individual is a victim of domestic violence, dating violence, or stalking, shall be retained in confidence by such public housing agency, and shall neither be entered into any shared database nor provided to any related entity, except to the extent that disclosure is--

(I) requested or consented to by the individual in writing;

(ii) required for use in an eviction proceeding under subsection (1)(5) or (6) of this section; or

(iii) otherwise required by applicable law.

(B) Notification

Public housing agencies must provide notice to tenants assisted under this section of their rights under this section and subsection (1)(5) and (6) of this section, including their right to confidentiality and the limits thereof.

(3) Definitions

For purposes of this subsection, subsection (c)(3), and subsection (1)(5) and (6) of this section--

(A) the term "domestic violence" has the same meaning given the term in section 13925 of this title;

(B) the term "dating violence" has the same meaning given the term in section 13925 of this title;

(C) the term "stalking" means--

(i)(I) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or

(II) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and

(ii) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to--

(I) that person;

(II) a member of the immediate family of that person; or

(III) the spouse or intimate partner of that person; and

(D) the term "immediate family member" means, with respect to a person--

(i) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(ii) any other person living in the household of that person and related to that person by blood or marriage.

42 U.S.C. § 1437f. Low income housing assistance

. . .

(C) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments.

. . .

(9)(A) That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.

(B) An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.

(C)(i) Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking.

(ii) Notwithstanding clause (i) or any Federal, State, or local law to the contrary, an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing.

(iii) Nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.

(iv) Nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant

or a member of the tenant's household, provided that the owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate.

(v) Nothing in clause (i) may be construed to limit the authority of an owner, manager, or public housing agency to evict or terminate from assistance any tenant or lawful occupant if the owner, manager or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance.

(vi) Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

(d) Required provisions and duration of contracts for assistance payments; waiver of limitation

(1) Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that--

(A) the selection of tenants shall be the function of the owner, subject to the annual contributions contract between the Secretary and the agency, except that with respect to the certificate and moderate rehabilitation programs only, for the purpose of selecting families to be assisted, the public housing agency may establish local preferences, consistent with the public housing agency plan submitted under section 1437c-1 of this title by the public housing agency and that an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission;

(B)(i) the lease between the tenant and the owner shall be for at least one year or the term of such contract, whichever is shorter, and shall contain other terms and conditions specified by the Secretary;

(ii) during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence;

(iii) during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy, except that: (I) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, shall not be cause for termination of the tenancy or occupancy rights or program assistance, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (II) Notwithstanding subclause (I) or any Federal, State, or local law to the contrary, a public housing agency may terminate assistance to, or an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove,

terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing. (III) nothing in subclause (I) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (IV) nothing in subclause (I) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (V) nothing in subclause (I) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance, to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (VI) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

. . .

(f) Definitions

. . .

(8) the term "domestic violence" has the same meaning given the term in section 13925 of this title;

(9) the term "dating violence" has the same meaning given the term in section 13925 of this title;

(10) the term "stalking" means--

(A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or

(ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and

(B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to--

(i) that person;

(ii) a member of the immediate family of that person; or

(iii) the spouse or intimate partner of that person; and

(11) the term "immediate family member" means, with respect to a person--

(A) a spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in loco parentis; or

(B) any other person living in the household of that person and related to that person by blood or marriage.

. . .

(o) Voucher program

. . .

(7) Leases and tenancy

Each housing assistance payment contract entered into by the public housing agency and the owner of a dwelling unit--

. . .

(C) shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, and that an incident or incidents of actual or threatened domestic violence, dating violence, or stalking shall not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the tenancy or occupancy rights of the victim of such violence;

(D) shall provide that during the term of the lease, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any violent or drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy; except that (i) criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of the tenancy or occupancy rights, if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking; (ii) Limitation.--Notwithstanding clause (i) or any Federal, State, or local law to the contrary, a public housing agency may terminate assistance to, or an owner or manager may bifurcate a lease under this section, or remove a household member from a lease under this section, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by Federal, State, and local law for the termination of leases or assistance under the relevant program of HUD-assisted housing. (iii) nothing in clause (i) may be construed to limit the authority of a public housing agency, owner, or manager, when notified, to honor court orders addressing rights of access or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up; (iv) nothing in clause (i) limits any otherwise available authority of an owner or manager to evict or the public housing agency to terminate assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the owner, manager, or public housing agency does not subject an individual who is or has been a victim

of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate; (v) nothing in clause (i) may be construed to limit the authority of an owner or manager to evict, or the public housing agency to terminate assistance to any tenant if the owner, manager, or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance; and (vi) nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

. . .

