

RECONCILING DOMESTIC VIOLENCE PROTECTIONS AND THE SECOND AMENDMENT

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In March of 2023, the Fifth Circuit Court of Appeals held that individuals subject to domestic violence protective orders could not be required to give up their guns. The decision was the first of a federal appellate court to overturn a firearm regulation pursuant to New York State Rifle & Pistol Association v. Bruen, a 2022 Supreme Court opinion that created a new standard for determining the constitutionality of gun restrictions. After Bruen, only laws that are “consistent with this Nation’s historical tradition of firearm regulation” pass constitutional muster.

The Fifth Circuit’s decision in United States v. Rahimi, in which the Supreme Court heard oral argument on November 2023, highlights the unworkability of the Bruen test. Women’s rights were virtually nonexistent when the Second Amendment was ratified. Domestic violence was tolerated, and it was not until nearly 200 years later that protective order statutes were enacted across the United States. Looking to the past to justify modern-day gun laws gravely threatens women’s rights and safety.

But Bruen does not require such a narrow reading. Significant historical and legal precedent exists for disarming dangerous persons, and those who have had protective orders entered against them undoubtedly fall into that category. This Article’s feminist critique of Bruen demonstrates why its holding is deeply problematic. Yet it also shows that it is possible to both hew to Second Amendment jurisprudence and protect survivors of intimate partner violence.

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INTRODUCTION

When the Second Amendment was ratified in 1791, women's lives bore little resemblance to those they lead today. Women did not have the right to vote.¹ Married women rarely worked outside the home² and were excluded from certain occupations,³ including the practice

1. It was not until a constitutional amendment in 1920 that women were enfranchised. See U.S. CONST. amend. XIX (providing that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex").

2. Richard H. Chused, *Married Women's Property Law: 1800-1850*, 71 GEO. L.J. 1359, 1360 (1983) (noting that "[b]y and large historians have concluded that role changes for most early nineteenth-century married women involved increased family responsibilities, not greater participation in the larger commercial and political world"). Professor Chused adds that "at the end of the 19th century, less than 20 percent of women were in the labor force. About 40 percent of unmarried women, but only 5 percent of married women, were in the labor force." *Id.* at 1396 n.192.

3. See *Goesaert v. Cleary*, 335 U.S. 464, 467 (1948) (upholding as constitutional the denial of bartending licenses to women). The challenged law

of law.⁴ On the rare occasion that a woman was employed, “it was the husband’s prerogative to collect her wages.”⁵ Girls’ educational opportunities were limited.⁶ The Seneca Falls Convention, a landmark event in the women’s rights movement, was not held until 1848, over half a century after the Second Amendment’s ratification.⁷

The infamous coverture doctrine,⁸ which “structured marriage to give a husband superiority over his wife in most aspects of the

required bartenders in cities of 50,000 or more to be licensed, but only allowed women who were the wives or daughters of male owners of licensed liquor establishments to obtain licenses. *Id.* at 465.

4. The first woman was not admitted to a state bar until 1869. Aleta Wallach, *Arabella Babb Mansfield (1846–1911)*, 2 WOMEN’S RTS. L. REP 3, 3 (1974). When Mrs. Mansfield applied for admission to the Iowa bar, the state code specifically excluded women from admission. DAWN BRADLEY BERRY, THE 50 MOST INFLUENTIAL WOMEN IN AMERICAN LAW 6 (1996). A progressive judge created a pathway for her licensure by locating “another Iowa statute that extended all statutory references to the masculine gender to women as well.” *Id.* Despite Mrs. Mansfield’s historic achievement, in 1872, the Supreme Court upheld the right of states to deny women licenses to practice law. *See Bradwell v. Illinois*, 83 U.S. 130, 139 (1872). The *Bradwell* Court referenced the doctrine of coverture in its decision, holding that because a woman has “no legal existence separate from her husband,” the Supreme Court of Illinois properly found that women were “incompetent fully to perform the duties and trusts that belong to the office of an attorney and counsellor.” *Id.* at 141 (Bradley, J., concurring). Notably, *Bradwell* was decided the same year the first African American woman earned a law degree. *Pioneer Women in the American Legal Profession*, WOMEN HISTORY BLOG, <https://www.womenhistoryblog.com/2013/05/first-women-lawyers.html> (last visited Mar. 4, 2024).

5. Reva B. Siegel, *Home As Work: The First Woman’s Rights Claims Concerning Wives’ Household Labor, 1850–1880*, 103 YALE L.J. 1073, 1117 (1994).

6. Chused, *supra* note 2, at 1416 (“There is no doubt that girls continued to receive lesser educations than boys long after 1800 and that expressions of support for gender equality in education were met with strong disapproval.”).

7. LIBR. OF CONG., *Today in History - July 19*, <https://www.loc.gov/item/today-in-history/july-19/> (last visited Mar. 4, 2024).

8. The frequently cited Blackstone Commentaries described the manner in which a married woman is “covered” by her husband:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything Upon this principle, of a union of person in husband and wife, depend almost all the legal rights, duties, and disabilities, that either one of them acquire by the marriage.

1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, 442 (1765). Blackstone is widely described as “the preeminent authority on English law for the founding generation.” *Alden v. Maine*, 527 U.S. 706, 715 (1999).

relationship,” was at the core of much of women’s subjugation.⁹ “When women married, as the vast majority did,”¹⁰ they surrendered their autonomy, as “coverture demanded that women lose their public legal identity and submit to private patriarchy.”¹¹ “[W]ives were treated as civilly dead persons in many situations,” with husbands controlling their money, labor, and property.¹² Husbands also represented their wives in the legal system: “[w]omen could not sue or be sued . . . own or control real estate and personal property, freely enter into contracts, defend a lawsuit, sit on juries, or design their wills.”¹³

Women’s legal incapacity extended to their status in their own families. Women could not leave unhappy, inequitable, or violent marriages because “[d]ivorce . . . was a rare legal event [in the United States] in the early nineteenth century.”¹⁴ If parents separated, fathers had “the superior right to custody.”¹⁵

As Lucretia Mott, an early feminist and abolitionist activist, described in 1852, a woman at that time was “an inferior dependent.”¹⁶ Unsurprisingly, Black women fared worse than their

9. Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 *YALE L.J.* 2117, 2122 (1996).

10. THE GILDER LEHRMAN INST. OF AM. HIST., *The Legal Status of Women, 1776–1830*, <https://ap.gilderlehrman.org/essay/legal-status-women-1776-1830> (last visited Mar. 4, 2024).

11. Susan P. Liebell, *Sensitive Places?: How Gender Unmasks the Myth of Originalism in District of Columbia v. Heller*, 53 *POLITY* 207, 216 (2021).

12. Chused, *supra* note 2, at 1368. *See also* Siegel, *supra* note 5, at 1082 (“[A] wife negotiated marriage as a dependent: without property or the legal prerogative to earn it, and impaired in her capacity to contract, to convey or devise property, and to file suit.”).

13. Liebell, *supra* note 11, at 216. *See also* Reva B. Siegel, *The Modernization of Marital Status Law: Adjudicating Wives’ Rights to Earnings, 1860–1930*, 82 *GEO. L.J.* 2127, 2127 (1994) (“For centuries the common law of coverture gave husbands rights in their wives’ property and earnings, and prohibited wives from contracting, filing suit, drafting wills, or holding property in their own names.”).

14. Lawrence M. Friedman, *A Dead Language: Divorce Law and Practice Before No-Fault*, 86 *VA. L. REV.* 1497, 1501 (2000). If a woman wanted to extricate herself from a marriage, often the “only way to get a divorce was to petition the legislature. Divorces, in other words, were statutes (in the form of private acts).” *Id.*

15. Andre P. Derdeyn, *Child Custody Contests in Historical Perspective*, 133 *AM. J. PSYCHIATRY* 1369, 1370 (1976). The decision to preference a father’s right to custody was based on both “the historical view of children as essentially the property of the father” and “the fact that the father was vastly more competent financially than the mother.” *Id.*

16. 1 *HISTORY OF WOMAN SUFFRAGE* 359 (Elizabeth C. Stanton et al. eds., reprinted 1985) (1881). Other women at the time described themselves as having “no more power than a child.” *Subjection of Women*, *WOMAN’S J.*, Dec. 23, 1876, at 410, reprinted in *BALLOT BOX*, Nov. 1876.

white counterparts. They were enslaved in the eighteenth century, and, as author Dorothy Sterling explained, “[t]o be a Black Woman in nineteenth-century America was to live in the double jeopardy of belonging to the ‘inferior’ sex of an ‘inferior’ race.”¹⁷

It was not until well into the nineteenth century that women began to gain increased rights. Married Women’s Property Acts granted them “contractual or testamentary control over property held at law.”¹⁸ Statutes protecting women’s earnings from the institution of coverture, i.e., allowing them to keep their earnings separate from those of their husbands, emerged after the Civil War.¹⁹ Women also began to make wills in meaningful numbers after 1800.²⁰

Although women made slow progress with respect to their economic independence and legal capacity, their safety and bodily autonomy did not ameliorate as rapidly. Laws against family violence were not consistently enacted until the 1850s. “The whole of the eighteenth and half of the nineteenth century appears to have been a legislative vacuum.”²¹ This was largely a result of entrenched patriarchy, for “[w]hereas the state has long possessed the right to punish violators of the criminal law, it has often been claimed that family relationships require or deserve special immunity.”²²

Of course, history is not monolithic. Women’s rights, like other human and civil rights, experience progress and retrenchment.²³ Today’s originalist conservative Supreme Court has ushered in an era of such retrenchment.²⁴ In 2022, the Court decided *New York State*

17. DOROTHY STERLING, *Introduction to WE ARE YOUR SISTERS: BLACK WOMEN IN THE NINETEENTH CENTURY* xiii (1997).

18. Chused, *supra* note 2, at 1366. Notably, “[w]hen legislators initially modified the common law, their object was to provide families economic security—not to empower or emancipate wives.” Siegel, *supra* note 13, at 2141.

19. Chused, *supra* note 2, at 1398. These “Married Women’s Property Acts,” which did not apply to women who were slaves, began to appear in the 1850s. They permitted women to engage in legal transactions and allowed them control over their own money. See Siegel, *supra* note 5, at 1082–83, 1082 n.14.

20. See Chused, *supra* note 2, at 1366–67.

21. Elizabeth Pleck, *Criminal Approaches to Family Violence, 1640–1980*, 11 CRIME & JUST. 19, 29 (1989).

22. *Id.* at 20.

23. See, e.g., Carolyn B. Ramsey, *Domestic Violence and State Intervention in the American West and Australia, 1860–1930*, 86 IND. L.J. 185, 187 (2011) (describing efforts to arrest and prosecute domestic violence offenders in the American frontier in the late 1800s and early 1900s); Pleck, *supra* note 21, at 20 (describing and explaining the reasoning behind oscillating periods of interest and disinterest in addressing family violence from the Puritan era to the 1980s).

24. As Justice Sotomayor eloquently stated in her dissent in *303 Creative LLC v. Elenis*, “[n]ew forms of inclusion have been met with reactionary exclusion.” 600 U.S. 570, 604 (2023) (Sotomayor, J., dissenting).

Rifle & Pistol Association v. Bruen,²⁵ which held that only restrictions that are “consistent with this Nation’s historical tradition of firearm regulation” survive constitutional scrutiny.²⁶ Less than a year later, the Fifth Circuit Court of Appeals heard *U.S. v. Rahimi*, which challenged the constitutionality of the federal law, 18 U.S.C. § 922(g)(8), that prohibits individuals subject to family violence protective orders from possessing firearms.²⁷ Applying the new standard established in *Bruen*, the *Rahimi* court invalidated § 922(g)(8) because it could not find evidence that domestic violence offenders were prohibited from possessing firearms when the Bill of Rights was ratified in 1791.

Bruen was decided the day before the Supreme Court handed down its decision in *Dobbs v. Jackson Women’s Health Organization*,²⁸ the case that overturned *Roe v. Wade* and the federal right to abortion. The *Dobbs* Court also looked to history to justify its ruling, specifically the fact that the right to abortion is not “deeply rooted in this Nation’s history and tradition.”²⁹ As these decisions and those that interpret their new precedent make clear, the Supreme Court’s fixation on historical tradition has eroded women’s rights in the United States. In looking back to the country’s founding era to determine the constitutionality of present-day rights, the Court takes women back to the days where they had few.

This Article will explain both why such analysis is wrong and why extreme outcomes like the one reached in *Rahimi* are not required even under *Bruen*’s restrictive new test. The Article begins by providing information about intimate partner abuse, with a focus on the factors that exacerbate it—firearms and separation violence—and protective orders that attempt to alleviate it. Part II details legal restrictions that federal and state legislatures have enacted to prevent perpetrators of intimate partner violence from accessing firearms. Part III describes the recent evolution of the Second Amendment jurisprudence in the Supreme Court and, subsequently, in the federal courts. Part IV explains why an originalist approach that requires looking back to the eighteenth and nineteenth centuries to find support for contemporary laws protecting women dooms those

25. 597 U.S. 1 (2022).

26. *Id.* at 2126.

27. 61 F.4th 443, 448–49 (5th Cir. 2023), *cert. granted*, 143 S. Ct. 2688 (2023).

28. 597 U.S. 215 (2022).

29. *Id.* at 231 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). As Professor Aaron Tang notes, “so crucial to its analysis was this assessment . . . that the majority repeated the same claim almost verbatim four times and included a 22-page appendix identifying every single abortion ban enacted by the states in the union as of 1868.” Aaron Tang, *After Dobbs: History, Tradition, and the Uncertain Future of a Nationwide Abortion Ban*, 75 STAN. L. REV. 1091, 1100 (2023).

measures to failure. Finally, Part V argues that *Bruen* supports analysis at a higher level of generality—namely, analogizing the prohibition against armed protective order respondents to a longstanding historical tradition of disarming dangerous persons. By focusing on the underlying purposes of historical and modern-day firearm prohibitions, contemporary Second Amendment jurisprudence can be reconciled with lifesaving protections for survivors of intimate partner violence.

I. INTIMATE PARTNER VIOLENCE AND FIREARMS

A. *Intimate Partner Violence*

Intimate partner violence³⁰ is a problem of “epidemic proportions.”³¹ Although precise numbers are impossible to ascertain, the National Coalition Against Domestic Violence reports that approximately 1 in 3 women and 1 in 4 men have experienced some form of physical violence by an intimate partner.³² Other studies have shown that “slightly more than 2 in 5 women (42 percent or 52 million) in the United States reported experiencing . . . physical violence by an intimate partner in their lifetime.”³³ An individual’s effort to gain and maintain power and control, the root cause of intimate partner abuse, can take a range of nonviolent forms as well, including “isolation, use of male privilege, intimidation, threats, use of children, economic and emotional abuse, minimizing, denying, and blaming.”³⁴ “Almost half of all women (49.4 percent or 61.7 million)

30. Although the terms “intimate partner violence” and “domestic violence” are often used interchangeably, they are distinct. Intimate partner violence “is abuse or aggression that occurs in a romantic relationship. ‘Intimate partner’ refers to both current and former spouses and dating partners.” CTRS. FOR DISEASE CONTROL & PREVENTION, *Fast Facts: Preventing Intimate Partner Violence* [hereinafter *Fast Facts*], <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html> (Oct. 11, 2022). Domestic violence is a broader term, encompassing violence committed by intimate partners as well as child and elder abuse. *Id.*

31. Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 3 (1999).

32. See *Fast Facts*, *supra* note 30.

33. RUTH LEEMIS, ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON INTIMATE PARTNER VIOLENCE, 5 (2022), https://www.cdc.gov/violenceprevention/pdf/nisvs/NISVSReportonIPV_2022.pdf. The study also found that more than 2 in 5 men (42.3 percent or 49.9 million) experienced physical violence in their intimate relationships. *Id.*

34. Tamara Kuennen & Jennifer Eyl, *Reviving ‘Part Two’ of the Power and Control Wheel*, 14 FAM. & INTIMATE PARTNER VIOLENCE Q. 43, 43–44 (2022). As Professors Kuennen and Eyl explain, the Duluth Model’s “Power and Control

reported . . . psychological aggression by an intimate partner in their lifetime.”³⁵

Although people of all genders, races, sexual orientations and identities, socioeconomic statuses, and abilities experience intimate partner violence, they do not experience it at equal rates. Because intimate partner violence is a premeditated and deliberate choice by those who perpetrate it, those who are traditionally marginalized are particularly vulnerable to abuse. Women are victims of domestic violence more often than men.³⁶ Women of color experience intimate partner violence at a higher rate than white women.³⁷ Lesbian, gay, or bisexual people face an increased risk of gender violence; 35 percent of heterosexual women experience rape, physical violence, and stalking by an intimate partner, compared to 61 percent of bisexual women.³⁸ Transgender individuals experience a dramatically higher prevalence of intimate partner victimization compared with cisgender individuals.³⁹ Additionally, “[s]ocioeconomic status is a factor that influences the occurrence of

Wheel” includes these actions within its spokes, with the rim depicting “the words ‘physical’ and ‘sexual violence,’ representing how it is violence that holds together and fortifies the abusive behaviors listed in the spokes, all of which support the hub.” *Id.*

35. LEEMIS ET AL., *supra* note 33, at 6. 45.1 percent (53.3 million) of men in the United States reported psychological aggression by an intimate partner in their lifetime. *Id.*

36. NAT’L COAL. AGAINST DOMESTIC VIOLENCE, *Domestic Violence* (2020), https://assets.speakcdn.com/assets/2497/domestic_violence-2020080709350855.pdf?1596828650457.

37. SHARON G. SMITH ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010–2012 STATE REPORT 120 (2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf>. See also Julie M. Kafka et. al., *Fatalities Related to Intimate Partner Violence: Towards a Comprehensive Perspective*, 27 INJ. PREV. 137 (2021) (noting that “young women, particularly racial/ethnic minority women, are disproportionately affected by [intimate partner homicide]”).

38. CTRS. FOR DISEASE CONTROL & PREVENTION, NISVS: AN OVERVIEW OF 2010 FINDINGS ON VICTIMIZATION BY SEXUAL ORIENTATION, https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_victimization_final-a.pdf. The CDC also reported that “37% of bisexual men will be victims of intimate partner violence in their lifetime,” compared with 29% of heterosexual men. *Id.*

39. Sarah Peitzmeier et al., *Intimate Partner Violence in Transgender Populations: Systematic Review and Meta-analysis of Prevalence and Correlates*, 110 AM. J. PUB. HEALTH at e1, e3 (2020).

domestic violence.”⁴⁰ Finally, people with disabilities have a higher lifetime prevalence of intimate partner violence than those without.⁴¹

B. Exacerbating Factors: Firearms and Separation Violence

When abusers have access to firearms, the violence and danger experienced by victims of intimate partner violence are exacerbated.⁴² As a threshold matter, simply existing as a woman in a relationship is a risk factor. Between 2003 and 2014, homicide was the leading cause of death among women under forty-five years old, and over half (55.3 percent) of those women were killed by an intimate partner.⁴³ Firearms are involved in the majority of these femicides; the U.S. Department of Justice found that more than two-thirds of spouse and ex-spouse homicide victims between 1980 and 2008 were killed with guns.⁴⁴ Perpetrators are more likely to use a gun than all other means combined to murder their female intimate partners.⁴⁵ As experts have clearly and succinctly stated, “The evidence is clear: when a woman is killed, it is most likely to be at the hands of an intimate partner with a gun.”⁴⁶

The danger extends beyond fatal physical violence. It is estimated that 13.6 percent of American women have been

40. Disa K. V. Lubker, *Socioeconomic Status and Domestic Violence*, 3 INT’L J. GLOB. HEALTH & HEALTH DISPARITIES 85, 90 (2004).

41. Matthew J. Breiding & Brian S. Armour, *The Association Between Disability and Intimate Partner Violence in the United States*, 25 ANN. EPIDEMIOLOGY 455, 459 (2015).

42. *Domestic Violence & Firearms*, NAT’L COAL. AGAINST DOMESTIC VIOLENCE, (Nov. 16, 2023), https://assets.speakcdn.com/assets/2497/guns_and_dv_2022.pdf [hereinafter NCADV].

43. Aaron Kivisto & Megan Porter, *Firearm Use Increases Risk of Multiple Victims in Domestic Homicides*, 48 AM. ACAD. PSYCHIATRY L. 26, 26 (2020).

44. ALEXIA COOPER & ERICA L. SMITH, U.S. DEP’T OF JUST., HOMICIDE TRENDS IN THE UNITED STATES, 1980–2008, at 20 (2011), <https://bjs.ojp.gov/content/pub/pdf/htus8008.pdf>. See also Julie M. Kafka et al., *supra* note 37, at 141 (reporting that “firearms were the primary weapon in 7 out of 10 IPV-related deaths”).

45. Leonard J. Paulozzi et al., *Surveillance for Homicide Among Intimate Partners—United States, 1981–1998*, 50 MORBIDITY & MORTALITY WKLY. REP. 1, 9 (2001). Firearms are used in 54 percent of homicides, which is more than double the number of victims killed with a sharp instrument, the next most prevalent murder weapon. Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence – United States, 2003–2014*, 66 MORBIDITY AND MORTALITY WKLY. REP. 741, 743 (2017).

46. April M. Zeoli & Shannon Frattaroli, *Evidence for Optimism: Policies to Limit Batters’ Access to Guns*, in REDUCING GUN VIOLENCE IN AMERICA: INFORMING POLICY WITH EVIDENCE AND ANALYSIS 53 (Daniel W. Webster & Jon S. Vernick eds., 2013).

threatened by intimate partners with firearms.⁴⁷ Moreover, abusers' access to guns endangers the lives of people other than their intimate partner; "a sizeable percentage of" men who commit mass shootings have a history of domestic violence, "more so than men in the general population."⁴⁸ They also harm themselves; nearly 90 percent of intimate partner homicides that end with the perpetrator's suicide are committed with firearms.⁴⁹

If a firearm is the *thing* that puts survivors at the greatest risk, the most dangerous *time* for survivors is when they take steps to end an abusive relationship. As explained above, intimate partner violence is fundamentally about one person's desire to exercise power and control over another.⁵⁰ As such, a survivor's challenge to that dynamic (e.g., attempting to leave a relationship, seek help, or otherwise assert agency) will often cause an escalation of abusive behavior as the perpetrator seeks to reassert their dominance.

This phenomenon, known as "separation violence" or "separation assault," has been defined as

the attack on the woman's body and volition in which her partner seeks to prevent her from leaving, retaliate for the separation, or force her to return . . . It is an attempt to gain, retain, or regain power in a relationship, or to punish the woman for ending the relationship.⁵¹

47. NCADV, *supra* note 42. See also Susan B. Sorenson & Rebecca A. Schut, *Nonfatal Gun Use in Intimate Partner Violence: A Systematic Review of the Literature*, 19 TRAUMA, VIOLENCE & ABUSE 431, 431 (2016) (describing how intimate partners use guns to threaten, intimidate, and nonfatally injure); Brief for National Network to End Domestic Violence, Network to End Domestic Violence Fund, District of Columbia Coalition Against Domestic Violence as Amici Curiae Supporting Petitioner at 28, *D.C. v. Heller*, 554 U.S. 570 (2008) (No. 22-915) (explaining that abusers "make threats with their firearms by pointing it at the victim; cleaning it; shooting it outside; threatening to harm people, pets, or others about whom the victim cares; or threatening suicide").