(20) Prohibited basis for termination of assistance

(A) In general

A public housing agency may not terminate assistance to a participant in the voucher program on the basis of an incident or incidents of actual or threatened domestic violence, dating violence, or stalking against that participant.

(B) Construal of lease provisions

Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered a serious or repeated violation of the lease by the victim or threatened victim of that criminal activity justifying termination of assistance to the victim or threatened victim.

(C) Termination on the basis of criminal activity

Criminal activity directly relating to domestic violence, dating violence, or stalking shall not be considered cause for termination of assistance for any participant or immediate member of a participant's family who is a victim of the domestic violence, dating violence, or stalking.

(D) Exceptions

(i) Public housing authority right to terminate for criminal acts

Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of the public housing agency to terminate voucher assistance to individuals who engage in criminal acts of physical violence against family members or others.

(ii) Compliance with court orders

Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of a public housing agency, when notified, to honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up.

(iii) Public housing authority right to terminate voucher assistance for lease violations

Nothing in subparagraph (A), (B), or (C) limit any otherwise available authority of the public housing agency to terminate voucher assistance to a tenant for any violation of a lease not premised on the act or acts of violence in question against the tenant or a member of the tenant's household, provided that the public housing agency does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to terminate.

(iv) Public housing authority right to terminate voucher assistance for imminent threat

Nothing in subparagraph (A), (B), or (C) may be construed to limit the authority of the public housing agency to terminate voucher assistance to a tenant if the public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property or public housing agency if that tenant is not evicted or terminated from assistance.

(v) Preemption

Nothing in this section shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, or stalking.

. . .

(r) Portability

. . .

(5) Lease violations

A family may not receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has moved out of the assisted dwelling unit of the family in violation of a lease, except that a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been the victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted

dwelling unit.

. . .

Metro North Owners, L.L.C. v. Thorpe, 870 N.Y.S.2d 768, 2008 WL 5381477 (N.Y. City Civil Court), 2008. Landlord brought a holdover proceeding against a Section 8 tenant, alleging nuisance in violation of the lease related to a domestic violence incident in which the tenant allegedly stabbed her ex-husband. The tenant moved for summary judgment based on the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005). The civil court for the City of New York held that the history of domestic violence could not be used to show a propensity on the part of the tenant to stab her ex-husband, but only as background information. Further, the tenant's affidavit sufficiently stated her claim for protection under VAWA 2005; the property manager's affidavit was unsubstantiated and conclusory and the security guard's report was inadmissible hearsay. Further, the court found that even if the landlord had submitted admissible evidence, the tenant was a victim of domestic violence and entitled to protection under VAWA 2005.

MISCELLANEOUS

18 U.S.C. § 117. Domestic assault by an habitual offender

(a) In general.--Any person who commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country and who has a final conviction on at least 2 separate prior occasions in Federal, State, or Indian tribal court proceedings for offenses that would be, if subject to Federal jurisdiction--

(1) any assault, sexual abuse, or serious violent felony against a spouse or intimate partner; or

(2) an offense under chapter 110A,

shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.

(b) Domestic assault defined.--In this section, the term "domestic assault" means an assault committed by a current or former spouse, parent, child, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child, or guardian of the victim.

18 U.S.C. § 875. Interstate communications

(a) Whoever transmits in interstate or foreign commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than twenty years, or both.

(c) Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both.

U.S. v. Kammersell, C.A. 10 (Utah) 1999, 196 F.3d 1137, Certiorari denied 120 S.Ct. 2664, 530 U.S. 1231, 147 L.Ed. 2d 277. The defendant's transmission of a threatening communication from his computer via "instant message" to the recipient's computer in the same state was sufficient to satisfy the jurisdictional element of the offense of transmission of a threatening communication in interstate commerce; the message was transmitted over interstate telephone lines and traveled to a server out of the state during the transmission; it is of no moment whether only the recipient in the same state could have viewed the message.