48. LIN HUFF-CORZINE & THOMAS MARVELL, DOMESTIC VIOLENCE AND MASS SHOOTINGS: A REVIEW OF CURRENT ACADEMIC LITERATURE 4 (2021), <https://www.ojp.gov/pdffiles1/nij/grants/303499.pdf>.

49. J. Logan et al., *Characteristics of perpetrators in homicide-followed-by-suicide incidents: National Violent Death Reporting System – 17 US States, 2003–2005*, 168 AM. J. EPIDEMIOLOGY 1056, 1059 (2008). A recent study by the Violence Policy Center found that "sixty-two percent of all murder-suicides involved an intimate partner" and that of those incidents "95 percent were females killed by their intimate partners . . . and 93 percent involved a gun." Violence Policy Center, *American Roulette: Murder-Suicide in the United States 2* (2023), <https://vpc.org/studies/amroul2023.pdf>.

50. See Kuennen & Eyl, *supra* note 34, at 43–44.

51. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65–66 (1991).

The National Institute of Justice has reported that attempting to leave a violent relationship was the precipitating factor in 45 percent of murders of a woman by a man.⁵² At least half of women who leave their abusers are followed and harassed or further attacked by them.⁵³ Help-seeking behaviors, particularly from law enforcement, are a significant cause of separation violence. Researchers have found that 20 percent of men arrested for domestic abuse re-assaulted their partner before the original criminal case was resolved in court.⁵⁴ Allowing a victim to drop prosecution has been shown to result in the lowest rate of pre-settlement violence.⁵⁵ Finally, increased prosecution of protective order violations is associated with “increases in the homicide rate of white females, both married and unmarried, and African American unmarried males.”⁵⁶

C. Protective Orders

An often-utilized option for people seeking safety from intimate partner violence is a family violence protective order.⁵⁷ A protective order is a civil legal remedy that survivors can use to prevent further abuse and otherwise keep themselves and their children safe.⁵⁸ A judge issuing a protective order can provide relief that is specifically tailored to an individual’s situation.⁵⁹ For example, the judge can require an abuser to stay a certain distance away from a survivor, their home, or their workplace; to stop communicating in a harassing or threatening manner with the survivor; or to surrender a firearm.⁶⁰

52. Carolyn Rebecca Block, *How Can Practitioners Help an Abused Woman Lower Her Risk of Death?*, 250 NAT’L INST. JUST. J. 4, 6 (2003).

53. Mahoney, *supra* note 51, at 171.

54. David A. Ford, *Preventing and Provoking Wife Battery Through Criminal Sanctioning: A Look at the Risks*, in ABUSED AND BATTERED: SOCIAL AND LEGAL RESPONSES TO FAMILY VIOLENCE 191, 198 (Dean O. Knudsen & JoAnn C. Miller, eds., 1991).

55. David A. Ford & Mary Jean Regoli, *The Preventive Impacts of Policies for Prosecuting Wife Batterers*, in CRIME & DELINQUENCY 181, 195 (1992).

56. Laura Dugan et al., *Exposure Reduction or Retaliation? The Effects of Domestic Violence Resources on Intimate-Partner Homicide*, 37 L. & SOC’Y REV. 169, 194 (2003).

57. The terms “protective order” and “restraining order” are often used interchangeably, but they are not analogous. A restraining order can be issued against a broad category of individuals (e.g., a neighbor or co-worker), while issuance of a protective order is typically limited to those who have experienced family violence (intimate partner, child, or elder abuse), dating violence, stalking, or sexual violence.

58. See 25 AM. JUR. 2D *Domestic Abuse and Violence* § 31 (2023).

59. TK Logan, Lisa Shannon & Robert Walker, *Protective Orders: Questions and Conundrums*, 7 TRAUMA, VIOLENCE, & ABUSE 175, 180 (2006).

60. Tex. Young Laws. Ass’n, *Ending the Violence: How to Obtain a Texas Protective Order*, 71 TEX. BAR. J. 344, 344 (2008); Barbara J. Hart, *The Legal Road*

Prior to 1976, only two states had protective order statutes.⁶¹ By 1994, due in large part to incentives included in the Violence Against Women Act (VAWA), all fifty states had enacted legislation authorizing their issuance.⁶² State laws and procedures vary,⁶³ but in most jurisdictions, the first step is a temporary *ex parte* order that typically lasts between fourteen and twenty days.⁶⁴ Final protective orders, which range in duration from one year to permanent,⁶⁵ require notice and the opportunity for a hearing.⁶⁶ Protective order proceedings include the same due process protections as any other civil hearing, including service requirements to provide proper notice to respondents and the application of rules of evidence and the relevant evidentiary standards.

Although a protective order is a civil remedy, violation of a protective order can lead to criminal consequences.⁶⁷ Criminal law is relevant when a survivor seeks a protective order as well. As Appendix A reveals, the protective order statutes in all fifty states

to *Freedom* (1991), <https://www.biscmi.org/wp-content/uploads/2020/06/THE-LEGAL-ROAD-TO-FREEDOM.pdf>.

61. Matthew Carlson et al., *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*, 14 J. FAM. VIOLENCE 205, 206 (1999).

62. *Id.* VAWA “provided direct funding for legal assistance for the purpose of obtaining and enforcing protective orders at the state level as well as substantial funding for data collection, communication systems, and community coordination with ‘the goal of improving the effectiveness of civil protection orders.’” Paula Pierce & Brian Quillen, *No Contest: Why Protective Orders Provide Victims Superior Protection to Bond Conditions*, 40 AM. J. CRIM. L. 227, 249 (2013).

63. R. KEITH PERKINS, DOMESTIC TORTS § 3:34 (2023); BATTERED WOMEN’S JUSTICE PROJECT, STATE PROTECTION ORDER DURATIONS MATRIX, 3–40 (2015), <https://www.bwjp.org/ncpoffc-state-protection-order-duration-matrix.pdf>.

64. *See id.* at 3–40.

65. Long-term protective orders, known as permanent or indefinite protective orders, are granted only in the most serious situations. *See generally* Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 VAND. L. REV. 1015 (2014). For example, in Texas, a court can only enter a protective order that exceeds two years if the respondent committed a felony family violence offense, caused serious bodily injury to the petitioner, or if the petitioner previously had two or more protective orders against them. *See* Tex. Fam. Code § 85.025(a-1).

66. *See* BATTERED WOMEN’S JUSTICE PROJECT, *supra* note 63, at 3–40.

67. Logan et al., *supra* note 59, at 178. *See also* Pierce & Quillen, *supra* note 62, at 249 (explaining that in order for states to access VAWA funding, they must “(1) ensure that protection orders are given full faith and credit by all sister states; (2) provide government assistance with service of process in protection order cases; and (3) criminalize violations of protection orders.” (quoting Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J. L. & FEMINISM 3, 12 (1999))).

include elements referencing conduct that is criminal in nature.⁶⁸ Relatedly, the firearm prohibition codified in 18 U.S.C. § 922(g)(8) recognizes that “[r]espondents to [domestic violence protective orders] have high rates of criminal justice system involvement . . . and often have committed severe domestic violence.”⁶⁹ The requirements for a qualifying § 922(g)(8) protective order, as detailed in Part II below, include underlying behavior that is criminal in nature—harassment, stalking, threatening, or conduct that would place an intimate partner in reasonable fear of bodily injury.⁷⁰ Thus, even though a protective order is a civil remedy, both the orders themselves and the state and federal laws that prohibit those subject to protective orders from possessing firearms depend on and relate to violence that could implicate the criminal legal system.

There is scholarly consensus that protective orders are associated with a reduced risk of violence.⁷¹ Protective orders are also a low-cost solution relative to the societal and personal costs associated with domestic violence.⁷² For example, researchers recently found that in Kentucky alone, protective orders were estimated to have saved taxpayers \$85 million in a one-year period.⁷³

68. See *infra* Appendix A.

69. Zeoli & Frattaroli, *supra* note 46, at 55–56.

70. 18 U.S.C. § 922(g)(8)(B)–(C).

71. See Kellie K. Player, *Expanding Protective Order Coverage*, 43 ST. MARY’S L.J. 579, 589 (2012); Logan et al., *supra* note 59, at 192–93; Carlson et al., *supra* note 61, at 224; Judith McFarlane et al., *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 AM. J. PUB. HEALTH 617 (2004); TK LOGAN & ROBERT WALKER, CARSEY INST., CIVIL PROTECTIVE ORDERS EFFECTIVE IN STOPPING OR REDUCING PARTNER VIOLENCE, 4 (2011), <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1130&context=carsey>; Christopher T. Benitez et al., *Do Protection Orders Protect?*, 38 J. AM. ACAD. PSYCHIATRY L. 376, 385 (2010); Pierce & Quillen, *supra* note 62, at 250–51; Karen Tracy, *Building A Model Protective Order Process*, 24 AM. J. CRIM. L. 475, 478–79 (1997). Entry of protective orders into the National Instant Criminal Background Check System can also save lives. Between 2006 and 2015, 89,000 individuals with misdemeanor domestic violence convictions or restraining orders were prevented from purchasing a firearm after a background check. See Jennifer Mascia, *The Federal Background Check System Allowed Nearly 7,000 Domestic Abusers to Buy Guns*, THE TRACE (July 7, 2016), <https://www.thetrace.org/2016/07/federal-background-check-system-domestic-abusers-guns/>.

72. See Logan et al., *supra* note 59, at 180, 197.

73. TK Logan et al., *The Economic Costs of Partner Violence and the Cost-Benefit of Civil Protective Orders*, 27 J. INTERPERSONAL VIOLENCE 1137, 1147 (2012). The cost savings from protective orders accrues from their preventative nature, namely, avoided expenditures in the criminal legal system, health services, legal costs, and lost time from work. *Id.*

Moreover, the option of a civil remedy is vital because many survivors are reluctant to involve the criminal legal system in their lives. An incarcerated partner is unable to provide financial support, childcare, housing, transportation, or other critical needs, so a protective order may be a way for survivors to be safe from physical harm while maintaining overall stability in their lives. Escalation of violence resulting from an abuser's arrest (as described in Subpart I.B. above) or survivors' fear that "mandatory arrest" policies may lead to their own detention are also significant concerns that could cause a survivor to seek a non-carceral solution to intimate partner abuse.⁷⁴ Lastly, but significantly, people from historically marginalized groups may be disinclined to report domestic abuse to law enforcement because of "legitimate concerns that they will be subjected to differential treatment because of their ethnicity, gender . . . [,] immigration status," race, class, or sexual orientation.⁷⁵ A civil protective order mitigates these dangers, allowing survivors to obtain a legal remedy that keeps them safe while not necessarily removing their partner from their lives or invoking the rigid and often draconian consequences of the criminal legal system.

Despite these benefits, protective orders remain underutilized. Researchers "have found that only between seventeen percent and thirty-four percent of people experiencing intimate-partner violence obtained a protective order."⁷⁶ This may be the result of barriers such as threats of perpetrator retaliation, a perceived lack of efficacy of protective orders, negative perceptions and fears surrounding the justice system, inability to take time away from work or find childcare to appear in court, and survivors' lack of resources independent of their abusers.⁷⁷

Those survivors who do obtain protective orders, however, also receive a measure of protection from intimate partner firearm

74. Mandatory arrest policies compel officers who respond to a domestic violence call to effectuate an arrest once probable cause has been established. Mandatory arrest was first instituted in 1989, and since that time, all jurisdictions in the United States have enacted such policies, largely due to financial enticements included in the Violence Against Women Act of 1994. See Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence; 1970–1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 63–64 (1992) (discussing the history of mandatory arrest statutes). See also *infra* note 267, at 1374–75 (explaining why law enforcement officers often do not identify survivors and therefore wrongly arrest them).

75. See Edna Erez & Carolyn Copps Hartley, *Battered Immigrant Women and the Legal System: A Therapeutic Jurisprudence Perspective*, 4 W. CRIMINOLOGY REV. 155, 158 (2003).

76. Mary D. Fan, *Disarming the Dangerous: Preventing Extraordinary and Ordinary Violence*, 90 IND. L.J. 151, 175 (2015).

77. Logan et al., *supra* note 59, at 185–86.

violence, per the federal and state statutes detailed in the proceeding Part.

II. LEGAL RESTRICTIONS ON FIREARM POSSESSION BY PERPETRATORS OF INTIMATE PARTNER VIOLENCE

The first federal law to address the dangers posed by armed domestic violence offenders was the Violent Crime Control and Law Enforcement Act, enacted as part of the Violence Against Women Act of 1994.⁷⁸ The Act prevents individuals subject to family violence protective orders from possessing firearms or ammunition.⁷⁹ The statute lays out three requirements for a qualifying protective order. First, the respondent must have been afforded due process, including notice of a hearing and an opportunity to be heard.⁸⁰ Second, the order must forbid harassment, stalking, threatening, or other conduct that would place an intimate partner in reasonable fear of bodily injury.⁸¹ Lastly, the order must include a finding that the respondent “represents a credible threat to the physical safety of” their intimate partner or “explicitly [prohibit] the use, attempted use, or threatened use of physical force against such intimate partner . . . that would reasonably be expected to cause bodily injury.”⁸² Individuals subject to a qualifying protective order are prohibited from possessing firearms only as long as the order is in place.⁸³

Domestic violence convictions also result in firearm prohibitions. Under the Gun Control Act,⁸⁴ enacted as Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, all felons, including those convicted of felony domestic violence offenses, face a permanent ban on firearms possession.⁸⁵ The Lautenberg Amendment to the

78. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified at 42 U.S.C. § 13701).

79. 18 U.S.C. § 922(g)(8) (2018).

80. *Id.* § 922(g)(8)(a) (requiring that the underlying protective order be “issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate”).

81. *Id.* § 922(g)(8)(b) (requiring that the order restrain the respondent “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”).

82. *Id.* § 922(g)(8)(C)(i)–(ii).

83. *Id.* § 922(g)(8).

84. Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, 1220 (codified after amendment at 18 U.S.C. § 922(d)(1)–(7) (2012 & Supp. III)). The Gun Control Act is a comprehensive statute that created a set of regulations governing the manufacture, sale, production, and transfer of firearms and ammunition. *Id.*

85. The Act also disqualifies fugitives, drug addicts, those deemed to be mentally incompetent, undocumented immigrants, those dishonorably discharged from the armed services, and those who have renounced their U.S. citizenship from gun ownership. *Id.*

Violence Against Women Act permanently bars those convicted of misdemeanor crimes of domestic violence from possessing firearms.⁸⁶ State-level domestic violence gun prohibitions exist as well, many mirroring the federal statutory bans on those convicted of domestic violence felonies and misdemeanors and those subject to family violence protective orders.⁸⁷

As this author detailed in a prior article, underenforcement of domestic violence gun prohibitions is a significant problem.⁸⁸ Judges often fail to order offenders to surrender their firearms, and when they do, few mechanisms exist to ensure that weapons are safely relinquished.⁸⁹ The lack of enforcement is problematic because the data show that dispossessing protective order respondents of their firearms saves lives. A study analyzing data from forty-six cities between 1979 and 2003 found that states that restricted access to firearms to those subject to domestic violence restraining orders saw a 19 percent reduction in total intimate partner homicides and had 25 percent fewer firearms-related intimate partner homicides.⁹⁰

86. See 18 U.S.C. § 922(g)(9) (2018) (“It shall be unlawful for any person . . . 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.”); see also Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009, 371–72 (1996).

87. See generally BATTERED WOMEN’S JUSTICE PROJECT, FIREARMS AND DOMESTIC VIOLENCE: STATE AND TERRITORIAL STATUTORY PROVISIONS (2020), <https://www.bwjp.org/assets/documents/pdfs/2020-fall-firearms-dv-matrix.pdf>.

88. See Natalie Nanasi, *Disarming Domestic Abusers*, 14 HARV. L. & POL’Y REV. 559, 560–62 (2020) (explaining that domestic violence firearm prohibitions routinely go unenforced and proposing solutions to disarm offenders).

89. *Id.* at 560–61.

90. April M. Zeoli & Daniel W. Webster, *Effects of Domestic Violence Policies, Alcohol Taxes and Police Staffing Levels on Intimate Partner Homicide in Large US Cities*, INJ. PREVENTION 90, 92 (2010); see also Elizabeth Richardson Vigdor & James A. Mercy, *Do Laws Restricting Access to Firearms by Domestic Violence Offenders Prevent Intimate Partner Homicide?*, 30 EVALUATION REV. 313, 329–33 (2006) (finding that states with laws that limited access to firearms by individuals subject to domestic violence protective orders had 10 percent lower firearms femicide rates than states without these laws); F. Stephen Bridges et al., *Domestic Violence Statutes and Rates of Intimate Partner and Family Homicide*, 19 CRIM. JUST. POL’Y REV. 117, 127 (2008) (stating that “the family homicide rate decreased across [forty-seven] states as the number of states restricting firearms during a restraining order increased”); Everytown for Gun Safety, *Domestic Abuse Protective Orders and Firearm Access in Rhode Island*, EVERYTOWN RSCH. & POL’Y (2015), <https://everytownresearch.org/reports/domestic-abuse-protective-orders-and-firearm-access-in-rhode-island/> (finding that states that restrict access to

Other researchers have also found that active enforcement of such laws leads to lower femicide rates.⁹¹

Dating partners are also protected by laws that require protective order respondents to relinquish firearms. A 2003 study found that when state law requires law enforcement officials to confiscate firearms upon serving a restraining order, rates of reported dating partner violence decline.⁹² Moreover, removing firearms from the hands of domestic violence offenders can also protect non-intimate partners. Researchers studying familicide found that in 29 percent of multiple family homicides, the perpetrator had been the subject of a domestic violence restraining order.⁹³

The legal regime that disarms domestic violence offenders—including those subject to family violence protective orders and with misdemeanor and felony convictions—is longstanding and comprehensive. Challenges brought under the Fifth and Eighth Amendments, as well as the Equal Protection, Commerce, and Ex-Post Facto Clauses, have all withstood constitutional scrutiny.⁹⁴ Although intimate partner firearm restrictions have also historically survived Second Amendment challenges, a shift in Second Amendment jurisprudence, as detailed in Part III below, led to the first serious questions about the viability of those protections.

III. THE SECOND AMENDMENT IN THE SUPREME AND FEDERAL COURTS

The Second Amendment to the United States Constitution, proposed in 1789 and ratified in 1791 as part of the Bill of Rights, states that “a well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”⁹⁵

firearms by those under domestic violence restraining orders saw up to a 25 percent reduction in intimate partner gun homicides).

91. Carolina Díez et al., *State Intimate Partner Violence-Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015*, 167 ANNALS INTERNAL MED. 536, 536 (2017) (finding that a combination of laws prohibiting individuals subject to domestic violence protective orders from possessing firearms and an explicit requirement to relinquish them was associated with 9.7 percent lower total intimate partner homicide rates and 14.0 percent lower firearm-related intimate partner homicide rates than in states without these laws).

92. Laura Dugan, *Domestic Violence Legislation: Exploring Its Impact on the Likelihood of Domestic Violence, Police Involvement, and Arrest*, 2 CRIMINOLOGY & PUB. POL'Y 283, 300–04 (2003).

93. Marieke Liem & Ashley Reichelmann, *Patterns of Multiple Family Homicide*, 18 HOMICIDE STUD. 44, 49 (2014).

94. See Nanasi, *supra* note 88, at 570–71.

95. U.S. CONST. amend. II.

For nearly two centuries, the Second Amendment evoked little controversy. It was “interpreted—in three separate decisions by the U.S. Supreme Court, in 1876, 1886, and 1939—as granting the people a right to bear arms in the militia context.”⁹⁶ In other words, for most of American constitutional history, the Second Amendment was conceived as a collective, as opposed to an individual, right. That changed, however, when the Supreme Court decided *District of Columbia v. Heller*⁹⁷ in 2008.

A. D.C. v. Heller

The *Heller* Court fundamentally changed the longstanding constitutional approach to the Second Amendment when it held that the Amendment protects an individual right to possess a firearm, unconnected with militia service.⁹⁸ Justice Scalia, justifying the significant departure from precedent, wrote that the reference to militias in the prefatory clause merely “announce[d] a purpose,” and did not limit the operative clause that created the right to keep and bear arms.⁹⁹

Heller declared a D.C. ban on handgun possession unconstitutional, but the Court was careful to note that “[l]ike most rights, the right secured by the Second Amendment is not unlimited.”¹⁰⁰ Justice Scalia elaborated that “[f]rom Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”¹⁰¹ Specifically, the Court indicated that

nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government

96. JENNIFER TUCKER ET AL., A RIGHT TO BEAR ARMS? THE CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND AMENDMENT 3 (2019). In the most recent case, *United States v. Miller*, the Court found that the Second Amendment must be “interpreted and applied” in the historical context of the militia “with obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made.” 307 U.S. 174, 178 (1939).

97. 554 U.S. 570 (2008).

98. *Id.* at 605. Later, in *McDonald v. City of Chicago*, the Court held that that Second Amendment right to keep and bear arms, as interpreted by *Heller*, applies to the states under the due process clause of the Fourteenth Amendment. 561 U.S. 742, 778 (2010).

99. *Heller*, 554 U.S. at 577.

100. *Id.* at 626.

101. *Id.*

buildings, or laws imposing conditions and qualifications on the commercial sale of arms.¹⁰²

The Court went on to explain that it identified “these presumptively lawful regulatory measures only as examples” and that its “list does not purport to be exhaustive.”¹⁰³ Finally, and relatedly, the *Heller* opinion emphasized that the right enshrined by the Second Amendment accrued to “law-abiding, responsible citizens.”¹⁰⁴

Heller transformed Second Amendment jurisprudence in many ways, but one thing it did not do was provide guidance on how to consider future challenges to firearm regulations. Lower courts quickly stepped in to fill the gap. Federal appeals courts soon “coalesced around a ‘two-step’ framework for analyzing Second Amendment challenges that combine[d] history with means-end scrutiny.”¹⁰⁵ In step one, a court analyzing the constitutionality of a firearm regulation determined whether the regulated activity fell inside or outside the scope of the Second Amendment right as originally or historically understood.¹⁰⁶ “If the historical evidence at this step [wa]s ‘inconclusive or suggest[ed] that the regulated activity is *not* categorically unprotected,’” courts proceeded to step two.¹⁰⁷ At that step, a court considered “the strength of the government’s justification for restricting or regulating” the Second Amendment right and applied “a level of ‘means-ends’ scrutiny ‘that [wa]s proportionate to the severity of the burden that the law impose[d] on the right’: strict scrutiny if the burden [wa]s severe, and intermediate scrutiny if it [wa]s not.”¹⁰⁸

The two-step framework—a mix of historical inquiry and traditional constitutional means-end analysis—rapidly became “ensconced in Second Amendment law. Eleven of the twelve geographic circuits expressly adopted it, and no federal court of appeals to confront the question rejected the two-part framework.”¹⁰⁹ Federal courts across the United States implemented the test from 2008 until 2022, when the Supreme Court, in *New York State Rifle &*

102. *Id.* at 626–27.