25 U.S. C. § 2803. Bureau of Indian Affairs - Law enforcement authority

The Secretary may charge employees of the Bureau of Indian Affairs with law enforcement responsibilities and may authorize those employees to--

(1) carry firearms;

(2) execute or serve warrants, summonses, or other orders relating to a crime committed in Indian country and issued under the laws of--

(A) the United States (including those issued by a Court of Indian Offenses under regulations prescribed by the Secretary), or

(B) an Indian tribe if authorized by the Indian tribe;

(3) make an arrest without a warrant for an offense committed in Indian country if--

(A) the offense is committed in the presence of the employee,

(B) the offense is a felony and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing, the felony, or

(C) the offense is a misdemeanor crime of domestic violence, dating violence, stalking, or violation of a protection order and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent or guardian of the victim, and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing the crime;

(4) offer and pay a reward for services or information, or purchase evidence, assisting in the detection or investigation of the commission of an offense committed in Indian country or in the arrest of an offender against the United States;

(5) make inquiries of any person, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter relevant to the enforcement or carrying out in Indian country of a law of either the United States or an Indian tribe that has authorized the employee to enforce or carry out tribal laws;

(6) wear a prescribed uniform and badge or carry prescribed credentials;

(7) perform any other law enforcement related duty; and

(8) when requested, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement or carrying out of the laws or regulations the agency enforces or administers.

INDIAN CHILD WELFARE

25 U.S.C. § 1901 through 1903.

25 U.S.C. § 1901. Congressional findings

Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds--

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have power to regulate commerce with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 U.S.C. § 1902. Congressional declaration of policy

The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

25 U.S.C. § 1903. Definitions

For the purposes of this chapter, except as may be specifically provided otherwise, the term—

(1) “child custody proceeding” shall mean and include--

(i) “foster care placement” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) “termination of parental rights” which shall mean any action resulting in the termination of the parent-child relationship;

(iii) “preadoptive placement” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) “adoptive placement” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) “extended family member” shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) “Indian” means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 1606 of Title 43;

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(C) of Title 43;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of Title 18 and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

INDIAN CHILD WELFARE - CHILD CUSTODY PROCEEDINGS

25 U.S.C. § 1911 through 1923.

25 U.S.C. § 1911. Indian tribe jurisdiction over Indian child custody proceedings

(a) Exclusive jurisdiction

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided*, That such transfer shall be subject to declination by the tribal court of such tribe.

(C) State court proceedings; intervention

In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

25 U.S.C. § 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel

In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(C) Examination of reports or other documents

Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures

Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

25 U.S.C. § 1913. Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(C) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) Collateral attack; vacation of decree and return of custody; limitations

After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

25 U.S.C. § 1914. Petition to court of competent jurisdiction to invalidate action upon showing of certain violations

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

25 U.S.C. § 1915. Placement of Indian children

(a) Adoptive placements; preferences

In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Foster care or preadoptive placements; criteria; preferences

Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(C) Tribal resolution for different order of preference; personal preference considered; anonymity in application of preferences

In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided*, That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) Social and cultural standards applicable

The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) Record of placement; availability

A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

25 U.S.C. § 1916. Return of custody

(a) Petition; best interests of child

Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 1912 of this title, that such return of custody is not in the best interests of the child.

(b) Removal from foster care home; placement procedure

Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this chapter, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

25 U.S.C. § 1917. Tribal affiliation information and other information for protection of rights from tribal relationship; application of subject of adoptive placement; disclosure by court

Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

25 U.S.C. § 1918. Reassumption of jurisdiction over child custody proceedings

(a) Petition; suitable plan; approval by Secretary

Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by Title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b) Criteria applicable to consideration by Secretary; partial retrocession

(1) In considering the petition and feasibility of the plan of a tribe under subsection (a) of this section, the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 1911(a) of this title are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 1911(b) of this title, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 1911(a) of this title over limited community or geographic areas without regard for the reservation status of the area affected.

(C) Approval of petition; publication in Federal Register; notice; reassumption period; correction of causes for disapproval

If the Secretary approves any petition under subsection (a) of this section, the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a) of this section, the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Pending actions or proceedings unaffected

Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 1919 of this title.