103. *Id.* at 627 n.26.

104. *Id.* at 635 (stating that the Second Amendment “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home”).

105. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022).

106. *Id.* at 18.

107. *Id.* (citing *Kanter v. Barr*, 919 F.3d 437, 441 (7th Cir. 2019)).

108. *Id.* at 103 (Breyer, J., dissenting) (citing *Nat’l Rifle Assn. of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 195, 198, 205 (5th Cir. 2012)).

109. Jacob D. Charles, *The Dead Hand of a Silent Past: Bruen, Gun Rights, and the Shackles of History*, 73 DUKE L.J. 67, 85 (2023).

Pistol Association v. Bruen, expressly “decline[d] to adopt [the] . . . approach.”¹¹⁰

B. *New York State Rifle & Pistol Association v. Bruen*

Bruen involved a challenge to a New York law that required an individual who sought to carry a firearm outside the home to obtain a license; that license necessitated a showing of “proper cause” that could be satisfied only by demonstrating “a special need for self-protection distinguishable from that of the general community.”¹¹¹ In striking down the New York regulation, the Court rejected the two-step framework that had been widely accepted and implemented across the U.S. since *Heller*.¹¹² In its place, the Court adopted a new test that eliminated step two (means-end scrutiny) and focused exclusively on the past: a gun restriction would be constitutional only if the government could “demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.”¹¹³

More specifically, the *Bruen* Court held that when “the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.”¹¹⁴ Where the Second Amendment protects the person and the conduct,¹¹⁵ the burden shifts to the government to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’”¹¹⁶

In mandating that “lower courts abandon traditional tiers-of-scrutiny analysis in Second Amendment cases and instead review

110. *Bruen*, 597 U.S. at 17.

111. *Id.* at 12.

112. *Id.* at 103 (Breyer, J., dissenting).

113. *Id.* at 17 (majority opinion).

114. *Id.* at 24.

115. The first element of this test—who constitutes a protected person—is a deceptively simple and therefore contested. *See, e.g.*, Charles, *supra* note 109, at 95 (addressing the complexity of “whether the Second Amendment’s plain text covers an individual’s conduct”). The *Bruen* Court stated that it was “undisputed” that the petitioners, described as “ordinary, law-abiding, adult citizens[,] . . . are part of ‘the people’ whom the Second Amendment protects.” *Bruen*, 597 U.S. at 3. That language begs the question of the status of non-“ordinary” and non-law-abiding citizens. A full discussion of that issue is outside the scope of this Article, but scholars have cogently argued that they may not be covered individuals. *See* Charles, *supra* note 109, at 149; Joseph Blocher & Eric Ruben, *Originalism-By-Analogy and Second Amendment Adjudication*, 133 YALE L.J. 102, 118 n.104 (2023) (listing cases finding that felons are not “the people” covered by the plain text of the second Amendment).

116. *Bruen*, 597 U.S. at 24.

claims based *solely* on text, history, and tradition,” the Supreme Court upended Second Amendment precedent.¹¹⁷ It also, as Professor Jacob Charles argues, created a test that “is essentially sui generis in the Court’s individual-rights jurisprudence.”¹¹⁸

Despite this dramatic jurisprudential change, the *Bruen* Court underscored that the new historically-based test was not intended to drastically limit the government’s ability to regulate firearms. “To be clear,” Justice Thomas wrote, “analogical reasoning under the Second Amendment is neither a regulatory straightjacket nor a regulatory blank check.”¹¹⁹ As the Court further explained:

[o]n the one hand, courts should not “uphold every modern law that remotely resembles a historical analogue,” because doing so “risk[s] endorsing outliers that our ancestors would never have accepted.” On the other hand, analogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster.¹²⁰

Moreover, *Bruen* explicitly left in place the conventional wisdom that Second Amendment rights are not unlimited. The majority opinion quoted language in *Heller* to reiterate that “the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”¹²¹ And as Justice Alito noted in his concurring opinion, “[n]or have we disturbed anything that we said in *Heller* or *McDonald v. Chicago* about restrictions that may be imposed on the possession or carrying of guns.”¹²² However, this seeming truism, along with *Bruen*’s reiteration that the Second Amendment protected only “ordinary, law-abiding citizens,”¹²³ was soon to be put to the test.

117. Charles, *supra* note 109, at 69.

118. *Id.* Professor Charles further explains that “*Bruen* itself now subjects Second Amendment claims to an entirely different set of rules[,]” effectively “creating a super-right.” *Id.* at 72–73 (citing Khiara M. Bridges, *Foreword: Race in the Roberts Court*, 136 HARV. L. REV. 23, 69 (2022)).

119. *Bruen*, 597 U.S. at 30.

120. *Id.* (internal citations omitted).

121. *Id.* at 21 (quoting *Heller*, 554 U.S. at 626).

122. *Id.* at 72 (Alito, J., concurring) (internal citations omitted). Justice Kavanaugh also reproduced in full *Heller*’s “presumptively lawful” paragraph in his concurring opinion in *Bruen*. *Id.* at 81 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626–27 & 627 n.26).

123. *Id.* at 9.

C. U.S. v. Rahimi

Zackey Rahimi was abusive to his child's mother from the start of their relationship in 2017.¹²⁴ In the protective order petition she filed against him in 2020, she testified that his violence was so severe that she had to seek treatment at the emergency room.¹²⁵ He pointed a gun at her, fired it in her direction, and threatened to kill her.¹²⁶ He broke her cell phone and took her keys to prevent her from calling the police or otherwise seeking help.¹²⁷ The court granted her a protective order, at a hearing Mr. Rahimi had notice of and the opportunity to participate in,¹²⁸ based in part on her statement that she needed "a protective order because [she was] afraid that [Rahimi would] kill [her] and [her] son."¹²⁹

Less than a year after the entry of the protective order against him, Mr. Rahimi committed five shootings in the five weeks between December 1, 2020, and January 7, 2021.¹³⁰ Because he was subject to a domestic violence protective order that expressly prohibited him from possessing a firearm at the time of these shootings, he was arrested, charged, and convicted of a violation of § 922(g)(8).¹³¹ His initial appeal was dismissed, but Rahimi filed a second appeal challenging the validity of the domestic violence protective order firearm prohibition after the Supreme Court's decision in *Bruen*, which ultimately rose to the Fifth Circuit Court of Appeals.¹³²

The court analyzed § 922(g)(8) under the new *Bruen* standard and ultimately determined that the statute was unconstitutional.¹³³ In doing so, it became the first federal circuit court to strike down a gun regulation post-*Bruen*.

The Fifth Circuit articulated a range of rationales for its decision. First, it found that protective orders are not sufficiently analogous to historical laws prohibiting dangerous criminals from possessing

124. WBUR, *Should Domestic Abusers Have Gun Rights*, <https://www.wbur.org/onpoint/2023/11/04/supreme-court-domestic-abusers-gun-rights> [hereinafter WBUR].

125. *Id.*

126. *Id.*

127. *Id.*

128. See Petition for Writ of Certiorari, *Rahimi*, 61 F.4th 443 (No. 22-915) at 1–2.

129. WBUR, *supra* note 124.

130. United States v. Rahimi, 61 F.4th 443, 448–49 (5th Cir. 2023), *cert granted*, 143 S. Ct. 2688 (2023). Rahimi fired multiple shots into the home of an individual to whom he had sold narcotics; on two separate occasions, shot at the driver of a car he had gotten into an accident with; shot at a constable's vehicle; and "fired multiple shots in the air after his friend's credit card was declined at a Whataburger restaurant." *Id.*

131. *Id.* at 449.

132. *Id.*

133. *Id.* at 450.

firearms because “§ 922(g)(8) disarms people who have merely been civilly adjudicated to be a threat to another person” and because historical laws disarmed “those who had been adjudicated to be a threat to society generally, rather than to identified individuals.”¹³⁴ The court also rejected the analogy of nineteenth-century surety laws, which “required certain individuals to post bond before carrying weapons in public.”¹³⁵ Despite their similarity to modern-day protective orders—the *Rahimi* court described surety laws as being “meant to protect an identified person . . . from the risk of harm posed by another identified individual”¹³⁶—the court declined to find a sufficient analogy because historical surety laws only limited, but did not wholly prohibit, possession.¹³⁷

Rahimi is, of course, not the only case where *Bruen* has been applied, but it is significant for being the first federal circuit court decision to find a gun regulation unconstitutional and emblematic of the challenges in applying the new “historical analogue” legal test.¹³⁸ An analysis of nearly 200 lower federal court decisions implementing *Bruen* from June 2022 to March 2023 found that “[t]heir collective decisions . . . have been scattered, unpredictable, and often internally inconsistent.”¹³⁹ In short, “[l]ower courts have struggled to reach coherent and consistent results after *Bruen*, diverging in terms of both outcomes and methodology.”¹⁴⁰ The remainder of this Article will explore those challenges, employing a critical feminist lens to analyze the implications of the *Bruen* test on firearms and intimate partner violence.

IV. ANALOGY, ORIGINALISM, AND INTIMATE PARTNER VIOLENCE

Bruen’s centering of history and tradition creates a standard that laws impacting the lives of women may be unable to meet. This Part explores two related feminist critiques. First, it documents the slow pace of progress in recognizing and addressing the harms of intimate partner violence to illuminate the Sisyphean task of identifying an eighteenth-century regulation that protected survivors. Next, it

134. *Id.* at 459.

135. *Bruen*, 597 U.S. at 5.

136. *Rahimi*, 61 F.4th at 459–60.

137. *Id.* at 460.

138. *See id.* at 461.

139. Charles, *supra* note 109, at 78.

140. *Protecting Public Safety After New York State Rifle & Pistol Association v. Bruen: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. 8 (2023) (written statement of Eric Ruben, Assistant Professor of Law, SMU Dedman School of Law). *See also* Randy E. Barnett & Nelson Lund, *Implementing Bruen, L. & LIBERTY* (Feb. 6, 2023), <https://lawliberty.org/implementing-bruen/> (predicting that it “will be extremely difficult for lower courts to apply [*Bruen*] in a principled manner”).

contends that originalism and feminism are arguably mutually exclusive. Women were not part of the body politic when our Nation's founding documents were drafted and ratified. As such, women's experiences and stories were not considered when drafting historical legislation and are absent from the historical record. Thus, looking to history to justify modern-day regulations will not only fail but also erode progress made for women in the centuries since.

A. *Intimate Partner Violence's Analogical Challenges*

As an initial matter, it is important to address how far back in history *Bruen* requires one to search to find an appropriate analogue for modern-day gun restrictions. Although courts have looked at regulations “from as early as 1285”¹⁴¹ and “Oliver Cromwell's interregnum”¹⁴² in the 1600s, the general consensus is to seek relevant laws in either 1791, when the Second Amendment was ratified as part of the Bill of Rights, or 1868, when the Fourteenth Amendment was ratified as one of the post-Civil War Reconstruction Amendments.¹⁴³

The question of whether the former or later date in the seventy-seven-year span controls remains unsettled.¹⁴⁴ The *Rahimi* court stated that it “afford[ed] greater weight to historical analogues more contemporaneous to the Second Amendment's ratification.”¹⁴⁵ Others have argued that “the question is controlled not by the original meaning of the first ten Amendments in 1791 but instead by the meaning those texts and the Fourteenth Amendment had in 1868[.]” when portions of the Bill of Rights were made applicable to the states.¹⁴⁶

Regardless of which time period controls—one in the eighteenth or one in the nineteenth century—it is unlikely that any spot-on precedent will exist for a twenty-first-century regulation. As Professors Joseph Blocher and Eric Ruben succinctly state, the *Bruen* test leads to “acute problems of anachronism.”¹⁴⁷

141. See *Bruen*, 597 U.S. at 40.

142. *Rahimi*, 61 F.4th at 456.

143. *Bruen*, 597 U.S. at 38–39.

144. See Charles, *supra* note 109, at 99 (noting that “the Court did not settle whether 1791—when the Second Amendment was ratified—or 1868—when the Second Amendment was incorporated through the Fourteenth Amendment—was the relevant benchmark”).

145. *Rahimi*, 61 F.4th at 456.

146. Steven G. Calabresi & Sarah E. Agudo, *Individual Rights Under State Constitutions When the Fourteenth Amendment Was Ratified in 1868: What Rights Are Deeply Rooted in American History and Tradition?*, 87 TEX. L. REV. 7, 115–16 (2008).

147. Blocher & Ruben, *supra* note 115, at 109.

One of the most obvious challenges relates to the evolution of firearms themselves. While “handguns are by far the most common type of gun”¹⁴⁸ in modern times, they did not exist in the founding era.¹⁴⁹ Neither did shotguns,¹⁵⁰ revolvers,¹⁵¹ machine guns,¹⁵² or 3D-printed ghost guns. Instead, “Americans in 1791 generally owned muzzle-loading flintlocks . . . incapable of firing multiple shots.”¹⁵³ The 1792 Uniform Militia Act, which required all white males between the ages of eighteen and forty-five to serve in the militia, mandated that eligible men arm themselves with a musket or rifle, not a shotgun or AR-15,¹⁵⁴ because

semiautomatic firearms technology didn’t exist in any meaningful sense in the era of the founding fathers. They had something much different in mind when they drafted the Second Amendment. The typical firearms of the day . . . could hold a single round at a time, and a skilled shooter could hope to get off three or possibly four rounds in a minute of firing.¹⁵⁵

Returning briefly to the subject of intimate partner violence, the inefficient nature of firearms in the eighteenth century meant that they were rarely involved in domestic disputes. Instead of slowly

148. Kim Parker et. al., *America’s Complex Relationship With Guns*, PEW RSCH. CTR. (June 22, 2017), <https://www.pewresearch.org/social-trends/2017/06/22/the-demographics-of-gun-ownership/> (reporting that 62 percent of Americans own handguns, “while 22% own a rifle and 16% own a shotgun”).

149. The automatic handgun was invented in 1892. *See Gun Timeline*, PBS HISTORY DETECTIVES, <https://www.pbs.org/opb/historydetectives/technique/gun-timeline/>.

150. Shotguns came into common use in the 1850s. *See id.*

151. Samuel Colt patented his eponymous revolver in 1836. *See* Richard C. Rattenbury, *Revolver*, BRITANNICA (Feb., 18, 2015), <https://www.britannica.com/technology/revolver>.

152. The machine gun was invented in 1884. *See The Machine Gun: Its History, Development and Use: A Resource Guide*, LIBRARY OF CONGRESS RESEARCH GUIDES, <https://guides.loc.gov/machine-gun-its-history-development-and-use>.

153. Blocher & Ruben, *supra* note 115, at 153 (citing Randolph Roth, *Why Guns Are and Are Not the Problem: The Relationship Between Guns and Homicide in American History*, in *A RIGHT TO BEAR ARMS? THE CONTESTED ROLE OF HISTORY IN CONTEMPORARY DEBATES ON THE SECOND AMENDMENT* 113, 117 (Jennifer Tucker et al. eds., 2019)).

154. Patrick J. Charles, *The 1792 National Militia Act, the Second Amendment, and Individual Militia Rights: A Legal and Historical Perspective*, 9 GEO. J. L. & PUB. POL’Y 323, 332 (2011).

155. Christopher Ingraham, *What ‘Arms’ Looked Like When the Second Amendment Was Written*, WASH. POST. (June 13, 2016, 4:01 PM), <https://www.washingtonpost.com/news/wonk/wp/2016/06/13/the-men-who-wrote-the-2nd-amendment-would-never-recognize-an-ar-15/>.

loading a musket, “[m]arital murderers” typically used “their fists or feet.”¹⁵⁶

Requiring a direct, or even arguably an indirect, analogue would conceivably invalidate nearly any modern firearm regulation that didn’t involve a simple weapon. As experts have noted, “To many, it may seem like madness that law enacted before the invention of antibiotics and electricity or the founding of the first American colony—not to mention automatic and semiautomatic weapons—can dictate how modern firearms are regulated today.”¹⁵⁷ More broadly, as Justice Breyer stated in his dissent in *Bruen*, “[l]aws addressing repeating crossbows, launcegays, dirks, dagges, skeines, stilladers, and other ancient weapons will be of little help to courts confronting modern problems.”¹⁵⁸ And the challenges will become only more acute because “as technological progress pushes our society ever further beyond the bounds of the Framers’ imaginations, attempts at ‘analogical reasoning’ will become increasingly tortured.”¹⁵⁹ “In short, a standard that relies solely on history is unjustifiable and unworkable.”¹⁶⁰

Commentators have argued that “evolving technology . . . call[s] for evolving regulation.”¹⁶¹ Similarly, evolving humanity, specifically with respect to the recognition of women’s civil rights, also calls for evolving regulation. But with a “Second Amendment doctrine . . . [that] has become intensely preoccupied with genealogy,” such evolution faces significant hurdles.¹⁶² As *Rahimi* demonstrates, staking modern-day constitutionality on laws governing intimate partner violence in the founding era will inevitably lead to an erosion of contemporary rights.

Prior to the ratification of the Second Amendment, Puritans in the Colonial era enacted laws against spousal violence, but they did so not out of a concern for women as much as to ensure their vision of

156. RANDOLPH ROTH, *AMERICAN HOMICIDE* 115 (2009). Professor Roth adds that abusers “picked up whatever was at hand—a stick, a stone, a tool. Guns required preparation and a degree of premeditation.” *Id.* at 115–16.

157. Mark Anthony Frassetto, *The Use and Misuse of History in Second Amendment Litigation in A RIGHT TO BEAR ARMS?* 202 (Jennifer Tucker et al. eds., 2019).

158. *Bruen*, 597 U.S. at 115 (Breyer, J., dissenting).

159. *Id.*

160. *Id.* Professors Randy Barnett and Nelson Lund agree, noting that “historical analogies will frequently provide insufficient guidance, particularly for novel gun control laws that address modern problems.” Barnett & Lund, *supra* note 140.

161. Ingraham, *supra* note 155.

162. Darrell Miller, “*Lineal Descendant*” *Analysis in Second Amendment Litigation*, HARV. L. REV. BLOG (April 7, 2021), <https://harvardlawreview.org/blog/2021/04/lineal-descendant-analysis-in-second-amendment-litigation/>.

morality.¹⁶³ At the time, “[c]riminal laws against family violence were intended mainly to serve symbolic purposes—to define the boundary between saint and sinner.”¹⁶⁴ As such, laws against family violence were “rarely enforced, and when they were, offenders usually received lenient sentences.”¹⁶⁵ Predictably, “the courts never permitted . . . a wife to punish a husband.”¹⁶⁶

Later, “[a]s Puritans became Yankees, the limited enforcement of domestic violence legislation disappeared altogether.”¹⁶⁷ The patriarchal doctrine of “[c]overture provided the legal context for American law-making,”¹⁶⁸ largely leaving men to abuse their wives with impunity. State courts upheld the right of “moderate chastisement”¹⁶⁹ and declined to convict husbands for assault, finding that they were permitted “to use toward [their wives] such a degree of force as is necessary.”¹⁷⁰ In effect, if a man “engaged in spousal abuse, for the most part, unless [he] left permanent damage to the abused spouse, [he was] not subject to criminal penalties.”¹⁷¹

A permissive attitude towards intimate partner abuse was not limited to battery. “Another violent aspect of coverture—conjugal rights—entitled a husband to companionship, cooperation, affection, and sexual access.”¹⁷² As such, “[m]arital rape was not a crime, and husbands could expect sexual monopoly over their wives.”¹⁷³ In family courts, as in criminal courts, “nineteenth-century judges developed a body of divorce law premised on the assumption that a wife was obliged to endure various kinds of violence as a normal—and sometimes deserved—part of married life.”¹⁷⁴

163. Pleck, *supra* note 21, at 24–25; *see also* Siegel, *supra* note 9, at 2130 (“[W]hen the legal system did prosecute wife beating, it treated the crime as a deviant social act rather than as conduct recently condoned by law, selecting men for prosecution in ways that suggest that concerns other than protecting women animated the punishment of wife beaters.”).

164. Pleck, *supra* note 21, at 25.

165. *Id.*

166. *Id.* at 24.

167. *Id.* at 27.

168. Liebell, *supra* note 11, at 218; *see also supra* notes 7–9 and accompanying text.

169. *Bradley v. State*, 1 Miss. (1 Walker) 156, 158 (1824).

170. *State v. Black*, 60 N.C. (Win.) 262, 267 (1864); *see also* Siegel, *supra* note 13, at 2125 & n.25 (delineating many cases from 1823–1864, “particularly in the southern and mid-Atlantic regions [that] recognized a husband’s prerogative to chastise his wife”).

171. Mary C. Curtis, *Gun Control is an American Tradition*, SLATE (May 3, 2023, 2:28 PM), <https://slate.com/news-and-politics/2023/05/gun-control-laws-bruen-us-history.html>.

172. Liebell, *supra* note 11, at 217.

173. *Id.*

174. Siegel, *supra* note 9, at 2133–34.

By the late 1800s, courts began to constrain the legal right of men to abuse their wives.¹⁷⁵ Here again, however, legal evolutions did not necessarily arise out of conceptions of equality. Instead, “[d]uring the Reconstruction Era, public interest in marital violence rose as wife beating began to shift in political complexion from a ‘woman’s’ issue to a ‘law and order’ issue.”¹⁷⁶ And as occurred in earlier periods, even limited progress was met with retrenchment and resistance. Family violence may have been officially prohibited, but intervention in cases of intimate partner abuse did not substantially increase. In this era, it was not because authorities “insisted that a husband has the legal prerogative to beat his wife; instead, they often asserted that the legal system should not interfere in cases of wife beating . . . in order to protect the privacy of the marriage relationship and to promote domestic harmony.”¹⁷⁷ It was not until the late 1970s that the law truly began protecting victims of domestic violence¹⁷⁸ and 1992 that the Supreme Court explicitly rejected coverture.¹⁷⁹

The disparate treatment and condonation of violence against women is a historical fact; “for a century after courts repudiated the right of chastisement, the American legal system continued to treat wife beating differently from other cases of assault and battery.”¹⁸⁰ The reasons for this inequity are complex and multifold, but one important explanation is the public-private distinction. This principle posits that an action considered a crime when committed

175. See *id.*; Fulgham v. State, 46 Ala. 143 145–47 (1871).

176. Siegel, *supra* note 9, at 2136. Professor Siegel notes that at this time, the Ku Klux Klan “began to invoke wife beating as an excuse for assaults on black men.” *Id.*

177. *Id.* at 2120. These legal justifications comported with cultural changes, as “jurists began to justify the regulation of domestic violence in the language of privacy and love associated with companionate marriage.” *Id.* Similarly, the passage of Married Women’s Property Acts “did not legitimate any radical shifts in the economic status of women.” Chused, *supra* note 2, at 1362.

178. Even this progress is not without controversy, as scholars have argued that an increased focus on criminalization of perpetrators disempowers survivors and does not in fact keep them safer. See e.g., Deborah Epstein, *Redefining the State’s Response to Domestic Violence: Past Victories and Future Challenges*, 1 GEO J. GENDER & L. 127, 136–37 (1999); Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 HARV. J.L. & GENDER 53, 71–74 (2017); Mimi E. Kim, *From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration*, 27 J. ETHNIC & CULTURAL DIVERSITY SOC. WORK 219, 221–23 (2018); Natalie Nanasi, *New Approaches to Disarming Domestic Abusers*, 67 VILL. L. REV. 561, 593–601 (2022).

179. See *Planned Parenthood v. Casey*, 505 U.S. 833, 869 (1992). In *Casey*, Justice O’Connor described coverture as “repugnant to this Court’s present understanding of marriage and of the nature of the rights secured by the Constitution,” adding that “[w]omen do not lose their constitutionally protected liberty when they marry.” *Id.* at 898.

180. Siegel, *supra* note 9, at 2118.

against a stranger or acquaintance outside the home (such as physical or sexual assault) is protected when it is perpetrated against an intimate partner within the confines of one's home.¹⁸¹

The idea of a public-private distinction dates as far back as the eighteenth century, when “[l]egal thinkers . . . distinguished between public and private behavior” and determined that “private vices were not the legitimate subject of law The family [thereby] became a private institution, separated from public life.”¹⁸² Blackstone, who notoriously described coverture, also expounded on this concept, stating that “private vices . . . which man is bound to perform considered only as an individual, are not, cannot be, the object of any municipal law.”¹⁸³

Nearly a century after Blackstone's commentaries, courts continued to use the public-private distinction to justify intimate partner violence. As the North Carolina Supreme Court explained:

We know that a slap on the cheek, let it be as light as it may, indeed any touching of the person of another in a rude or angry manner – is in law an assault and battery. In the nature of things it cannot apply to persons in the marriage state, it would break down the great principle of mutual confidence and dependence; throw open the bedroom to the gaze of the public; and spread discord and misery, contention and strife, where peace and concord ought to reign.¹⁸⁴

In differentiating violence this way, the state took an active “role in defining ‘private sphere’ life and demonstrating that women's . . . dependence on men was a condition imposed and enforced by law.”¹⁸⁵

In distinguishing historic legislation from contemporary protective order statutes, the Fifth Circuit focused on the fact that historical laws were “aimed at curbing terroristic or riotous behavior, i.e., disarming those who had been adjudicated to be a threat to

181. The public-private distinction “has historically been gendered, with the ‘public’ sphere traditionally being the realm of men and the ‘private’ sphere the realm of women.” Suzanne A. Kim, *Reconstructing Family Privacy*, 57 HASTINGS L.J. 557, 569 (2006).

182. Pleck, *supra* note 21, at 28.

183. 4 BLACKSTONE, *supra* note 8, at 41. Blackstone gave the example of “the vice of drunkenness,” which he argued that “if committed privately and alone, is beyond the knowledge and of course beyond the reach of human tribunals: but if committed publicly, in the face of the world, its evil example makes it liable to temporal censures.” *Id.* at 41–42.

184. *State v. Hussey*, 44 N.C. (Busb.) 123, 126 (1852) (holding wives incompetent to testify against husbands in all cases of assault and battery, except where permanent injury or great bodily harm is inflicted).

185. Siegel, *supra* note 5, at 1078.

society generally, rather than to identified individuals.”¹⁸⁶ This notion, and subsequent legal conclusion, that intimate partner violence is a private, strictly interpersonal matter demonstrates the perpetuation of the public-private distinction and the insidious impact of a longstanding misunderstanding of intimate partner abuse. Violence against women is not about a person’s inability to manage their anger or a problem that occurs because of one violent partner or in one volatile relationship. It is beyond the scope of this Article to provide a full exposition, but as others have persuasively shown, domestic violence has deep societal causes, namely patriarchy¹⁸⁷ and political inequality.¹⁸⁸

Intimate partner violence also has significant impact both inside and outside the home. Victims are obviously harmed by abuse, but perpetrators with guns also pose a threat to the public and to themselves. They are more likely than the average person to commit a mass shooting¹⁸⁹ or endanger the life of a police officer.¹⁹⁰ The murder of an intimate partner is not only “often coupled with additional killings,” but “almost one-half of intimate partner homicides committed by men with guns ended with suicide.”¹⁹¹ Domestic violence is therefore neither caused nor experienced in isolation—its harms effect the health, productivity, and safety of not just individuals but entire communities.

In short, intimate partner violence “contributes to and is a consequence of political, economic, and other inequalities women face

186. *Rahimi*, 61 F.4th at 459.

187. *See* Siegel, *supra* note 13, at 2135 (“Where coverture was once viewed as paradigmatically feudal, its patriarchal aspect is now most prominent.”); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 4 (1988) (“The virtual abolition of patriarchy—a political structure that values men more than women—is the political precondition of a truly ungendered jurisprudence.”).

188. *See* Liebell, *supra* note 11, at 233 (arguing that “[p]olitical inequality is inextricably related to patterns of domination within the family, including domestic violence.”).

189. Lisa B. Geller et al., *The Role of Domestic Violence in Fatal Mass Shootings in the United States, 2014–2019*, 8 INJ. EPIDEMIOLOGY 38, 43 (2021) (documenting that the shooter in 68 percent of mass shootings between 2014 and 2019 had either killed an intimate partner or other family member or had a history of domestic violence).

190. Cassandra Kercher et al., *Homicides of Law Enforcement Officers Responding to Domestic Disturbance Calls*, 19 INJ. PREV. 331, 334 (2013) (finding that domestic dispute calls were among the deadliest for law enforcement officers and that ninety-five percent of officers killed were murdered with a firearm).

191. *See* Sierra Smucker et al., *Suicide and Additional Homicides Associated with Intimate Partner Homicide: North Carolina 2004–2013*, 95 J. URB. HEALTH 337, 337 (2018).

daily.”¹⁹² When understood in this way, it can be “seen as a crime that threatens not only its victims but also the social order.”¹⁹³ But the legal system’s longstanding misunderstandings about family violence, which perpetuate today, often limit the judiciary’s ability to both understand its root causes and ameliorate its personal and societal harms.

Professor Jacob Charles notes that “no founding era regulations forbade or even tightly regulated private cannon possession” because “there was not a perceived problem to solve.”¹⁹⁴ Similarly, as demonstrated and explained herein, intimate partner violence was for most of U.S. history not considered an issue worth addressing. As such, conditioning Second Amendment constitutionality on founders’ recognition of women’s rights has inevitably led to a continuing failure to protect women.

B. *Originalism v. Feminism*

Six of the justices sitting on the Supreme Court today identify as originalists.¹⁹⁵ As experts note, an originalist judicial philosophy is not “a single, coherent, unified theory of constitutional interpretation, but rather a smorgasbord of distinct constitutional theories that share little in common except a misleading reliance on a single label.”¹⁹⁶ What some call originalism, others label as “historical traditionalism,” which, as the name suggests, focuses less on the original meaning of constitutional text and more on historical practice, precedent, or customs and social norms.¹⁹⁷ Others describe the Court’s current majority as engaging in “originalism-by-analogy,” which requires judges to reason analogically straight from the historical record, rather than using historical sources to identify the original public meaning of a constitutional provision.¹⁹⁸

192. Daniel G. Saunders et al., *Patriarchy’s Link to Intimate Partner Violence: Applications to Survivors’ Asylum Claims*, 29 VIOLENCE AGAINST WOMEN 1998, 1999 (2023).

193. Pleck, *supra* note 21, at 20. “The lesson of the past,” Professor Pleck notes, “is that the greater the emphasis on the ‘family’ character of domestic violence, the lower the interest and support for criminalization of family violence.” *Id.* at 53.

194. Charles, *supra* note 109, at 113.

195. See Malinda Seymore, *Originalism: Erasing Women from the Body Politic*, 10 ADOPTION & CULTURE 214, 214 (2022).

196. Thomas B. Colby & Peter J. Smith, *Living Originalism*, 59 DUKE L.J. 239, 244 (2009).

197. See Randy E. Barnett & Lawrence B. Solum, *Originalism after Dobbs, Bruen, and Kennedy: The Role of History and Tradition*, 118 NW. U. L. REV. 433, 452 (2023).

198. Blocher & Ruben, *supra* note 115, at 99.

Regardless of the label, in 2022, in both *Dobbs*¹⁹⁹ and *Bruen*, the Court's focus on history and tradition operated "not as a strategy to avoid constitutional politics but to fundamentally reorient them."²⁰⁰ Although "presented as a value-neutral enterprise, unconnected from political aims or legal movement or conservative outcomes . . . everything is value-laden, even the choice of method."²⁰¹ And the Court's choice of originalism in cases involving both abortion and gun rights orients its jurisprudence to a time when the law didn't consider women.

The founders of our country and framers of our Constitution did not take women, or anyone other than white landowning men for that matter, into account when they drafted the Bill of Rights, including the Second Amendment.²⁰² As detailed above in Part IV.A, women's rights, and women's safety specifically, were not deemed issues worthy of consideration until centuries later.²⁰³

Although some argue that the Constitution's use of the word "people" makes it gender-neutral, in fact, the use of the term is itself evidence of gender bias. As Professor Jill Hasday explains, "The Constitution produced in 1787 did not include the word male because the Founders presumed that they could use sex-neutral language—'We the People,' rather than 'We the Men'—without suggesting that men and women had equal rights under the law or in the Constitution."²⁰⁴ The exclusion of women was no accident. Abigail Adams, wife of President John Adams, famously asked her husband

199. See Rachel Rebouché & Mary Ziegler, *Fracture: Abortion Law and Politics After Dobbs*, 76 SMU L. REV. 27, 36 (2023) ("*Dobbs* also previewed the approach to unenumerated rights taken by the Court's new majority; one, the majority claims, that is yoked to tradition and history.").

200. *Id.* at 40.

201. Seymore, *supra* note 195, at 215.

202. See Mary Anne Franks, *Book Talk: The Cult of the Constitution*, 13 CONLAWNOW 33, 34 (2021) ("White male supremacy permeates the creation, interpretation, explication, and execution of the Constitution."). See also Melissa Murray, *Children of Men: The Roberts Court's Jurisprudence of Masculinity*, 60 HOUS. L. REV. 799, 815 (2023) (noting that "the rights enshrined in the Bill of Rights—like the . . . Second Amendment rights credited in . . . *Bruen*—were initially drafted and ratified with the expectation that they would be exercised by (white, property-owning) men.").

203. See *supra* pages 124–31.

204. Jill Elaine Hasday, *Women's Exclusion from the Constitutional Canon*, 2013 U. ILL. L. REV. 1715, 1718–19 (2013). See also Liebell, *supra* note 11, at 220 ("there is no evidence that the rights of married women were considered at the Constitutional Convention or in the correspondence of the delegates. Although the framers used gender-neutral terms such as persons, people, and electors, the original understanding of duties (e.g., militia) or rights (e.g., voting) did not formally apply to women because they were represented in political life by their husbands.").

and his fellow founding fathers to “remember the ladies” and “consider the rights of women while laying the framework for the new, independent nation.”²⁰⁵ They declined. The founders “did not simply forget about the ladies; they specifically and intentionally determined to exclude them and to confirm men’s tyrannical power.”²⁰⁶

Women’s deliberate and systematic exclusion demonstrates that gender discrimination is not “an accident in the law but rather a central force in its development.”²⁰⁷ Women are not “part of We the People in any meaningful sense in the framing of the original Constitution and post-Civil War Amendments.”²⁰⁸ As the dissenters in *Dobbs* eloquently stated, “‘people’ did not ratify the Fourteenth Amendment. Men did. So it is perhaps not so surprising that the ratifiers were not perfectly attuned to the importance of reproductive rights for women’s liberty, or for their capacity to participate as equal members of our Nation.”²⁰⁹

205. LIBRARY OF CONGRESS BLOGS, *Remember the Ladies* (March 31, 2016), <https://blogs.loc.gov/loc/2016/03/remember-the-ladies/>. Mrs. Adams requested in full: “in the new code of laws which I suppose it will be necessary for you to make, I desire you would remember the ladies and be more generous and favorable to them than your ancestors.” *Id.* She asked that the founders “not put such unlimited power into the hands of the husbands . . . [because] all men would be tyrants if they could.” *Id.* She then boldly threatened that “[i]f particular care and attention is not paid to the ladies, we are determined to foment a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation.” *Id.*

206. Mary Anne Case, *The Ladies? Forget About Them. A Feminist Perspective on the Limits of Originalism*, 29 CONST. COMMENT. 431, 432 (2014). Professor Case adds that

the disenfranchisement of women could [therefore] be characterized as a principled decision about the allocation of power and the locus at which power is exercised in the same way as might, for example, the construction of the Senate, federalism, or the separation of powers, each of which also could be seen to serve sectarian interests.

Id. at 432–33.

207. KATHRYN M. STANCHI ET AL., FEMINIST JUDGMENTS: REWRITTEN OPINION OF THE UNITED STATES SUPREME COURT 26 (2016) (citing MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY (2012)).

208. Case, *supra* note 206, at 453.

209. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 372 (2022) (Breyer, Sotomayor, and Kagan, JJ., dissenting). An Ohio judge made a similar point in discussing *Bruen*, stating that

the glaring flaw in any analysis of the United States’ historical tradition of firearm regulation in relation to Ohio’s gun laws is that no such analysis could account for what the United States’ historical tradition of firearm regulation would have been if women and nonwhite people had been able to vote for the representatives who determined these regulations.

State v. Philpotts, 194 N.E.3d 371, 373 (2022) (Brunner, J., dissenting). And Professor Jill Hasday elaborates that when

Put most simply, “modern jurisprudence is ‘masculine,’” meaning that “the values, the dangers ... that characterize women’s lives are not reflected at any level whatsoever in contracts, torts, constitutional law, or any other field of legal doctrine.”²¹⁰ The Roberts Court has amplified this viewpoint through a “commitment to an ascendant ‘jurisprudence of masculinity’ that prioritizes, both explicitly and implicitly, men’s rights, even as it diminishes and constrains women’s rights.”²¹¹ From the founding era until today, “[w]omen are compared to the unstated norm of men.”²¹²

With this perspective, it becomes clear that originalism, while purportedly neutral, operates to disadvantage women.²¹³ When women’s experiences are ignored, “what initially may seem to be an objective stance may appear partial from another point of view[;] what initially appears to be a fixed and objective difference may seem from another viewpoint like the subordination or exclusion of some people by others.”²¹⁴ Originalism’s “objective” history is therefore steeped in gender bias.

The result of this bias is that

the United States restructured significant aspects of its constitutional order in the aftermath of the Civil War . . . congressmen on all sides of the debates over the Fourteenth Amendment hoped that the amendment’s Equal Protection Clause would not be read to disrupt common law coverture or prohibit sex discrimination, even as their discussion of the amendment made clear that such an interpretation of equal protection was possible.

Hasday, *supra* note 204, at 1719.

210. West, *supra* note 187, at 58. Or, as the participants in an 1852 women’s rights convention stated:

The law is wholly masculine: it is created and executed by our type or class of the man nature. The framers of all legal compacts are thus restricted to the masculine stand-point of observation—to the thoughts, feelings, and biases of men. The law, then, could give us no representation as women, and therefore, no impartial justice ... for we can be represented only by our peers.

THE PROCEEDINGS OF THE WOMAN’S RIGHTS CONVENTION, HELD AT SYRACUSE, SEPTEMBER 8TH, 9TH & 10TH, 1852 20–21 (Syracuse, J.E. Masters 1852).

211. Murray, *supra* note 202, at 799.

212. Martha Minow, *Justice Engendered*, 101 HARV. L. REV. 10, 13 (1987). This critique is not limited to gender, as Professor Minow adds: “Blacks, Mormons, Jews, and Arabs are different in relation to the unstated white Christian norm. Handicapped persons are different in relation to the unstated norm of able-bodiedness.” *Id.* at 32.

213. As Professor Melissa Murray explains, “[i]t is hardly surprising that an interpretive method that prioritizes the Founding and Founders’ intent yields gendered outcomes.” Murray, *supra* note 202, at 845.

214. Minow, *supra* note 212, at 14. Professor Minow states this point another way, when she writes that “there is an assumption that the existing social and economic arrangements are natural and neutral.” *Id.* at 33.

the distinctive values women hold, the distinctive dangers from which we suffer, and the distinctive contradictions that characterize our inner lives are not reflected in legal theory because legal theory . . . is about actual, real life, enacted, legislated, adjudicated law, and women have, from law's inception, lacked the power to make law protect, value, or seriously regard our experience.²¹⁵

Firearm jurisprudence provides a concrete example of how the law ignores women's lived experiences. In *Bruen*, the Court discussed the "central" nature of self-defense to the Second Amendment right, stating that "[m]any Americans hazard greater danger outside the home than in it."²¹⁶ This statement ignores the reality that for many women, the most dangerous place is often their own home.²¹⁷ According to the United Nations, more than half (56 percent) of women and girls murdered in 2021 were killed by intimate partners or family members, revealing the stark dangers faced in a place where safety is often assumed.²¹⁸ Thus, "[i]n the case of the Second Amendment, armed self-defense might be substantively different if women were the legal subjects, because they are more likely to be killed in their home by an acquaintance."²¹⁹ And it is the very

215. West, *supra* note 187, at 60. Professor Robert Hayman makes a similar point with respect to race when he states, "in judicial practice, 'tradition' is nearly always white." Robert L. Hayman, Jr., *The Color of Tradition: Critical Race Theory and Postmodern Constitutional Traditionalism*, 30 HARV. C.R.-C.L. L. REV. 57, 58 (1995). He adds that originalists' efforts "to define unifying traditions has systematically excluded the voices, perspectives, and counter-traditions of cultural minorities, leaving them at the mercy of the past practices, and embedded habits of majoritarian forces." *Id.* at 74.

216. *Bruen*, 597 U.S. at 33 ("[A] Chicagoan is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower" (citing *Moore v. Madigan*, 702 F.3d 933, 937 (7th Cir. 2012))). See also Eric Ruben, *Self-Defense Exceptionalism and the Immunization of Private Violence*, 96 S. CAL. L. REV. 509, 532 (2023) (discussing how gun rights advocates shifted focus from immunity for using guns to protect the home to immunity for using guns in self-defense outside the home).

217. See Petrosky et al., *supra* note 45, at 1 (explaining that homicide was the leading cause of death among women under 45 from 2003–14, and that over half of the women were killed by an intimate partner).

218. U.N. OFFICE ON DRUGS AND CRIME & ENDING VIOLENCE AGAINST WOMEN SECTION, U.N. ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, GENDER-RELATED KILLINGS OF WOMEN AND GIRLS (FEMICIDE/FEMINICIDE) 5 (2022), <https://www.unwomen.org/sites/default/files/2022-11/Gender-related-killings-of-women-and-girls-improving-data-to-improve-responses-to-femicide-feminicide-en.pdf>. Conversely, "only eleven percent of male homicides [were] perpetrated in the private sphere." *Id.*

219. Liebell, *supra* note 11, at 233. Professor Liebell adds that "Second Amendment scholarship generally assumes that the private sphere is a place of safety and freedom rather than a site of violence" and that "the power of a head

protections that aim to remedy this harm that were undone by the originalist doctrine created in *Bruen* and implemented in *Rahimi*.²²⁰

Finally, looking to history to justify contemporary regulations is also problematic when one considers the axiom: “history is what the present chooses to remember about the past.”²²¹ What historians deemed significant to memorialize is itself a product of gender bias. Recorded are the accounts of founding fathers, not the mothers, wives, and daughters who were not in the “room where it happens.”²²² Their hopes, struggles, and inner lives are largely lost to history. We do not know the stories of the women who endured second-class status under the yoke of coverture and violence, the indignities they faced, big and small. We cannot know the dangers they confronted at the hands of their intimate partners or how they felt about the presence of guns in their homes and communities. We are left only to assume that they yearned, as we do, for safety and peace.

As Professor Martha Minow explains, “[t]he work of historians often has taken the perspective of those who were powerful, and ignored others.”²²³ Put another way, “history is written by the victors.”²²⁴ Thus, when *Bruen* and *Rahimi* courts declared gun regulations unconstitutional because they could not identify a historical analogue, their “emphasis on historical silence imbues an absent past with more explanatory power than it can bear.”²²⁵ First, “historical silence might reflect not an absence of law and practice, but the simple fact that historians have yet to uncover it, let alone on a briefing schedule.”²²⁶ Moreover, and importantly, the relevant women’s history does not exist because it was not deemed worthy of creating or recording.

of household to defend his home with a gun is inextricably linked to centuries of gendered hierarchy in the private sphere and racial privilege.” *Id.* at 232, 236.

220. See West, *supra* note 187, at 60 (“Women are absent from jurisprudence because women as *human beings* are absent from the law’s protection: jurisprudence does not recognize us because law does not protect us.”).

221. Eric Foner, *Confederate Statues and ‘Our’ History*, N.Y. TIMES (Aug. 20, 2017), <https://www.nytimes.com/2017/08/20/opinion/confederate-statues-american-history.html>.

222. *The Room Where It Happens*, WIKIPEDIA, https://en.wikipedia.org/wiki/The_Room_Where_It_Happens (discussing the song featured in the musical *Hamilton*, which focuses on Alexander Hamilton’s accomplishments and those of the other founding fathers).

223. Minow, *supra* note 212, at 67–68.

224. Matthew Phelan, *The History of “History Is Written by the Victors,”* SLATE (Nov. 26, 2019), <https://slate.com/culture/2019/11/history-is-written-by-the-victors-quote-origin.html>.

225. Charles, *supra* note 109, at abstract. Professor Charles notes elsewhere that *Bruen* “places outsized importance on missing historical records.” *Id.* at 71.

226. Blocher & Ruben, *supra* note 115, at 157.

V. A PROPER READING OF *BRUEN* SUPPORTS DISARMING INDIVIDUALS SUBJECT TO FAMILY VIOLENCE PROTECTIVE ORDERS

Myriad problems exist with the Court's *Bruen* test, but the gutting of domestic violence protections need not be one of them. *Bruen* can be applied to 18 U.S.C. § 922(g)(8) without invalidating the law because the Court mandated a “historical *analogue*, not a historical *twin*.”²²⁷ Although, for the reasons explained above, protective order statutes did not exist at the time the Second Amendment was ratified, the lack of a “dead ringer” need not be the death knell for protective order firearms restrictions.²²⁸ As the Seventh Circuit explained, “exclusions need not mirror limits that were on the books in 1791.”²²⁹

As a district court applying the *Bruen* test stated, “the critical question lower courts now face is whether *Bruen* requires the regulatory landscape be trimmed with a scalpel or a chainsaw.”²³⁰ *Rahimi* was a chainsaw, but as will be explained below, its analysis is flawed and not required by the Court's new precedent.