25 U.S.C. § 1919. Agreements between States and Indian tribes

(a) Subject coverage

States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Revocation; notice; actions or proceedings unaffected

Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

25 U.S.C. § 1920. Improper removal of child from custody; declination of jurisdiction; forthwith return of child: danger exception

Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

25 U.S.C. § 1921. Higher State or Federal standard applicable to protect rights of parent or Indian custodian of Indian child

In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this subchapter, the State or Federal court shall apply the State or Federal standard.

25 U.S.C. § 1922. Emergency removal or placement of child; termination; appropriate action

Nothing in this subchapter shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this subchapter, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

25 U.S.C. § 1923. Effective date

None of the provisions of this subchapter, except sections 1911(a), 1918, and 1919 of this title, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after November 8, 1978, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

APPENDICES

BRADY IMPLICATIONS

It is a violation of federal law for any person to sell or otherwise dispose of any firearm or ammunition to any person that they know or have reasonable cause to believe is under an order of protection or has been convicted of a misdemeanor crime of domestic violence (18 U.S.C. § 922(d)). It is also a violation of federal law for a person who is subject to a court order of protection or who has been convicted of a misdemeanor crime of domestic violence to possess a firearm or ammunition (18 U.S.C. § 922(g)).

A. “Order of Protection” - court order which restrains the person from harassing, stalking, or threatening an intimate partner or child of the intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the child

AND

1 - was issued after a hearing of which the person received actual notice and at which the person had an opportunity to participate

AND

2 - includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child

OR

- 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

“Intimate partner” - protected person and defendant are:

- spouses or former spouses
- cohabitates or formerly cohabitated
- have child in common
- or protected person is the child of intimate partner

Duration - Prohibition for the duration of the order.

Exceptions - military, federal, state, and local law enforcement officers

- while they are on duty
- only their firearms and ammunition necessary for their job position

Louisiana orders:

-Brady does **NOT** apply:

- Temporary restraining orders if issued ex parte

-Brady **DOES** apply:

- Protective orders
- Preliminary and permanent injunctions
- Criminal Stay Away Orders **IF** issued after a hearing

B. Conviction of “Misdemeanor crime of domestic violence”

1. - is a misdemeanor under federal, state or tribal law

AND

2 - has as an element the use or attempted use of physical force or the threatened use of a deadly weapon

AND

3 - committed by

- current or former spouse, parent or guardian of the victim
- person who has a child in common with the victim
- person who is cohabiting or has in the past cohabited with the victim as a spouse, parent, or guardian
- person similarly situated to a spouse, parent, or guardian of the victim

AND

4 -defendant was represented by counsel **OR** knowingly and intelligently waived right to counsel

AND

5 -if the defendant was entitled to a jury trial **either** the case was tried by a jury **OR** the defendant knowingly and intelligently waived right to a jury trial by guilty plea or otherwise.

Duration - Prohibition forever or until the conviction has been expunged or set aside or until the convicted person has been pardoned or has had civil rights restored.

Exceptions: none.

**VIOLENCE AGAINST WOMEN ACT (VAWA)
FULL FAITH AND CREDIT**

18 U.S.C. § 2265. Requires a protection order to be given full faith and credit by courts of other states, Indian tribes and territories and enforced as if it were the order of the enforcing State, tribe or territory if:

1 - the issuing court has jurisdiction over the parties and the subject matter

AND

2 - reasonable notice and an opportunity to be heard was given to the person against whom the order was issued sufficient to protect that person's right to due process

-if ex parte order

-notice and an opportunity to be heard has been given within the time required by the issuing state or tribal law

-in any event, within a reasonable time after the order was issued sufficient to protect the respondent's due process rights

"Protection order" includes any injunction, restraining order or other order issued for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with, or physical proximity to, another person. Also includes support, custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order or injunction pursuant to State, tribal, territorial or local law for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

-includes temporary and final orders

-issued by civil and criminal courts

-whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as the order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection

Full faith and credit NOT accorded

-to a protection order issued by a state, tribal or territorial court against someone who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner if

1- no cross or counter petition, complaint, or other written pleading was filed seeking the protection order,

OR

2- a cross or counter petition has been filed but the court did not make specific findings that each party was entitled to the order.

Therefore, a "mutual or reciprocal" order of protection will not be given full faith and credit in its provisions against the petitioner unless the defendant also filed a petition or pleading requesting a protection order, notice and an opportunity to be heard was given to the petitioner, and the court made specific findings that the defendant was also entitled to such an order.