Even the *Rahimi* court understood that a core question stemming from *Bruen*, as well as *Heller* and *McDonald*, is *why* a “challenged law burdens the right to armed self-defense.”²³¹ This “why” is the critical question: discovering “some kind of principle, some animating *purpose* or *theme* to the history” is what the law requires, not an identical historical equivalent.²³² The new test for Second Amendment constitutional validity should be understood as inquiring whether the challenged modern-day law and relevant historical law were justified on similar grounds, or, why the legislators in each era implemented the firearm restriction. This permits analysis at a higher level of generality than the Fifth Circuit utilized in *Rahimi*.²³³

227. New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 30 (2022).

228. *Id.*

229. United States v. Skoien, 614 F.3d 638, 641 (7th Cir. 2010).

230. United States v. Perez-Gallan, 640 F. Supp. 3d 697, 713 (W.D. Tex. 2022).

231. *Rahimi*, 61 F.4th at 454 (citing *McDonald*, 561 U.S. at 767); *Heller*, 554 U.S. at 599.

232. Miller, *supra* note 162. Put another way, “[t]he judicial task is finding what principles are reflected by the historical restrictions.” Blocher & Ruben, *supra* note 115, at 147.

233. Professor Darrell Miller has pointed out an inconsistency in the level of generality utilized in firearms cases, noting that “[t]oo often, gun rights advocates look for broad family resemblances when it comes to which firearms fall within Second Amendment coverage—like large capacity magazines or assault rifles—but then demand an *identical twin* when it comes to regulations.” Miller, *supra* note 162.

A. *Dangerous Persons is the Proper Analogue*

With respect to domestic violence, one of the *Bruen* Court's most significant statements was that "[t]he Second Amendment . . . 'elevates above all other interests the right of *law-abiding, responsible* citizens to use arms.'"²³⁴ As the Third Circuit declared in 2016, there exists a "time-honored principle that the right to keep and bear arms does not extend to those likely to commit violent offenses."²³⁵ Similarly, states have long prohibited "bearing arms in a way that spreads 'fear' or 'terror' among the people."²³⁶ And dangerous persons also regularly fall into the category of individuals excluded from the Second Amendment's protection.

A frequently referenced example of these principles is then-Judge Amy Coney Barrett's dissent in *Kanter v. Barr*, a case challenging federal and Wisconsin state felon-in-possession statutes, in which the now-Justice stated that "people have the right to keep and bear arms but . . . history and tradition support Congress's power to strip certain groups of that right."²³⁷ Specifically, Barrett noted that

[h]istory is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns In 1791—and for well more than a century afterward—legislatures disqualified categories of people from the right to bear arms only when they judged that doing so was necessary to protect the public safety.²³⁸

Importantly, Barrett noted that "Congress is not limited to case-by-case exclusions of persons who have been shown to be untrustworthy

234. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 26 (2022) (emphasis added) (citing *Heller*, 554 U.S. at 635). *See also* *United States v. Bena*, 664 F.3d 1180, 1183 (8th Cir. 2011) ("Scholarship suggests historical support for a common-law tradition that permits restrictions directed at citizens who are not law-abiding and responsible.").

235. *Binderup v. Att'y Gen.*, 836 F.3d 336, 367 (3d Cir. 2016). As the concurring opinion elaborates, "the debates from the Pennsylvania, Massachusetts and New Hampshire ratifying conventions, which were considered 'highly influential' by the Supreme Court in *Heller* . . . confirm that the common law right to keep and bear arms did not extend to those who were likely to commit violent offenses." *Id.* at 368 (Hardiman, J., concurring in part and concurring in the judgments). Hence, the best evidence we have indicates that the right to keep and bear arms was understood to exclude those who presented a danger to the public. *Id.* at 368 (Hardiman, J., concurring in part and concurring in the judgments) (quoting *United States v. Barton*, 633 F.3d 168, 174 (3d Cir. 2011)) (brackets omitted). *See also Heller*, 554 U.S. at 626 ("nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.").

236. *Bruen*, 597 U.S. at 50.

237. *Kanter*, 919 F.3d at 452 (Barrett, J., dissenting).

238. *Id.* at 451.

with weapons, nor need these limits be established by evidence presented in court.”²³⁹

The *Kanter* dissent focuses on the “lineal descendants’ of historical laws banning dangerous people from possessing guns.”²⁴⁰ Many courts, including the *Bruen* Court and those applying its new methodology, have similarly delineated historical restrictions on possession by those deemed to be dangerous, from Colonial times through Antebellum and beyond.²⁴¹ Scholars have also extensively detailed the historical precedent for disarming dangerous individuals.²⁴² Significantly, the historical inquiry does not hinge on the nature of the proceedings (i.e., civil or criminal) but on the conduct of the individual.

The concepts of dangerousness and public safety also arguably underlie all of *Heller*’s presumptively lawfully regulated categories: prohibitions on carry by felons and the mentally ill, or in sensitive places such as schools or courthouses. In fact, “several courts of appeals” have even moved beyond a public safety analysis, concluding “that *nonviolent* felons are outside the scope of the Second Amendment” when they reflect “disrespect for the law.”²⁴³

Another category often analyzed concurrently with dangerousness is virtuousness.²⁴⁴ As the Seventh Circuit stated, “[w]hatever the pedigree of the rule against even nonviolent felons possessing weapons . . . most scholars of the Second Amendment agree that the right to bear arms was tied to the concept of a virtuous citizenry and that, accordingly, the government could disarm ‘unvirtuous citizens.’”²⁴⁵ This label presents challenges, however, due to its discriminatory past application. Many categories

239. *Id.* at 464 (citing *Skoien*, 614 F.3d at 641).

240. *Id.* at 464–65.

241. *See, e.g., Bruen*, 597 U.S. at 45–48 (detailing restrictions on public carry in the Colonial Era, two-thirds of which related to dangerous people); *Perez-Gallan*, 640 F. Supp. 3d at 708–13; *Rahimi*, 61 F.4th at 454–55.

242. *See* Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 258–61 (2020) (describing the history of prohibitions on “dangerous persons” from 602 A.D. through Colonial times); Mark Frassetto, *Firearms and Weapons Legislation up to the Early Twentieth Century* 40–43 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200991 (providing a “fairly comprehensive picture of state firearms legislation from the Colonial era until the start of the twentieth century” relating to “Felons, Foreigners and Others Deemed Dangerous By the State”).

243. *Kanter*, 919 F.3d at 446.

244. *See* *Medina v. Whitaker*, 913 F.3d 152, 158–59 (D.C. Cir. 2019) (suggesting that either dangerousness or lack of virtue could justify a firearm ban), *cert. denied sub nom. Medina v. Barr*, 140 S. Ct. 645 (2019).

245. *United States v. Yancey*, 621 F.3d 681, 684–85 (7th Cir. 2010).

of individuals – including Catholics,²⁴⁶ Native Americans,²⁴⁷ and African Americans²⁴⁸—were disarmed under the guise of lack of virtue.²⁴⁹ But as Professor Joseph Blocher and Caitlan Carberry explain, “one can accept that the Framers denied firearms to groups they thought to be particularly dangerous (or unvirtuous, or irresponsible) without sharing their conclusion about which groups qualify as such.”²⁵⁰ And “while many of these bans have been unjust and discriminatory,” the underlying purpose, the critical *why*, however prejudiced, was the “to disarm those who posed a danger.”²⁵¹

B. Subjects of Family Violence Protective Orders are Dangerous Individuals

It is a focus on underlying rationales, specifically dangerousness, that should be the crux of the *Bruen* analysis when considering the constitutionality of § 922(g)(8). Through this lens, it is indisputable that domestic violence offenders—including those who have had protective orders entered against them—are dangerous and should not be permitted to remain armed.²⁵²

A distinction drawn by the *Rahimi* court to invalidate firearm restrictions for protective order respondents is that protective orders

246. See Greenlee, *supra* note 242, at 263 (describing how states such as Maryland, Virginia, and Pennsylvania disarmed Catholics).

247. See Joseph Blocher & Caitlan Carberry, *Historical Gun Laws Targeting “Dangerous” Groups and Outsiders*, in *NEW HISTORIES OF GUN RIGHTS AND REGULATION: ESSAYS ON THE PLACE OF GUNS IN AMERICAN LAW AND SOCIETY*, 131, 136–140 (2023) (detailing restrictions on Native Americans’ access to guns in the 17th, 18th, and 19th centuries).

248. See Greenlee, *supra* note 242, at 269 (noting that “[n]ineteenth-century prohibitions on arms possession were mostly discriminatory bans on slaves and freedmen.”); Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 *GEO. L.J.* 309, 338 (1991).

249. Other laws disarmed those who “libeled or defamed acts of the Continental Congress” and “all Persons failing or refusing to take the Oath of Allegiance” of any citizenship rights.” See Greenlee, *supra* note 242, at 264–65. Such restrictions would plainly violate the First Amendment today.

250. Blocher & Carberry, *supra* note 247, at 12.

251. See Greenlee, *supra* note 242, at 286. Stated another way, sufficient evidence exists to believe that the Framers “thought that gun laws were constitutional so long as they targeted groups of people thought to be dangerous, [and] arguably, that reason is what matters, not the groups to which they affixed that label.” Blocher & Carberry, *supra* note 247, at 146.

252. As this Section will establish, the Fifth Circuit’s likening of those subject to family violence protective orders to those who commit minor civil infractions, both real and imagined, such as “[p]eople who do not recycle or drive an electric vehicle,” is both reckless and disingenuous. *Rahimi*, 61 F.4th at 453.

are civil matters, not criminal adjudications.²⁵³ The court mistakenly claims that protective orders are therefore entered “whether or not there is a ‘credible threat to the physical safety’ of anyone else.”²⁵⁴ In reality, a protective order is a quasi-criminal remedy that is granted to a survivor to prevent likely and foreseeable violence and danger.

As detailed in Section I.C. above, and as delineated in § 922(g)(8), a protective order cannot be entered without the opportunity for a hearing, during which the petitioner must present evidence to justify the entry of the order. An examination of the chart at Appendix A reveals that the family violence protective order statutes in all 50 states require proof of underlying conduct that could be the basis for a criminal prosecution, including physical or sexual assault, stalking, kidnapping, false imprisonment, or threats.²⁵⁵

This, as well as the criminal consequences that attach if a protective order is violated, move it beyond a “mere” civil remedy and dispel the *Rahimi* court’s baseless assertions that §922(g)(8) disarms individuals “with no history of violence whatever”²⁵⁶ To the contrary, empirical evidence supports the legal conclusion that individuals who successfully obtain protective orders against their intimate partners have experienced significant abuse.²⁵⁷ Researchers report that “[i]n general, women seeking protective orders report a history of severe violence.”²⁵⁸ They have been punched, choked,

253. *Id.* at 458–59 (“By contrast, § 922(g)(8) disarms people who have merely been civilly adjudicated to be a threat to another person—or, who are simply governed by a civil order that ‘by its terms explicitly prohibits the use, attempted use, or threatened use of physical force,’ § 922(g)(8)(C)(ii)[.]”)

254. *Id.* at 459.

255. *See* Appendix A.

256. *Rahimi*, 61 F.4th at 459. The concurring opinion in *Rahimi* similarly perpetuates problematic and unsubstantiated myths about intimate partner violence, specifically that they are “often misused as a tactical device in divorce proceedings—and issued without any actual threat of danger.” *Id.* at 465.

257. The risks are not limited to perpetrators’ intimate partners. Nearly thirty percent of intimate partner homicides involve additional victims. *See* Sharon G. Smith et al., *Intimate Partner Homicide and Corollary Victims in 16 States: National Violent Death Reporting System, 2003–2009*, 104 AM. J. PUB. HEALTH 461, 463 (2014). *See* discussion *supra* Parts I.B and IV.A regarding the correlation between violence in the home and public violence such as mass shootings and police fatalities.

258. TK Logan et al., *Protective Orders in Rural and Urban Areas: A Multiple Perspective Study*, 11 VIOLENCE AGAINST WOMEN 876, 877 (2005) (citations omitted). *See also* Kelly Roskam et al., *The Case for Domestic Violence Firearm Prohibitions Under Bruen*, 51 FORDHAM URB. L.J. 221, 255 (2023) (noting that “the decision to petition [for a Domestic Violence Protective Order] is often precipitated by particularly severe violence.”); Jill Theresa Messing et al., *Are Abused Women’s Protective Actions Associated With Reduced Threats Stalking, and Violence Perpetrated by their Male Intimate Partners?*, 23 VIOLENCE AGAINST WOMEN 263 (2016) (reporting that 61 percent of women to petitioned for

beaten, kicked, burned, set on fire, and raped. They have suffered emotional, psychological, and economic harm, and have been threatened with weapons and words promising lethality.”²⁵⁹ They are also at risk of significant firearm-related abuse; a 2021 study found that survivors who sought protective orders were significantly more likely to report that their abusers threatened them with guns, pointed guns at them, coerced them at gunpoint, and hurt them with guns.²⁶⁰ These risks are pronounced before a survivor seeks a protective order and oftentimes exacerbated by efforts to obtain one.²⁶¹

In addition to past violence, protective orders are not issued unless the petitioner can demonstrate a likelihood of future harm. When seeking a protective order,

[s]peculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant. Thus, a preliminary injunction will not be issued simply to prevent the possibility of some remote future injury. *A presently existing actual threat must be shown.*²⁶²

The statutory requirements of § 922(g)(8) demand that a qualifying protective order include a finding that the respondent represents a “credible threat to the physical safety” of their intimate partner and “explicitly prohibit[] the use, attempted use, or threatened use of physical force . . . that would reasonably be expected to cause bodily injury”²⁶³ Fortunately, multiple studies have found that protective orders are effective in preventing such abuse.²⁶⁴

protective orders against their intimate partners experienced “severe” violence, including forcible sex, burning, and attempted murder).

259. Jane K. Stoeber, *supra* note 65, at 1019–20 (citations omitted).

260. Kellie R. Lynch et al., *Firearm-Related Abuse and Protective Order Requests Among Intimate Partner Violence Victims*, 37 J. INTERPERSONAL VIOLENCE 12973, 12983–84 (2021).

261. See discussion *supra* Part I.B (describing and explaining the escalation of violence that can occur when a survivor of intimate partner violence challenges an abuser’s power and control by, for example, seeking a court’s protection). Retaliatory violence may “be motivated by knowledge of supportive or protective resources for women, particularly in men who believe such services deprive them of their rightful authority or control in intimate relationships.” Dugan et al., *supra* note 56, at 174.

262. *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001).

263. 18 U.S.C. § 922(g)(8)(C)(i–ii).

264. See McFarlane et al., *supra* note 71, at 616 (finding significant reductions in violence among women who sought and qualified for protection orders); Carlson et al., *supra* note 61, at 214–15 (reporting that survivors experience a “significant decline” in the probability of abuse following the entry of a protection order; prior to filing, 68 percent of women reported physical violence; after filing, only 23 percent reported the same).

Although protective orders are, as stated above, quasi-criminal, the fact that they do not necessarily involve the criminal legal system is an important feature for many survivors. This flexibility is likely why “[c]ivil protection orders are . . . the single most frequently used legal remedy to address intimate partner violence.”²⁶⁵ Protective orders are a critical alternative remedy for survivors who seek to prevent abuse but do not want law enforcement involved in their lives.

As explained in Subpart I.C. above, some survivors resist engagement with a criminal legal system that they view with fear, suspicion, or distrust. “Race, class, sexual orientation, immigration status, and other identities may have [a profound impact] on women’s decisions to invoke formal systems,” making victims from traditionally marginalized communities reluctant or even afraid to seek the assistance of law enforcement.²⁶⁶ For example, “[v]ictims whose batterers are African American . . . may be particularly hesitant” to send their batterer to jail “if they view the system as oppressive or racist.”²⁶⁷ Survivors may also be unwilling to call the police because of the reasonable fear that they too may be arrested if a responding officer mistakes self-defense for mutual combat and/or cannot immediately identify a primary aggressor.²⁶⁸

A call to the police can lead to the arrest, prosecution, and incarceration of a survivor’s partner. A survivor may ultimately determine that the direct and/or collateral consequences of such criminal involvement are too draconian. Moreover, for many people

265. Jane K. Stoeber, *Freedom from Violence: Using the Stages of Change Model to Realize the Promise of Civil Protection Orders*, 72 OHIO ST. L.J. 303, 318 (2011). See also Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487, 1503–04 (2008) (noting that civil protection orders are, “in the view of many experts, the most effective legal remedy against domestic violence.”).

266. Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, 37 FLA. ST. U. L. REV. 1, 37 (2009).

267. Lauren Bennett et al., *Systemic Obstacles to the Criminal Prosecution of a Battering Partner: A Victim Perspective*, 14 J. INTERPERSONAL VIOLENCE 761, 769 (1991).

268. See Shamita Das Dasgupta, *A Framework for Understanding Women’s Use of Nonlethal Violence in Intimate Heterosexual Relationships*, 8 VIOLENCE AGAINST WOMEN 1364, 1365 (2002) (summarizing studies of increased rates of arrests of women). Dasgupta notes that women taken into police custody as initiators of violence were in most cases battered themselves, but because they were not identified as victims, “the contexts of their violence . . . remained invisible.” *Id.* at 1375. She calls for increased training that would allow officers to differentiate between defensive and non-defensive violence and to identify a predominant aggressor in situations of domestic abuse. *Id.* at 1382.

facing domestic violence, the removal of a partner from their lives may, perhaps counterintuitively, make them less stable or safe.²⁶⁹ If, for example, the abuser is the primary breadwinner in a family, their absence can lead to life-threatening economic instability for the survivor upon the sudden absence of income, transportation, and/or childcare. The data show that there is a 50 percent chance that a female victim of domestic violence will drop below the poverty line if she leaves her abuser.²⁷⁰ Researchers have also found that 38 percent of domestic violence survivors become homeless at some point in their lives.²⁷¹

In sum, contrary to the *Rahimi* court's assertions, a protective order is not a lesser version of a call to the police. It is, instead, a survivor-led remedy, a potentially non-criminal option that allows people in abusive relationships to control how to safely extricate themselves from a violent, sometimes life-threatening, situations.

Courts and scholars agree that “those who are subject to domestic violence protective orders covered by § 922(g)(8) fall within the historical bar of presumptively dangerous persons.”²⁷² It is at this level of generality—the analogue of dangerous persons—that *Bruen* must be understood and applied. Any other methodology would be the “regulatory straightjacket” the Court cautioned against and foreclose nearly all contemporary gun regulations, including lifesaving protections for survivors of domestic violence. As the Court stated, “Of course, the regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868. But the Constitution

269. See Bennett et al., *supra* note 267, at 768.

270. See Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence & Justice for Victims of Domestic Violence*, 8 YALE J.L. & FEMINISM 359, 368 (1995) (citing NATIONAL CLEARINGHOUSE FOR THE DEFENSE OF BATTERED WOMEN, STATISTICS PACKET (3d ed. Fed. 1994)). A participant in a study of low-income survivors of domestic violence explained that she “avoided leaving her abusive husband for years because she feared losing the only wealth she had, her property and home.” Cynthia K. Sanders, *Economic Abuse in the Lives of Women Abused by an Intimate Partner: A Qualitative Study*, 21 VIOLENCE AGAINST WOMEN 3, 15 (2014).

271. Charlene K. Baker et al., *Domestic Violence and Housing Problems: A Contextual Analysis of Women's Help-Seeking, Received Informal Support, and Formal System Response*, 9 VIOLENCE AGAINST WOMEN 754, 766 (2003). See also *Domestic Violence and Homelessness*, ACLU WOMEN'S RIGHTS PROJECT 1 (Mar. 21, 2006), <https://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf> (explaining that domestic violence is thus a leading cause of homelessness for women).

272. *United States v. Boyd*, 999 F.3d 171, 186 (3d Cir. 2021), *cert. denied*, 142 S. Ct. 511 (2021).

can, and must, apply to circumstances beyond those the Founders specifically anticipated”²⁷³

CONCLUSION

In its unnecessarily narrow application of *Bruen*’s new methodology, the Fifth Circuit’s decision in *Rahimi* not only endangers women’s lives, but turns back the clock to an era when they had few rights and lacked agency and independence.

The Second Amendment is not just about “the right to keep arms for self-defense;” it also encompasses “the inverse right to protect oneself by avoiding arms”²⁷⁴ This is an important reminder, particularly when one considers that the regulation of firearms has historically been used by those with power to maintain it. Professors Robert Cottrol and Raymond Diamond explain that denying Black people the right to guns was a means to keep them disempowered.²⁷⁵ The *Rahimi* court, in using to history to allow domestic abusers’ access to firearms, similarly disempowers women.

In 2005, the Supreme Court radically limited the effectiveness of protective orders by holding, in *Town of Castle Rock v. Gonzalez*,²⁷⁶ that states did not have a constitutional duty to enforce them.²⁷⁷ By now allowing domestic violence offenders to keep their guns, survivors’ ability to protect themselves is further diminished.

273. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 3 (2022). See also *Heller v. D.C. (Heller II)*, 670 F.3d 1244, 1275 (Kavanaugh, J., dissenting) (“The constitutional principles do not change (absent amendment), but the relevant principles must be faithfully applied not only to circumstances as they existed in 1787, 1791, and 1868, for example, but also to modern situations that were unknown to the Constitution’s Framers.”). The Court has, when considering the evolution of firearms, recognized the need to consider societal and technological evolution, stating: “the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Bruen*, 597 U.S. at 28 (quoting *Heller*, 554 U.S. at 582).

274. Joseph Blocher, *The Right Not to Keep or Bear Arms*, 64 STAN. L. REV. 1, 1 (2012).

275. See Cottrol & Diamond, *supra* note 248, at 336–38 (detailing antebellum Southern restrictions on African Americans’ use and ownership of guns); *Id.* at 344–46 (describing Southern statutes, known as “black codes,” that disarmed newly freed slaves by forbidding them from carrying firearms without a license). In the 1800s, “in [s]ome states, slaves and persons of color were prohibited from possession or carrying arms without a license or at all.” Stephen P. Halbrook, *Going Armed with Dangerous and Unusual Weapons to the Terror of the People: How the Common Law Distinguished the Peaceable Keeping and Bearing of Arms*, THE ASPEN INST. 8 (Sept. 15, 2016), https://stephenhalbrook.com/law_review_articles/going_armed.pdf.

276. 545 U.S. 748, 748 (2005).

277. *Id.* at 768.

Women's rights are eroded and more will die at the hands of their abusers unless the Supreme Court recognizes and reverses the errors of *Rahimi*.

APPENDIX A

STATE	PROTECTION ORDER STATUTE	DEFINED TERMS
Alabama	<p>ALA. CODE § 30-5-3: “(a) The courts, as provided in this chapter, shall have jurisdiction to issue protection orders.</p> <p>(b) A protection order may be requested in any pending civil or domestic relations action, as an independent civil action, or in conjunction with the preliminary, final, or post-judgment relief in a civil action.</p> <p>(c) A petition for a protection order may be filed in any of the following locations:</p> <p>(1) Where the plaintiff or defendant resides.</p> <p>(2) Where the plaintiff is temporarily located if he or she has left his or her residence to avoid further abuse.</p> <p>(3) Where the abuse occurred.</p> <p>(4) Where a civil matter is pending before the court in which the plaintiff and the defendant</p>	<p>ALA. CODE § 13A-6-130: (a)(1) A person commits the crime of domestic violence in the first degree if the person commits the crime of assault in the first degree pursuant to Section 13A-6-20; aggravated stalking pursuant to Section 13A-6-91; or burglary in the first degree pursuant to Section 13A-7-5 and the victim is a current or former spouse, parent, step-parent, child, step-child, grandparent, step-grandparent, grandchild, step-grandchild, any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant.</p> <p>(2) For the purposes of this section, a household member excludes non-romantic or non-intimate co-residents, and a dating relationship means a current or former relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement by either party.</p> <p>ALA. CODE § 13A-6-20: (a) A person commits the crime of assault in the first degree if:</p> <p>(1) With intent to cause serious physical injury to another person, he or she causes serious physical injury</p>

	<p>are opposing parties.</p> <p>(d) When custody, visitation, or support, or a combination of them, of a child or children has been established in a previous court order in this state, or an action containing any of the issues above is pending in a court in this state in which the plaintiff and the defendant are opposing parties, a copy of any temporary ex parte protection order issued pursuant to this chapter and the case giving rise thereto should be transferred to the court of original venue of custody, visitation, or support for further disposition as soon as practical taking into account the safety of the plaintiff and any children.</p> <p>(e) A minimum period of residency of a plaintiff is not required to petition the court for an order of protection.</p>	<p>to any person by means of a deadly weapon or a dangerous instrument; or (2) With intent to disfigure another person seriously and permanently, or to destroy, amputate, or disable permanently a member or organ of the body of another person, he or she causes such an injury to any person; or (3) Under circumstances manifesting extreme indifference to the value of human life, he or she recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to any person; or (4) In the course of and in furtherance of the commission or attempted commission of arson in the first degree, burglary in the first or second degree, escape in the first degree, kidnapping in the first degree, rape in the first degree, robbery in any degree, sodomy in the first degree, or any other felony clearly dangerous to human life, or of immediate flight therefrom, he or she causes a serious physical injury to another person; or (5) While driving under the influence of alcohol or a controlled substance or any combination thereof in violation of Section 32-5A-191 or 32-5A-191.3, he or she causes serious physical injury to the person of another with a vehicle or vessel.</p> <p>(b) Assault in the first degree is a Class B felony.</p> <p>ALA. CODE § 13A-6-131: (a)(1) A person commits the crime</p>
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		<p>of domestic violence in the second degree if the person commits the crime of assault in the second degree pursuant to Section 13A-6-21; the crime of intimidating a witness pursuant to Section 13A-10-123; the crime of stalking pursuant to Section 13A-6-90; the crime of burglary in the second or third degree pursuant to Sections 13A-7-6 and 13A-7-7; or the crime of criminal mischief in the first degree pursuant to Section 13A-7-21 and the victim is a current or former spouse, parent, step-parent, child, step-child, grandparent, step-grandparent, grandchild, step-grandchild, any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant.</p> <p>(2) For the purposes of this section, a household member excludes non-romantic or non-intimate co-residents, and a dating relationship means a current or former relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement by either party.</p> <p>ALA. CODE § 13A-6-21: (a) A person commits the crime of assault in the second degree if the person does any of the following: (1) With intent to cause serious physical injury to another person, he or she causes serious physical injury to any person. (2) With intent</p>
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		<p>to cause physical injury to another person, he or she causes physical injury to any person by means of a deadly weapon or a dangerous instrument. (3) He or she recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument. (4)a. With intent to prevent a peace officer, as defined in Section 36-21-60, a detention or correctional officer at any municipal or county jail or state penitentiary, emergency medical personnel, a utility worker, or a firefighter from performing a lawful duty, he or she intends to cause physical injury and he or she causes physical injury to any person. b. For the purpose of this subdivision, a person who is a peace officer who is employed or under contract while off duty by a private or public entity is a peace officer performing a lawful duty when the person is working in his or her approved uniform while off duty with the approval of his or her employing law enforcement agency. Provided, however, that nothing contained in this subdivision shall be deemed or construed as amending, modifying, or extending the classification of a peace officer as off-duty for workers compensation purposes or any other benefits to which a peace officer may otherwise be entitled to under law when considered on-duty. Additionally, nothing</p>
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		<p>contained in this subdivision shall be deemed or construed as amending, modifying, or extending the tort liability of any municipality as a result of any action or inaction on the part of an off-duty police officer. (5) With intent to cause physical injury to a teacher or to an employee of a public educational institution during or as a result of the performance of his or her duty, he or she causes physical injury to any person. (6) With intent to cause physical injury to a health care worker, including a nurse, physician, technician, or any other person employed by or practicing at a hospital as defined in Section 22-21-20; a county or district health department; a long-term care facility; a physician's office, clinic, or outpatient treatment facility during the course of or as a result of the performance of the duties of the health care worker or other person employed by or practicing at the hospital; the county or district health department; any health care facility owned or operated by the State of Alabama; the long-term care facility; the physician's office, clinic, or outpatient treatment facility; or a pharmacist, pharmacy technician, pharmacy intern, pharmacy extern, or pharmacy cashier; he or she causes physical injury to any person. This subdivision shall apply to assaults on home health care workers while they are in a</p>
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		<p>private residence. This subdivision shall not apply to assaults by patients who are impaired by medication. (7) For a purpose other than lawful medical or therapeutic treatment, he or she intentionally causes stupor, unconsciousness, or other physical or mental impairment or injury to another person by administering to him or her, without his or her consent, a drug, substance or preparation capable of producing the intended harm. (8) With intent to cause physical injury to a Department of Human Resources employee or any employee performing social work, as defined in Section 34-30-1, during or as a result of the performance of his or her duty, he or she causes physical injury to any person. (b) Assault in the second degree is a Class C felony.</p> <p>ALA. CODE § 13A-6-132: (a)(1) A person commits domestic violence in the third degree if the person commits the crime of assault in the third degree pursuant to Section 13A-6-22; the crime of menacing pursuant to Section 13A-6-23; the crime of reckless endangerment pursuant to Section 13A-6-24; the crime of criminal coercion pursuant to Section 13A-6-25; the crime of harassment pursuant to subsection (a) of Section 13A-11-8; the crime of criminal surveillance pursuant to Section 13A-11-32; the crime of harassing communications pursuant to subsection (b) of</p>
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		<p>Section 13A-11-8; the crime of criminal trespass in the third degree pursuant to Section 13A-7-4; the crime of criminal mischief in the second or third degree pursuant to Sections 13A-7-22 and 13A-7-23; or the crime of arson in the third degree pursuant to Section 13A-7-43; and the victim is a current or former spouse, parent, step-parent, child, step-child, grandparent, step-grandparent, grandchild, step-grandchild, any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant.</p> <p>(2) For the purpose of this section, a household member excludes non-romantic or non-intimate co-residents, and a dating relationship means a current or former relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement by either party.</p> <p>ALA. CODE § 13A-6-22: (a) A person commits the crime of assault in the third degree if:</p> <p>(1) With intent to cause physical injury to another person, he causes physical injury to any person; or (2) He recklessly causes physical injury to another person; or (3) With criminal negligence he causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or (4) With intent to prevent a peace officer from</p>
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		performing a lawful duty, he causes physical injury to any person. (b) Assault in the third degree is a Class A misdemeanor.
Alaska	ALASKA STAT. ANN. § 18.66.100 (West): (a) A person who is or has been a victim of a crime involving domestic violence may file a petition in the district or superior court for a protective order against a household member. A parent, guardian, or other representative appointed by the court under this section may file a petition for a protective order on behalf of a minor. The court may appoint a guardian ad litem or attorney to represent the minor. Notwithstanding AS 25.24.310 or this section, the office of public advocacy may not be appointed as a guardian ad litem or attorney for a minor in a petition filed under this section unless the petition has been	ALASKA STAT. ANN. § 18.66.990 (West): “domestic violence” and “crime involving domestic violence” mean one or more of the following offenses or an offense under a law or ordinance of another jurisdiction having elements similar to these offenses, or an attempt to commit the offense, by a household member against another household member: (A) a crime against the person under AS 11.41; (B) burglary under AS 11.46.300—11.46.310; (C) criminal trespass under AS 11.46.320—11.46.330; (D) arson or criminally negligent burning under AS 11.46.400—11.46.430; (E) criminal mischief under AS 11.46.475—11.46.486; (F) terrorist threatening under <u>AS 11.56.807</u> or <u>11.56.810</u> ; (G) violating a protective order under <u>AS 11.56.740(a)(1)</u> ; (H) harassment under <u>AS 11.61.120(a)(2)—(4)</u> or <u>(6)</u> ; or (I) cruelty to animals under <u>AS 11.61.140(a)(5)</u> if the animal is a pet;

	<p>filed on behalf of the minor.</p>	
<p>Arizona</p>	<p><u>ARIZ. REV. STAT. ANN. § 13-3602:</u> A. A person may file a verified petition, as in civil actions, with a magistrate, justice of the peace or superior court judge for an order of protection for the purpose of restraining a person from committing an act included in <u>domestic violence.</u></p>	<p><u>ARIZ. REV. STAT. ANN. § 13-3601: A.</u> "Domestic violence" means any act that is a dangerous crime against children as defined in § <u>13-705</u> or an offense prescribed in § <u>13-1102</u>, <u>13-1103</u>, <u>13-1104</u>, <u>13-1105</u>, <u>13-1201</u>, <u>13-1202</u>, <u>13-1203</u>, <u>13-1204</u>, <u>13-1302</u>, <u>13-1303</u>, <u>13-1304</u>, <u>13-1406</u>, <u>13-1425</u>, <u>13-1502</u>, <u>13-1503</u>, <u>13-1504</u>, <u>13-1602</u> or <u>13-2810</u>, § <u>13-2904</u>, subsection A, paragraph 1, 2, 3 or 6, § <u>13-2910</u>, subsection A, paragraph 8 or 9, § <u>13-2915</u>, subsection A, paragraph 3 or § <u>13-2916</u>, <u>13-2921</u>, <u>13-2921.01</u>, <u>13-2923</u>, <u>13-3019</u>, <u>13-3601.02</u> or <u>13-3623</u>, if any of the following applies: 1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household. 2. The victim and the defendant have a child in common. 3. The victim or the defendant is pregnant by the other party. 4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law. 5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of</p>

		<p>the defendant or to a person who resides or who has resided in the same household as the defendant. 6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship:</p> <p>(a) The type of relationship.</p> <p>(b) The length of the relationship.</p> <p>(c) The frequency of the interaction between the victim and the defendant.</p> <p>(d) If the relationship has terminated, the length of time since the termination.</p> <p><u>ARIZ. REV. STAT. ANN. § 13-705</u>: “Dangerous crime against children” means any of the following that is committed against a minor who is under fifteen years of age: (a) Second degree murder (b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument (c) Sexual assault (d) Molestation of a child (e) Sexual conduct with a minor (f) Commercial sexual exploitation of a minor (g) Sexual exploitation of a minor (h) Child abuse as prescribed in § 13-3623, subsection A, paragraph 1 (i) Kidnapping (j) Sexual abuse (k) Taking a child for the</p>
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		<p>purpose of prostitution as prescribed in § 13-3206 (l) Child sex trafficking as prescribed in § 13-3212 (m) Involving or using minors in drug offenses (n) Continuous sexual abuse of a child (o) Attempted first degree murder (p) Sex trafficking (q) Manufacturing methamphetamine under circumstances that cause physical injury to a minor (r) Bestiality as prescribed in § 13-1411, subsection A, paragraph 2 (s) Luring a minor for sexual exploitation (t) Aggravated luring a minor for sexual exploitation (u) Unlawful age misrepresentation (v) Unlawful mutilation (w) Sexual extortion as prescribed in § 13-1428 <u>ARIZ. REV. STAT. ANN. § 13-1102:</u> A person commits negligent homicide if with criminal negligence the person causes the death of another person, including an unborn child. <u>ARIZ. REV. STAT. ANN. § 13-1103:</u> A person commits manslaughter by doing any of the following: . . . <u>ARIZ. REV. STAT. ANN. § 13-1104:</u> A person commits second degree murder if without premeditation: . . . <u>ARIZ. REV. STAT. ANN. § 13-1105:</u> A person commits first degree murder if: <u>ARIZ. REV. STAT. ANN. § 13-1201:</u> A person commits endangerment by recklessly endangering another person with a substantial risk of</p>
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		<p>imminent death or physical injury. <u>ARIZ. REV. STAT. ANN. § 13-1202</u>: A person commits threatening or intimidating if the person threatens or intimidates by word or conduct <u>ARIZ. REV. STAT. ANN. § 13-1203</u>: A person commits assault by <u>ARIZ. REV. STAT. ANN. § 13-1204</u>: A person commits aggravated assault <u>ARIZ. REV. STAT. ANN. § 13-1302</u>: A person commits custodial interference <u>ARIZ. REV. STAT. ANN. § 13-1303</u>: A person commits unlawful imprisonment <u>ARIZ. REV. STAT. ANN. § 13-1304</u>: A person commits kidnapping <u>ARIZ. REV. STAT. ANN. § 13-1406</u>: A person commits sexual assault <u>ARIZ. REV. STAT. ANN. § 13-1425</u>: Unlawful disclosure of images depicting states of nudity or specific sexual activities <u>ARIZ. REV. STAT. ANN. § 13-1502</u>: A person commits criminal trespass in the third degree by <u>ARIZ. REV. STAT. ANN. § 13-1602</u>: A person commits criminal damage by</p>
<p>Arkansas</p>	<p><u>ARK. CODE ANN. § 9-15-201 (West)</u>: (d) A petition may be filed by: (1) Any adult family or household member on behalf of himself or herself; (2) Any adult family or</p>	<p><u>ARK. CODE ANN. § 9-15-103 (West)</u>: (4) “Domestic abuse” means: (A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or (B) Any sexual conduct between</p>

	<p>household member on behalf of another family or household member who is a minor, including a married minor; (3) Any adult family or household member on behalf of another family or household member who has been adjudicated an incompetent; or (4) An employee or volunteer of a domestic-violence shelter or program on behalf of a minor, including a married minor.</p> <p>(e)(1) A petition for relief shall: (A) Allege the existence of domestic abuse; (B) Disclose the existence of any pending litigation between the parties; and (C) Disclose any prior filings of a petition for an order of protection under this chapter. (2) The petition shall be accompanied by an affidavit made under oath that states the specific facts and circumstances of the domestic abuse and the specific relief sought. (f) The petition may be filed regardless of whether there is</p>	<p>family or household members, whether minors or adults, that constitutes a crime under the laws of this state;</p>
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	any pending litigation between the parties. (g) A person's right to file a petition, or obtain relief hereunder shall not be affected by his or her leaving the residence or household to avoid abuse.	
California	<p><u>CAL. FAM. CODE § 6250 (West)</u>: A judicial officer may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe any of the following:</p> <p>(a) That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.</p> <p>(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of</p>	<p><u>CAL. FAM. CODE § 6211 (West)</u>: "Domestic violence" is abuse perpetrated against any of the following persons: (a) A spouse or former spouse. (b) A cohabitant or former cohabitant, as defined in Section 6209. (c) A person with whom the respondent is having or has had a dating or engagement relationship. (d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12). (e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.</p> <p>(f) Any other person related by consanguinity or affinity within the second degree.</p> <p><u>CAL. FAM. CODE § 6203 (West)</u>: (a) For purposes of this act,</p>

	<p>abuse or threat of abuse by the family or household member.</p> <p>(c) That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction.</p> <p>(d) That an elder or dependent adult is in immediate and present danger of abuse as defined in Section 15610.07 of the Welfare and Institutions Code, based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought, except that no emergency protective order shall be issued based solely on an allegation of financial abuse.</p>	<p>“abuse” means any of the following:</p> <p>(1) To intentionally or recklessly cause or attempt to cause bodily injury.</p> <p>(2) Sexual assault.</p> <p>(3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.</p> <p>(4) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.</p> <p>(b) Abuse is not limited to the actual infliction of physical injury or assault.</p> <p><u>CAL. FAM. CODE § 6320 (West):</u></p> <p>(a) The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, credibly impersonating as described in Section 528.5 of the Penal Code, falsely personating as described in Section 529 of the Penal Code, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.</p>
Colorado	<u>COLO. REV. STAT.</u>	<u>COLO. REV. STAT. ANN. § 13-14-</u>

	<p><u>ANN. § 13-14-103</u> <u>(West):</u> (1)(a) Any county or district court shall have the authority to enter an emergency protection order pursuant to the provisions of this subsection (1). <u>COLO. REV. STAT. ANN. § 13-14-104.5</u> <u>(West):</u> (1)(a) Any municipal court of record, if authorized by the municipal governing body; any county court; and any district, probate, or juvenile court shall have original concurrent jurisdiction to issue a temporary or permanent civil protection order against an adult or against a juvenile who is ten years of age or older for any of the following purposes: (I) To prevent assaults and threatened bodily harm; (II) To prevent domestic abuse; (III) To prevent emotional abuse of the elderly or of an at-risk adult; (IV) To prevent sexual assault or abuse; and (V) To prevent</p>	<p><u>101 (West) :</u> “Domestic abuse” means any act, attempted act, or threatened act of violence, stalking, harassment, or coercion that is committed by any person against another person to whom the actor is currently or was formerly related, or with whom the actor is living or has lived in the same domicile, or with whom the actor is involved or has been involved in an intimate relationship. A sexual relationship may be an indicator of an intimate relationship but is never a necessary condition for finding an intimate relationship. For purposes of this subsection (2), “coercion” includes compelling a person by force, threat of force, or intimidation to engage in conduct from which the person has the right or privilege to abstain, or to abstain from conduct in which the person has a right or privilege to engage. “Domestic abuse” may also include any act, attempted act, or threatened act of violence against: (a) The minor children of either of the parties; or (b) An animal owned, possessed, leased, kept, or held by either of the parties or by a minor child of either of the parties, which threat, act, or attempted act is intended to coerce, control, punish, intimidate, or exact revenge upon either of the parties or a minor child of either of the</p>
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	stalking.	parties.
<p>Connecticut **some of the coercion aspects here differentiate this definition of domestic violence from criminal acts</p>	<p><u>CONN. GEN. STAT. ANN. § 46b-15</u> (West): (a) Any family or household member, as defined in section 46b-38a, who is the victim of domestic violence, as defined in section 46b-1, by another family or household member may make an application to the Superior Court for relief under this section. The court shall provide any person who applies for relief under this section with the information set forth in section 46b-15b. (b) The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. . . . Such orders may include temporary child custody or visitation rights, and such relief may include, but is not limited to, an order enjoining the</p>	<p><u>CONN. GEN. STAT. ANN. § 46b-1</u> (West): (b) As used in this title, “domestic violence” means: (1) A continuous threat of present physical pain or physical injury against a family or household member, as defined in section 46b-38a; (2) stalking, including, but not limited to, stalking as described in section 53a-181d, of such family or household member; (3) a pattern of threatening, including, but not limited to, a pattern of threatening as described in section 53a-62, of such family or household member or a third party that intimidates such family or household member; or (4) coercive control of such family or household member, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person’s free will and personal liberty. “Coercive control” includes, but is not limited to, unreasonably engaging in any of the following: (A) Isolating the family or household member from friends, relatives or other sources of support; (B) Depriving the family or household member of basic necessities; (C) Controlling, regulating or monitoring the family or household member’s movements, communications, daily behavior, finances, economic resources or access to</p>

	<p>respondent from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, harassing, assaulting, molesting, sexually assaulting or attacking the applicant; or (3) entering the family dwelling or the dwelling of the applicant.</p>	<p>services; (D) Compelling the family or household member by force, threat or intimidation, including, but not limited to, threats based on actual or suspected immigration status, to (i) engage in conduct from which such family or household member has a right to abstain, or (ii) abstain from conduct that such family or household member has a right to pursue; (E) Committing or threatening to commit cruelty to animals that intimidates the family or household member; or (F) Forced sex acts, or threats of a sexual nature, including, but not limited to, threatened acts of sexual conduct, threats based on a person's sexuality or threats to release sexual images.</p>
Delaware	<p><u>DEL. CODE ANN. tit. 10, § 1042 (West):</u> (a) A request for relief from domestic violence is initiated by the filing of a verified petition by the petitioner, or by the Division of Child Protective Services or the Division of Adult Protective Services, asking the court to issue a protective order against the respondent. <u>DEL. CODE ANN. tit. 10, § 1043 (West):</u> (a) A petitioner may request an</p>	<p><u>DEL. CODE ANN. tit. 10, § 1041 (West) :</u> “Protective order” means an order issued by the court to a respondent restraining said respondent from committing domestic violence against the petitioner, or a person in whose interest a petition is brought, and may include such measures as are necessary in order to prevent domestic violence. “Domestic violence” means abuse perpetrated by 1 member against another member of the following protected classes: a. Family, as that term is defined in § 901(12) of this title, regardless, however, of</p>

	<p>emergency protective order by filing an affidavit or verified pleading alleging that there is an immediate and present danger of domestic violence to the petitioner or to a minor child of the petitioner or to an adult who is impaired.</p>	<p>state of residence of the parties, or whether parental rights have been terminated; or</p> <p>b. Former spouses; persons cohabitating together who are holding themselves out as a couple, with or without a child in common; persons living separate and apart with a child in common; or persons in a current or former substantive dating relationship. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a substantive dating relationship. Factors to consider for a substantive dating relationship may include the length of the relationship, or the type of relationship, or the frequency of interaction between the parties.</p> <p>(1) “Abuse” means conduct which constitutes the following:</p> <p>a. Intentionally or recklessly causing or attempting to cause physical injury or a sexual offense, as defined in § 761 of Title 11;</p> <p>b. Intentionally or recklessly placing or attempting to place another person in reasonable apprehension of physical injury or sexual offense to such person or another;</p> <p>c. Intentionally or recklessly damaging, destroying or taking the tangible property of another person;</p>
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		<p>d. Engaging in a course of alarming or distressing conduct in a manner which is likely to cause fear or emotional distress or to provoke a violent or disorderly response;</p> <p>e. Trespassing on or in property of another person, or on or in property from which the trespasser has been excluded by court order;</p> <p>f. Child abuse, as defined in Chapter 9 of Title 16;</p> <p>g. Unlawful imprisonment, kidnapping, interference with custody and coercion, as defined in Title 11; or</p> <p>h. Any other conduct which a reasonable person under the circumstances would find threatening or harmful.</p>
<p>Florida</p>	<p><u>FLA. STAT. ANN. § 741.30 (West)</u>: (a) Any person described in paragraph (e), who is either the victim of domestic violence as defined in s. 741.28 or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence, has standing in the circuit court to file a sworn petition for an injunction for protection</p>	<p><u>FLA. STAT. ANN. § 741.28 (West)</u>: “Domestic violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.</p>

	<p>against domestic violence.</p>	
<p>Georgia *Language specifically cites criminal acts</p>	<p><u>GA. CODE ANN. § 19-13-4 (West):</u> (a) The court may, upon the filing of a verified petition, grant any protective order or approve any consent agreement to bring about a cessation of acts of <u>family violence</u>. The court shall not have the authority to issue or approve mutual protective orders concerning paragraph (1), (2), (5), (9), or (11) of this subsection, or any combination thereof, unless the respondent has filed a verified petition as a counter petition pursuant to Code Section 19-13-3 no later than three days, not including Saturdays, Sundays, and legal holidays, prior to the hearing and the provisions of Code Section 19-13-3 have been satisfied. The orders or agreements may: (1) Direct the respondent to refrain from such</p>	<p><u>GA. CODE ANN. § 19-13-1 (West):</u> As used in this article, the term “family violence” means the occurrence of one or more of the following acts between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household: (1) Any felony; or (2) Commission of offenses of battery, simple battery, simple assault, assault, stalking, criminal damage to property, unlawful restraint, or criminal trespass. The term “family violence” shall not be deemed to include reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.</p>

	<p>acts;</p> <p>(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;</p> <p>(3) Require a party to provide suitable alternate housing for a spouse, former spouse, or parent and the parties' child or children;</p> <p>(4) Award temporary custody of minor children and establish temporary visitation rights;</p> <p>(5) Order the eviction of a party from the residence or household and order assistance to the victim in returning to it, or order assistance in retrieving personal property of the victim if the respondent's eviction has not been ordered;</p> <p>(6) Order either party to make payments for the support of a minor child as required by law;</p> <p>(7) Order either party to make payments for the</p>	
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	<p>support of a spouse as required by law; (8) Provide for possession of personal property of the parties; (9) Order the respondent to refrain from harassing or interfering with the victim; (10) Award costs and attorney’s fees to either party; and (11) Order the respondent to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of family violence.</p>	
<p>Hawaii</p>	<p><u>HAW. REV. STAT. ANN. § 586-3</u> (West): a) There shall exist an action known as a petition for an order for protection in cases of domestic abuse. (b) A petition for relief under this chapter may be made by: (1) Any family or household member on the member’s own behalf or on behalf of a family</p>	<p><u>HAW. REV. STAT. ANN. § 586-1</u> (West) : “Domestic abuse” means: (1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse, coercive control, or malicious property damage between family or household members; or (2) Any act which would constitute an offense under section 709-906, or under part V or VI of chapter 707 committed against a minor family or household member by an adult family or</p>

	<p>or household member who is a minor or who is an incapacitated person as defined in section 560:5-102 or who is physically unable to go to the appropriate place to complete or file the petition; or</p> <p>(2) Any state agency on behalf of a person who is a minor or who is an incapacitated person as defined in section 560:5-102 or a person who is physically unable to go to the appropriate place to complete or file the petition on behalf of that person.</p>	<p>household member.</p> <p>“Coercive control” means a pattern of threatening, humiliating, or intimidating actions, which may include assaults, or other abuse that is used to harm, punish, or frighten an individual.</p> <p>“Coercive control” includes a pattern of behavior that seeks to take away the individual’s liberty or freedom and strip away the individual’s sense of self, including bodily integrity and human rights, whereby the “coercive control” is designed to make an individual dependent by isolating them from support, exploiting them, depriving them of independence, and regulating their everyday behavior including: (1) Isolating the individual from friends and family; (2) Controlling how much money is accessible to the individual and how it is spent; (3) Monitoring the individual’s activities, communications, and movements; (4) Name-calling, degradation, and demeaning the individual frequently; (5) Threatening to harm or kill the individual or a child or relative of the individual; (6) Threatening to publish information or make reports to the police or the authorities; (7) Damaging property or household goods; and (8) Forcing the individual to take part in criminal activity or child abuse.</p> <p>“Extreme psychological abuse” means an intentional or knowing course of conduct</p>
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		directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer extreme emotional distress.
Idaho	<u>IDAHO CODE ANN. § 39-6304 (West):</u> There shall exist an action known as a “ petition for a protection order ” in cases of <u>domestic violence</u> .	<u>IDAHO CODE ANN. § 39-6303 (West):</u> “ Domestic violence ” means the physical injury, sexual abuse or forced imprisonment or threat thereof of a family or household member, or of a minor child by a person with whom the minor child has had or is having a dating relationship, or of an adult by a person with whom the adult has had or is having a dating relationship.
Illinois	<u>750 ILL. COMP. STAT. ANN. 60/214:</u> (a) Issuance of order. If the court finds that petitioner has been abused by a family or household member or that petitioner is a high-risk adult who has been abused, neglected, or exploited, as defined in this Act, an order of protection prohibiting the abuse, neglect, or exploitation shall issue;	<u>750 ILL. COMP. STAT. ANN. 60/103 :</u> “ Abuse ” means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis. “ Harassment ” means knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner. Unless the presumption is rebutted by a preponderance of the evidence,

	<p>provided that petitioner must also satisfy the requirements of one of the following Sections, as appropriate: Section 217 on emergency orders, Section 218 on interim orders, or Section 219 on plenary orders. Petitioner shall not be denied an order of protection because petitioner or respondent is a minor. The court, when determining whether or not to issue an order of protection, shall not require physical manifestations of abuse on the person of the victim. Modification and extension of prior orders of protection shall be in accordance with this Act.</p>	<p>the following types of conduct shall be presumed to cause emotional distress:(i) creating a disturbance at petitioner’s place of employment or school; (ii) repeatedly telephoning petitioner’s place of employment, home or residence; (iii) repeatedly following petitioner about in a public place or places; (iv) repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner’s windows; (v) improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner’s from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless respondent was fleeing an incident or pattern of domestic violence; or (vi) threatening physical force, confinement or restraint on one or more occasions.</p> <p>“Interference with personal liberty” means committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct from which she or he has a right to abstain or to refrain</p>
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		<p>from conduct in which she or he has a right to engage.</p> <p>“Intimidation of a dependent” means subjecting a person who is dependent because of age, health or disability to participation in or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse as defined in this Act, regardless of whether the abused person is a family or household member.</p> <p>“Willful deprivation” means wilfully denying a person who because of age, health or disability requires medication, medical care, shelter, accessible shelter or services, food, therapeutic device, or other physical assistance, and thereby exposing that person to the risk of physical, mental or emotional harm, except with regard to medical care or treatment when the dependent person has expressed an intent to forgo such medical care or treatment. This paragraph does not create any new affirmative duty to provide support to dependent persons.</p>
<p>Indiana</p>	<p><u>IND. CODE ANN. § 34-26-5-2 (West):</u> (a) A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against</p>	<p><u>IND. CODE ANN. § 34-6-2-34.5 (West):</u> “Domestic or family violence” means, except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member: (1) Attempting to cause, threatening to cause, or</p>

	<p>a: (1) family or household member who commits an act of domestic or family violence; or (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the petitioner. (b) A person who is or has been subjected to harassment may file a petition for an order for protection against a person who has committed repeated acts of harassment against the petitioner. (c) A parent, a guardian, or another representative may file a petition for an order for protection on behalf of a child against a: (1) family or household member who commits an act of domestic or family violence; (2) person who has committed stalking under IC 35-45-10-5 or a sex offense under IC 35-42-4 against the child;</p>	<p>causing physical harm to another family or household member. (2) Placing a family or household member in fear of physical harm. (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress. (4) Abusing (as described in IC 35-46-3-0.5), torturing (as described in IC 35-46-3-0.5), mutilating (as described in IC 35-46-3-0.5), or killing a vertebrate animal without justification with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member. For purposes of IC 34-26-5, domestic and family violence also includes stalking (as defined in IC 35-45-10-1) or a sex offense under IC 35-42-4, whether or not the stalking or sex offense is committed by a family or household member.</p>
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	<p>(3) person who has committed repeated acts of harassment against the child; or (4) person who engaged in a course of conduct involving repeated or continuing contact with a child that is intended to prepare or condition a child for sexual activity (as defined in IC 35-42-4-13).</p>	
<p>Iowa</p>	<p><u>IOWA CODE ANN. § 915.50 (West)</u>: In addition to other victim rights provided in this chapter, <u>victims of domestic abuse and sexual abuse</u> shall have the following rights: The right to receive a no-contact order upon a finding of probable cause, pursuant to sections 236.3 through 236.10 and sections 236A.3 and 236A.11.</p>	<p><u>IOWA CODE ANN. § 236.2 (West)</u>: “Domestic abuse” means committing assault as defined in section 708.1 under any of the following circumstances: a. The assault is between family or household members who resided together at the time of the assault. b. The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault. c. The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time. d. The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.</p>

		<p>e. (1) The assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault.</p> <p><u>IOWA CODE ANN. § 708.1 (West)</u>: 1. An assault as defined in this section is a general intent crime.</p> <p>2. A person commits an assault when, without justification, the person does any of the following:</p> <p>a. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.</p> <p>b. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.</p> <p>c. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.</p> <p>d. (1) Intentionally points a laser emitting a visible light beam at another person with the intent to cause pain or injury to another.</p>
<p>Kansas</p>	<p><u>KAN. STAT. ANN. § 60-3104 (West)</u>: An intimate partner or household member may seek relief under the protection</p>	<p><u>KAN. STAT. ANN. § 60-3102 (West)</u>: “Abuse” means the occurrence of one or more of the following acts between intimate partners or household members:</p> <p>(1) Intentionally attempting</p>

	<p>from abuse act by filing a verified petition with any judge of the district court or with the clerk of the court <u>alleging abuse</u> by another intimate partner or household member.</p>	<p>to cause bodily injury, or intentionally or recklessly causing bodily injury. (2) Intentionally placing, by physical threat, another in fear of imminent bodily injury. (3) Engaging in any sexual contact or attempted sexual contact with another person without consent or when such person is incapable of giving consent. (4) Engaging in any of the following acts with a minor under 16 years of age who is not the spouse of the offender: (A) The act of sexual intercourse; or (B) any lewd fondling or touching of the person of either the minor or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the minor or the offender, or both.</p>
<p>Kentucky</p>	<p><u>KY. REV. STAT. ANN. § 403.725 (West)</u>: (1) A petition for an order of protection may be filed by: (a) A victim of domestic violence and abuse; or (b) An adult on behalf of a victim who is a minor otherwise qualifying for relief under this subsection.</p>	<p>2023 Ky. Acts 160: Domestic violence and abuse” means: (a) Physical injury, serious physical injury, stalking, sexual assault, strangulation, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual assault, strangulation, or assault between family members or members of an unmarried couple; or (b) Any conduct prohibited by KRS 525.125, 525.130, 525.135, or 525.137, or the infliction of fear of such imminent conduct, taken against a domestic animal</p>

		<p>when used as a method of coercion, control, punishment, intimidation, or revenge directed against a family member or member of an unmarried couple who has a close bond of affection to the domestic animal;</p>
<p>Louisiana *Language specifically cites criminal acts</p>	<p><u>LA. STAT. ANN. § 46:2136</u>: The court may grant any protective order or approve any consent agreement to bring about a cessation of <u>domestic abuse as defined in R.S. 46:2132</u>, or the threat or danger thereof, to a party, any minor children, or any person alleged to be incompetent, which relief may include but is not limited to: (1) Granting the relief enumerated in R.S. 46:2135. (2) Where there is a duty to support a party, any minor children, or any person alleged to be incompetent living in the residence or household, ordering payment of temporary support or provision of suitable housing for them, or granting possession to the petitioner of the residence or household to the exclusion of the defendant, by evicting the defendant or</p>	<p><u>LA. STAT. ANN. § 46:2132</u>: “Domestic abuse” includes but is not limited to physical or sexual abuse and any offense against the person, physical or non-physical, as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family member, household member, or dating partner against another. “Domestic abuse” also includes abuse of adults as defined in R.S. 15:1503 when committed by an adult child or adult grandchild. <u>LA. STAT. ANN. § 15:1503</u>: “Abuse” means the infliction of physical or mental injury, or actions which may reasonably be expected to inflict physical injury, on an adult by other parties, including but not limited to such means as sexual abuse, abandonment, isolation, exploitation, or extortion of funds or other things of value.</p>

	<p>restoring possession to the petitioner where the residence is solely owned by the defendant and the petitioner has been awarded the temporary custody of the minor children born of the parties.</p> <p>(3) Awarding temporary custody of or establishing temporary visitation rights and conditions with regard to any minor children or person alleged to be incompetent.</p> <p>(4)(a) Ordering either a medical or mental health evaluation or both of the perpetrator to be conducted by an independent court-appointed evaluator who qualifies as an expert in the field of domestic abuse. The evaluation shall be conducted by a person who has no family, financial, or prior medical or mental health relationship with the perpetrator or his attorney of record.</p> <p>(b) After a medical or mental health evaluation has been completed and a report issued, the court may order counseling or other medical or mental health treatment as</p>	
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	deemed appropriate.	
Maine	<p><u>ME. REV. STAT. ANN. tit. 19-A, § 4108: 1.</u> Temporary orders. The court may enter temporary orders authorized under subsection 2 that it considers necessary to protect a plaintiff or minor child from abuse, on good cause shown in an ex parte proceeding, which the court shall hear and determine as expeditiously as practicable after the filing of a complaint. Immediate and present danger of abuse to the plaintiff or minor child constitutes good cause. A temporary order remains in effect pending a hearing pursuant to section 4109.</p> <p>2. Interim relief. The court, in an ex parte proceeding, may enter temporary orders:</p> <p>A. Concerning the parental rights and responsibilities relating to minor children for whom the parties are responsible;</p> <p>B. Enjoining the defendant from engaging in the following:</p> <p>(1) Imposing a restraint upon the person or liberty of the</p>	<p><u>ME. REV. STAT. ANN. tit. 19-A, § 4102: “Abuse”</u> means the occurrence of the following acts:</p> <p>A. Attempting to cause or causing bodily injury or offensive physical contact, including sexual assaults under Title 17-A, chapter 11, except that contact as described in Title 17-A, section 106, subsection 1 is excluded from this definition;</p> <p>B. Attempting to place or placing another in fear of bodily injury, regardless of intent, through any course of conduct, including, but not limited to, threatening, harassing or tormenting behavior;</p> <p>C. Compelling a person by force, threat of force or intimidation:</p> <p>(1) To engage in conduct from which the person has a right or privilege to abstain; or</p> <p>(2) To abstain from conduct in which the person has a right to engage;</p> <p>D. Knowingly restricting substantially the movements of another person without that person’s consent or other lawful authority by:</p> <p>(1) Removing that person from that person’s residence, place of business or school;</p> <p>(2) Moving that person a substantial distance from</p>

	<p>plaintiff;</p> <p>(2) Threatening, assaulting, molesting, harassing, attacking or otherwise disturbing the peace of the plaintiff;</p> <p>(3) Entering the family residence or the residence of the plaintiff, including the land immediately surrounding and associated with the residence;</p> <p>(4) Repeatedly and without reasonable cause:</p> <p>(a) Following the plaintiff; or</p> <p>(b) Being at or in the vicinity of the plaintiff's home, school, business or place of employment;</p> <p>(5) Taking, converting or damaging property in which the plaintiff may have a legal interest;</p> <p>(6) Having any direct or indirect contact with the plaintiff;</p> <p>(7) Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A; or</p> <p>(8) Destroying, transferring or tampering with the plaintiff's passport or other immigration document in the defendant's</p>	<p>the vicinity where that person was found; or</p> <p>(3) Confining that person for a substantial period either in the place where the restriction commences or in a place to which that person has been moved;</p> <p>E. Communicating to a person a threat to commit, or to cause to be committed, a crime of violence dangerous to human life against the person to whom the communication is made or another, and the natural and probable consequence of the threat, whether or not that consequence in fact occurs, is to place the person to whom the threat is communicated, or the person against whom the threat is made, in reasonable fear that the crime will be committed;</p> <p>F. Repeatedly and without reasonable cause:</p> <p>(1) Following the plaintiff; or</p> <p>(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment;</p> <p>G. Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A; or</p> <p>H. Engaging in aggravated sex trafficking or sex trafficking as described in Title 17-A, section 852 or</p>
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	possession; or C. Concerning the care, custody or control of any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household and may enjoin the defendant from injuring or threatening to injure any such animal.	853, respectively.
Maryland *Language specifically cites criminal acts	<u>MD. CODE ANN., FAM. LAW § 4-506 (West):</u> (c)(1) If the respondent appears before the court at a protective order hearing or has been served with an interim or temporary protective order, or the court otherwise has personal jurisdiction over the respondent, the judge: (i) may proceed with the final protective order hearing; and (ii) if the judge finds by a preponderance of the evidence that the alleged abuse has occurred , or if the respondent consents to the entry of a protective order, the judge may grant a final protective order to protect any person eligible for relief from abuse.	<u>MD. CODE ANN., FAM. LAW § 4-501 (West):</u> (b)(1) “ Abuse ” means any of the following acts: (i) an act that causes serious bodily harm ; (ii) an act that places a person eligible for relief in fear of imminent serious bodily harm ; (iii) assault in any degree; (iv) rape or sexual offense under <u>§ 3-303, § 3-304, § 3-307, or § 3-308 of the Criminal Law Article</u> or attempted rape or sexual offense in any degree; (v) false imprisonment ; (vi) stalking under <u>§ 3-802 of the Criminal Law Article</u> ; or (vii) revenge porn under <u>§ 3-809 of the Criminal Law Article</u> .
Massachusetts	<u>MASS. GEN. LAWS ANN. ch. 209A, § 3 (West):</u> A person suffering from abuse from an	<u>MASS. GEN. LAWS ANN. ch. 209A, § 1 (West):</u> “ Abuse ”, the occurrence of one or more of the following acts

	<p>adult or minor family or household member may file a complaint in the court requesting protection from such abuse, including, but not limited to, the following orders:</p> <p>(a) ordering the defendant to refrain from abusing the plaintiff, whether the defendant is an adult or minor;</p> <p>(b) ordering the defendant to refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;</p> <p>(c) ordering the defendant to vacate forthwith and remain away from the household, multiple family dwelling, and workplace.</p> <p>Notwithstanding the provisions of section thirty-four B of chapter two hundred and eight, an order to vacate shall be for a fixed period of time, not to exceed one year, at the expiration of which time the court may extend any such order upon motion of the plaintiff, with notice to the defendant, for such additional time as it</p>	<p>between family or household members:</p> <p>(a) attempting to cause or causing physical harm;</p> <p>(b) placing another in fear of imminent serious physical harm;</p> <p>(c) causing another to engage involuntarily in sexual relations by force, threat or duress.</p>
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	<p>deems necessary to protect the plaintiff from abuse;</p> <p>(d) awarding the plaintiff temporary custody of a minor child; provided, however, that in any case brought in the probate and family court a finding by such court by a preponderance of the evidence that a pattern or serious incident of abuse, as defined in section 31A of chapter 208, toward a parent or child has occurred shall create a rebuttable presumption that it is not in the best interests of the child to be placed in sole custody, shared legal custody or shared physical custody with the abusive parent. Such presumption may be rebutted by a preponderance of the evidence that such custody award is in the best interests of the child. For the purposes of this section, an “abusive parent” shall mean a parent who has committed a pattern of abuse or a serious incident of abuse;</p>	
Michigan	<p><u>MICH. COMP. LAWS ANN. § 600.2950</u> (West): (1) Except as otherwise provided in</p>	

	<p>subsections (26) and (27), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner from doing 1 or more of the following:</p> <ul style="list-style-type: none">(a) Entering onto premises.(b) Assaulting, attacking, beating, molesting, or wounding a named individual.(c) Threatening to kill or physically injure a named individual.(d) Removing minor children from the individual having	
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	<p>legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.</p> <p>(e) Purchasing or possessing a firearm.</p> <p>(f) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.</p> <p>(g) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.</p> <p>(h) If the petitioner is a minor who has been the victim of sexual assault, as that term is defined in section 2950a,1 by the respondent and if the petitioner is enrolled in a public or nonpublic school that operates any of grades K to 12, attending school in the same building as the petitioner.</p> <p>(i) Having access to information in records concerning a minor</p>	
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	<p>child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.</p> <p>(j) Engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.</p> <p>(k) Any of the following with the intent to cause the petitioner mental distress or to exert control over the petitioner with respect to an animal in which the petitioner has an ownership interest:</p> <p>(i) Injuring, killing, torturing, neglecting, or threatening to injure, kill, torture, or neglect the animal. A restraining order that enjoins conduct under this subparagraph does not prohibit the lawful killing or other use of the animal as described in section 50(11) of the Michigan penal code, 1931 PA 328, MCL 750.50.</p> <p>(ii) Removing the animal from the petitioner's possession.</p> <p>(iii) Retaining or</p>	
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	<p>obtaining possession of the animal. (1) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence. (4) The court shall issue a personal protection order under this section if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1).</p>	
<p>Minnesota</p>	<p><u>MINN. STAT. ANN. § 518B.01 (West)</u>: Subd. 4. Order for protection. There shall exist an action known as a petition for an order for protection in cases of domestic abuse.</p>	<p><u>MINN. STAT. ANN. § 518B.01 (West)</u>: (a) “Domestic abuse” means the following, if committed against a family or household member by a family or household member: (1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; sexual extortion within</p>

		<p>the meaning of section 609.3458; or interference with an emergency call within the meaning of section 609.78, subdivision 2.</p>
<p>Mississippi</p>	<p><u>MISS. CODE. ANN. § 93-21-7 (West)</u>: (1) Any person may seek a domestic abuse protection order for himself by filing a petition alleging abuse by the respondent.</p>	<p><u>MISS. CODE. ANN. § 93-21-3 (West)</u>: (a) “Abuse” means the occurrence of one or more of the following acts between spouses, former spouses, persons living as spouses or who formerly lived as spouses, persons having a child or children in common, other individuals related by consanguinity or affinity who reside together or who formerly resided together or between individuals who have a current or former dating relationship:</p> <ul style="list-style-type: none"> (i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon; (ii) Placing, by physical menace or threat, another in fear of imminent serious bodily injury; (iii) Criminal sexual conduct committed against a minor within the meaning of <u>Section 97-5-23</u>; (iv) Stalking within the meaning of <u>Section 97-3-107</u>; (v) Cyberstalking within the meaning of <u>Section 97-45-15</u>; or (vi) Sexual offenses

		<p>within the meaning of <u>Section 97-3-65</u> or <u>97-3-95</u>.</p> <p>“Abuse” does not include any act of self-defense.</p>
Missouri	<p><u>MO. ANN. STAT. § 455.020 (West):</u> 455.020. Relief may be sought—order of protection effective, where 1. Any person who has been subject to <u>domestic violence</u> by a present or former family or household member, or who has been the <u>victim of stalking or sexual assault</u>, may seek relief under sections 455.010 to 455.085 by filing a verified petition alleging such domestic violence, stalking, or sexual assault by the respondent. 2. A person’s right to relief under sections 455.010 to 455.085 shall not be affected by the person leaving the residence or household to avoid domestic violence. 3. Any protection order issued pursuant to sections 455.010 to 455.085 shall be effective throughout the state in all cities and counties.</p>	<p><u>MO. ANN. STAT. § 455.010 (West):</u> “Domestic violence”, abuse or stalking committed by a family or household member, as such terms are defined in this section “Abuse”, includes but is not limited to the occurrence of any of the following acts, attempts or threats against a person who may be protected pursuant to this chapter, except abuse shall not include abuse inflicted on a child by accidental means by an adult household member or discipline of a child, including spanking, in a reasonable manner: (a) “Abusing a pet”, purposely or knowingly causing, attempting to cause, or threatening to cause physical injury to a pet with the intent to control, punish, intimidate, or distress the petitioner; (b) “Assault”, purposely or knowingly placing or attempting to place another in fear of physical harm; (c) “Battery”, purposely or knowingly causing physical harm to another with or without a deadly weapon; (d) “Coercion”,</p>

		<p>compelling another by force or threat of force to engage in conduct from which the latter has a right to abstain or to abstain from conduct in which the person has a right to engage; (e) “Harassment”, engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to an adult or child and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable adult or child to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner or child. Such conduct might include, but is not limited to: a. Following another about in a public place or places; b. Peering in the window or lingering outside the residence of another; but does not include constitutionally protected activity “Stalking”, is when any person purposely engages in an unwanted course of conduct that causes alarm to another person, or a person who resides together in the same household with the person seeking the order of protection when it is reasonable in that person’s situation to have been alarmed by the conduct. As</p>
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		<p>used in this subdivision: (a) "Alarm", to cause fear of danger of physical harm; and (b) "Course of conduct", two or more acts that serve no legitimate purpose including, but not limited to, acts in which the stalker directly, indirectly, or through a third party follows, monitors, observes, surveils, threatens, or communicates to a person by any action, method, or device "Sexual assault", causing or attempting to cause another to engage involuntarily in any sexual act by force, threat of force, duress, or without that person's consent</p>
<p>Montana</p>	<p><u>MONT. CODE ANN. § 40-15-102</u> (West): (1) A person may file a petition for an order of protection if: (a) the petitioner is <u>in reasonable apprehension of bodily injury</u> by the petitioner's partner or family member as defined in 45-5-206; or (b) the petitioner is a victim of one of the following offenses committed by a partner or family member: (i) assault as defined in 45-5-</p>	<p><u>MONT. CODE ANN. § 45-5-201</u> (West): (1) A person commits the offense of assault if the person: (a) purposely or knowingly causes bodily injury to another; (b) negligently causes bodily injury to another with a weapon; (c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or (d) purposely or knowingly causes reasonable apprehension of bodily injury in another. <u>MONT. CODE ANN. § 45-5-202</u> (West): (1) A person commits the offense of aggravated assault if the person purposely or knowingly</p>

	<p>201;</p> <p>(ii) <u>aggravated assault</u> as defined in 45-5-202;</p> <p>(iii) <u>intimidation</u> as defined in 45-5-203;</p> <p>(iv) <u>partner or family member assault</u> as defined in 45-5-206;</p> <p>(v) <u>criminal endangerment</u> as defined in 45-5-207;</p> <p>(vi) <u>negligent endangerment</u> as defined in 45-5-208;</p> <p>(vii) <u>assault on a minor</u> as defined in 45-5-212;</p> <p>(viii) <u>assault with a weapon</u> as defined in 45-5-213;</p> <p>(ix) <u>strangulation of a partner or family member</u> as defined in 45-5-215;</p> <p>(x) <u>unlawful restraint</u> as defined in 45-5-301;</p> <p>(xi) <u>kidnapping</u> as defined in 45-5-302;</p> <p>(xii) <u>aggravated kidnapping</u> as defined in 45-5-303; or</p> <p>(xiii) <u>arson</u> as defined in 45-6-103.</p>	<p>causes serious bodily injury to another or purposely or knowingly, with the use of physical force or contact, causes reasonable apprehension of serious bodily injury or death in another.</p> <p><u>MONT. CODE ANN. § 45-5-203 (West)</u>: (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, the person communicates to another, under circumstances that reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:</p> <p>(a) inflict physical harm on the person threatened or any other person; (b) subject any person to physical confinement or restraint; or (c) commit any felony.</p> <p>(2) A person commits the offense of intimidation if the person knowingly communicates a threat or false report of a pending fire, explosion, or disaster that would endanger life or property.</p> <p><u>MONT. CODE ANN. § 45-5-206 (West)</u>: (1) A person commits the offense of partner or family member assault if the person:</p> <p>(a) purposely or knowingly causes bodily injury to a partner or family member; (b) negligently causes bodily injury to a partner or family member with a weapon; or</p>
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		<p>(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.</p> <p><u>MONT. CODE ANN. § 45-5-207</u> <u>(West):</u> (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.</p> <p><u>MONT. CODE ANN. § 45-5-208</u> <u>(West):</u> A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.</p> <p><u>MONT. CODE ANN. § 45-5-212</u> <u>(West):</u> (1) A person commits the offense of assault on a minor if the person commits an offense under <u>45-5-201</u>, and at the time of the offense, the victim is under 14 years of age and the offender is 18 years of age or older.</p> <p><u>MONT. CODE ANN. § 45-5-213</u> <u>(West):</u> 1) A person commits the offense of assault with a weapon if the person purposely or knowingly</p>
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		<p>causes: (a) bodily injury to another with a weapon; or (b) reasonable apprehension of serious bodily injury in another by use of a weapon or what reasonably appears to be a weapon. <u>MONT. CODE ANN. § 45-5-215</u> <u>(West):</u> (1) A person commits the offense of strangulation of a partner or family member if the person purposely or knowingly impedes the normal breathing or circulation of the blood of a partner or family member by: (a) applying pressure on the throat or neck of the partner or family member; or (b) blocking air flow to the nose and mouth of the partner or family member. <u>MONT. CODE ANN. § 45-5-301</u> <u>(West):</u> (1) A person commits the offense of unlawful restraint if the person knowingly or purposely and without lawful authority restrains another so as to interfere substantially with the other person's liberty. <u>MONT. CODE ANN. § 45-5-302</u> <u>(West):</u> (1) A person commits the offense of kidnapping if the person knowingly or purposely and without lawful authority restrains another person by either secreting or holding the other person in a place of isolation or by using or threatening to use physical force. <u>MONT. CODE ANN. § 45-5-303</u></p>
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		<p>(West): 1) A person commits the offense of aggravated kidnapping if the person knowingly or purposely and without lawful authority restrains another person by either secreting or holding the other person in a place of isolation or by using or threatening to use physical force, with any of the following purposes:</p> <ul style="list-style-type: none"> (a) to hold for ransom or reward or as a shield or hostage; (b) to facilitate commission of any felony or flight thereafter; (c) to inflict bodily injury on or to terrorize the victim or another; (d) to interfere with the performance of any governmental or political function; or (e) to hold another in a condition of involuntary servitude. <p><u>MONT. CODE ANN. § 45-6-103</u></p> <p>(West): (1) A person commits the offense of arson when, by means of fire or explosives, the person knowingly or purposely:</p> <ul style="list-style-type: none"> (a) damages or destroys a structure, vehicle, personal property (other than a vehicle) that exceeds \$1,500 in value, crop, pasture, forest, or other real property that is property of another without consent; (b) damages or destroys a structure, vehicle, crop, pasture, forest, or other property that the person owns or has a possessory
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		<p>interest in, with the purpose of obtaining a pecuniary or other gain through fraud or deception; or (c) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.</p>
<p>Nebraska</p>	<p><u>NEB. REV. STAT. ANN. § 42-924 (West)</u>: (1)(a) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in this section.</p>	<p><u>NEB. REV. STAT. ANN. § 42-903 (West)</u>: For purposes of the Protection from Domestic Abuse Act, unless the context otherwise requires: (1) Abuse means the occurrence of one or more of the following acts between family or household members: (a) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument; (b) Placing, by means of credible threat, another person in fear of bodily injury. For purposes of this subdivision, credible threat means a verbal or written threat, including a threat performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct that is made by a person with the apparent ability to carry out the threat so as to cause the person who is the target of</p>

		<p>the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat shall not prevent the threat from being deemed a credible threat under this section; or</p> <p>(c) Engaging in sexual contact or sexual penetration without consent as defined in <u>section 28-318</u>;</p>
Nevada	<p><u>NEV. REV. STAT. ANN. § 33.020 (West)</u>: If it appears to the satisfaction of the court from specific facts shown by a verified application that an act of domestic violence has occurred or there exists a threat of domestic violence, the court may grant a temporary or extended order. A court shall only consider whether the act of domestic violence or the threat thereof satisfies the requirements of <u>NRS 33.018</u> without considering any</p>	<p><u>NEV. REV. STAT. ANN. § 33.018 (West)</u>: Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:</p> <p>(a) A battery.</p> <p>(b) An assault.</p> <p>(c) Coercion pursuant to <u>NRS 207.190</u>.</p> <p>(d) A sexual assault.</p>

	<p>other factor in its determination to grant the temporary or extended order.</p>	<p>(e) A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:</p> <ul style="list-style-type: none"> (1) Stalking. (2) Arson. (3) Trespassing. (4) Larceny. (5) Destruction of private property. (6) Carrying a concealed weapon without a permit. (7) Injuring or killing an animal. (8) Burglary. (9) An invasion of the home. (f) A false imprisonment. (g) Pandering. <p>2. The provisions of this section do not apply to:</p> <ul style="list-style-type: none"> (a) Siblings, except those siblings who are in a custodial or guardianship relationship with each other; or (b) Cousins, except those cousins who are in a custodial or guardianship relationship with each other. <p>3. As used in this section, “dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.</p>
<p>New Hampshire</p>	<p><u>N.H. REV. STAT. ANN. § 173-B:5: A</u></p>	<p><u>N.H. REV. STAT. ANN. § 173-B:1: “Abuse” means the</u></p>

	<p>finding of abuse shall mean the defendant represents a credible threat to the safety of the plaintiff. Upon a showing of abuse of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of abuse. Such relief shall direct the defendant to relinquish to the peace officer any and all firearms and ammunition in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant for the duration of the protective order. Other relief may include: <u>(a) Protective orders:</u></p>	<p>commission or attempted commission of one or more of the acts described in subparagraphs (a) through (h) by a family or household member or by a current or former sexual or intimate partner, where such conduct is determined to constitute a credible present threat to the petitioner’s safety. The court may consider evidence of such acts, regardless of their proximity in time to the filing of the petition, which, in combination with recent conduct, reflects an ongoing pattern of behavior which reasonably causes or has caused the petitioner to fear for his or her safety or well-being: (a) Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3. (b) Criminal threatening as defined in RSA 631:4. (c) Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5. (d) Interference with freedom as defined in RSA 633:1 through RSA 633:3-a. (e) Destruction of property as defined in RSA 634:1 and RSA 634:2. (f) Unauthorized entry as defined in RSA 635:1 and RSA 635:2. (g) Harassment as defined in RSA 644:4. (h) Cruelty to animals as defined in RSA 644:8.</p>
<p>New Jersey</p>	<p><u>N.J. STAT. ANN. § 2C:25-28 (West):</u> A victim may file a complaint alleging</p>	<p><u>N.J. STAT. ANN. § 2C:25-19 (West) :</u>”Domestic violence” means the occurrence of one or more of</p>

	<p>the commission of an act of domestic violence with the Family Part of the Chancery Division of the Superior Court in conformity with the Rules of Court. f. A plaintiff may seek emergency, ex parte relief in the nature of a temporary restraining order. A municipal court judge or a judge of the Family Part of the Chancery Division of the Superior Court may enter an ex parte order when necessary to protect the life, health or well-being of a victim on whose behalf the relief is sought.</p>	<p>the following acts inflicted upon a person protected under this act by an adult or an emancipated minor: (1) Homicide <u>N.J.S.2C:11-1 et seq.</u> (2) Assault <u>N.J.S.2C:12-1</u> (3) Terroristic threats <u>N.J.S.2C:12-3</u> (4) Kidnapping <u>N.J.S.2C:13-1</u> (5) Criminal restraint <u>N.J.S.2C:13-2</u> (6) False imprisonment <u>N.J.S.2C:13-3</u> (7) Sexual assault <u>N.J.S.2C:14-2</u> (8) Criminal sexual contact <u>N.J.S.2C:14-3</u> (9) Lewdness <u>N.J.S.2C:14-4</u> (10) Criminal mischief <u>N.J.S.2C:17-3</u> (11) Burglary <u>N.J.S.2C:18-2</u> (12) Criminal trespass <u>N.J.S.2C:18-3</u> (13) Harassment <u>N.J.S.2C:33-4</u> (14) Stalking <u>P.L.1992, c. 209 (C.2C:12-10)</u> (15) Criminal coercion <u>N.J.S.2C:13-5</u> (16) Robbery <u>N.J.S.2C:15-1</u> (17) Contempt of a domestic violence order pursuant to subsection b. of <u>N.J.S.2C:29-9</u> that constitutes a crime or disorderly persons offense (18) Any other crime involving risk of death or serious bodily injury to a person protected under the "Prevention of Domestic Violence Act of 1991," <u>P.L.1991, c. 261 (C.2C:25-17 et al.)</u></p>
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		(19) Cyber-harassment <u>P.L.2013, c. 272 (C.2C:33-4.1)</u>
New Mexico	<u>N.M. STAT. ANN. § 40-13-3 (West): A. A victim of domestic abuse may petition the court under the Family Violence Protection Act for an order of protection.</u>	<u>N.M. STAT. ANN. § 40-13-2 (West): “domestic abuse”:</u> (1) means an incident of stalking or sexual assault whether committed by a household member or not; (2) means an incident by a household member against another household member consisting of or resulting in: (a) physical harm; (b) severe emotional distress; (c) bodily injury or assault; (d) a threat causing imminent fear of bodily injury by any household member; (e) criminal trespass; (f) criminal damage to property; (g) repeatedly driving by a residence or work place; (h) telephone harassment; (i) harassment; (j) strangulation; (k) suffocation; or (l) harm or threatened harm to children as set forth in this paragraph; and (3) does not mean the use of force in self-defense or the defense of another;
New York	<u>N.Y. FAM. CT. ACT § 842 (McKinney 2020):</u> An order of protection under section eight hundred forty-one of this part shall set forth	<u>N.Y. FAM. CT. ACT § 827 (McKinney 2020):</u> (vii) aggravating circumstances exist which require the immediate arrest of the respondent. For the purposes of this section aggravating

	<p>reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection.</p>	<p>circumstances shall mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against the petitioner by the respondent, a history of repeated violations of prior orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner, or any member of the petitioner’s family or household.</p>
<p>North Carolina</p>	<p><u>N.C. GEN. STAT. ANN. § 50B-3</u>: If the court, including magistrates as authorized under <u>G.S. 50B-2(c1)</u>, finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts</p>	<p><u>N.C. GEN. STAT. ANN. § 50B-1</u>: (a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense: (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or</p>

	<p>of domestic violence.</p>	<p>(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in <u>G.S. 14-277.3A</u>, that rises to such a level as to inflict substantial emotional distress; or</p> <p>(3) Committing any act defined in <u>G.S. 14-27.21</u> through <u>G.S. 14-27.33</u>. <u>N.C. GEN. STAT. ANN. § 14-27.21</u>: (a) A person is guilty of first-degree forcible rape if the person engages in vaginal intercourse with another person by force and against the will of the other person, and does any of the following:</p> <p>(1) Uses, threatens to use, or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon.</p> <p>(2) Inflicts serious personal injury upon the victim or another person.</p> <p>(3) The person commits the offense aided and abetted by one or more other persons. <u>N.C. GEN. STAT. ANN. § 14-27.22</u>: (a) A person is guilty of second-degree forcible rape if the person engages in vaginal intercourse with another person:</p> <p>(1) By force and against the will of the other person; or</p> <p>(2) Who has a mental disability or who is mentally incapacitated or physically helpless, and the person</p>
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		<p>performing the act knows or should reasonably know the other person has a mental disability or is mentally incapacitated or physically helpless.</p> <p><u>N.C. GEN. STAT. ANN. § 14-27.23:</u> (a) A person is guilty of statutory rape of a child by an adult if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.</p> <p><u>N.C. GEN. STAT. ANN. § 14-27.24:</u> (a) A person is guilty of first-degree statutory rape if the person engages in vaginal intercourse with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim.</p> <p><u>N.C. GEN. STAT. ANN. § 14-27.25:</u> Statutory rape of person who is 15 years of age or younger</p> <p><u>N.C. GEN. STAT. ANN. § 14-27.26:</u> A person is guilty of a first degree forcible sexual offense if the person engages in a sexual act with another person by force and against the will of the other person, and does any of the following:</p> <p>(1) Uses, threatens to use, or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon.</p> <p>(2) Inflicts serious personal injury upon the victim or another person.</p>
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		<p>(3) The person commits the offense aided and abetted by one or more other persons. <u>N.C. GEN. STAT. ANN. § 14-27.27:</u> (a) A person is guilty of second degree forcible sexual offense if the person engages in a sexual act with another person: (1) By force and against the will of the other person; or (2) Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know that the other person has a mental disability or is mentally incapacitated or physically helpless. <u>N.C. GEN. STAT. ANN. § 14-27.28:</u> (a) A person is guilty of statutory sexual offense with a child by an adult if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years. <u>N.C. GEN. STAT. ANN. § 14-27.29:</u> (a) A person is guilty of first-degree statutory sexual offense if the person engages in a sexual act with a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim. <u>N.C. GEN. STAT. ANN. § 14-27.30:</u> Statutory sexual offense with a person who is 15 years of age or younger <u>N.C. GEN. STAT. ANN. § 14-27.31:</u> Sexual activity by a</p>
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		<p>substitute parent or custodian <u>N.C. GEN. STAT. ANN. § 14-27.33</u>: a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person: (1) By force and against the will of the other person; or (2) Who has a mental disability or who is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know that the other person has a mental disability or is mentally incapacitated or physically helpless. (NOTE: The definition of personal relationship in N.C. Gen. Stat. Ann. § 50B-1 was deemed unconstitutional and thus there has been a lot of proposed legislation to replace this statute.) See <i>M.E. v. T.J.</i>, 380 N.C. 539 (2022).</p>
<p>North Dakota</p>	<p><u>N.D. CENT. CODE ANN. § 14-07.1-02 (West)</u>: An action for a protection order commenced by a verified application alleging the existence of <u>domestic violence</u> may be brought in district court by any family or household member</p>	<p><u>N.D. CENT. CODE ANN. § 14-07.1-01 (West)</u>: “Domestic violence” includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members.</p>

	<p>or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.</p>	
<p>Ohio</p>	<p><u>OHIO REV. CODE ANN. § 2919.26 (West): (A)(1)</u> <u>Upon the filing of a complaint that alleges a violation of section 2909.06, 2909.07, 2911.12, or 2911.211 of the Revised Code</u> if the alleged victim of the violation was a family or household member at the time of the violation, a violation of a municipal ordinance that is substantially similar to any of those sections if the alleged victim of the violation was a family or household member at the time of the violation, any offense of violence if the alleged victim of the offense was a family or household member at the time of the commission of the offense, or any</p>	<p><u>OHIO REV. CODE ANN. § 2909.06 (West): 2909.06</u> Criminal damaging or endangering(A) No person shall cause, or create a substantial risk of physical harm to any property of another without the other person's consent: (1) Knowingly, by any means; (2) Recklessly, by means of fire, explosion, flood, poison gas, poison, radioactive material, caustic or corrosive material, or other inherently dangerous agency or substance.</p>

	<p>sexually oriented offense if the alleged victim of the offense was a family or household member at the time of the commission of the offense, the complainant, the alleged victim, or a family or household member of an alleged victim may file, or, if in an emergency the alleged victim is unable to file, a person who made an arrest for the alleged violation or offense under <u>section 2935.03 of the Revised Code</u> may file on behalf of the alleged victim, a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under <u>Criminal Rule 46</u>. The motion shall be filed with the clerk of the court that has jurisdiction of the case at any time after the filing of the complaint</p>	<p>(B) Whoever violates this section is guilty of criminal damaging or endangering, a misdemeanor of the second degree. If a violation of this section creates a risk of physical harm to any person, criminal damaging or endangering is a misdemeanor of the first degree. If the property involved in a violation of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if the violation creates a risk of physical harm to any person, criminal damaging or endangering is a felony of the fifth degree. If the property involved in a violation of this section is an aircraft, an aircraft engine, propeller, appliance, spare part, or any other equipment or implement used or intended to be used in the operation of an aircraft and if</p>
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		<p>the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this section is an occupied aircraft, criminal damaging or endangering is a felony of the fourth degree.</p> <p><u>OHIO REV. CODE ANN. § 2909.07</u> <u>(West):</u> Criminal mischief (A) No person shall:</p> <p>(1) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with either of the following:</p> <p>(a) The property of another;</p> <p>(b) One's own residential real property with the purpose to decrease the value of or enjoyment of the residential real property, if both of the following apply:</p> <p>(i) The residential real property is subject to a mortgage.</p> <p>(ii) The person has been served with a summons and complaint in a pending residential</p>
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		<p>mortgage loan foreclosure action relating to that real property. As used in this division, “pending” includes the time between judgment entry and confirmation of sale.</p> <p>(2) With purpose to interfere with the use or enjoyment of property of another, employ a tear gas device, stink bomb, smoke generator, or other device releasing a substance that is harmful or offensive to persons exposed or that tends to cause public alarm;</p> <p>(3) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with a bench mark, triangulation station, boundary marker, or other survey station, monument, or marker;</p> <p>(4) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with any safety device, the property</p>
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		<p>of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose;</p> <p>(5) With purpose to interfere with the use or enjoyment of the property of another, set a fire on the land of another or place personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure, or personal property that is on that land;</p> <p>(6) Without privilege to do so, and with intent to impair the functioning of any computer, computer system, computer network, computer software, or computer program, knowingly do any of the following:</p> <p>(a) In any manner or by any means, including, but not limited to, computer hacking, alter, damage, destroy, or modify a computer,</p>
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		<p>computer system, computer network, computer software, or computer program or data contained in a computer, computer system, computer network, computer software, or computer program;</p> <p>(b) Introduce a computer contaminant into a computer, computer system, computer network, computer software, or computer program.</p> <p>(7) Without privilege to do so, knowingly destroy or improperly tamper with a critical infrastructure facility.</p> <p><u>OHIO REV. CODE ANN. § 2911.12</u> <u>(West):</u> Burglary; trespass in a habitation when a person is present or likely to be present</p> <p>(A) No person, by force, stealth, or deception, shall do any of the following:</p> <p>(1) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another</p>
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		<p>person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately secured or separately occupied portion of the structure any criminal offense;</p> <p>(2) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure that is a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present, with purpose to commit in the habitation any criminal offense;</p> <p>(3) Trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, with purpose to commit in the structure or separately secured or separately occupied portion of the structure any criminal offense.</p> <p>(B) No person, by</p>
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		<p>force, stealth, or deception, shall trespass in a permanent or temporary habitation of any person when any person other than an accomplice of the offender is present or likely to be present.</p> <p><u>OHIO REV. CODE ANN. § 2911.211</u> (West): Aggravated trespass (A)(1) No person shall enter or remain on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to that person.</p>
Oklahoma	<p><u>OKLA. STAT. ANN. tit. 22, § 60.2</u> (West): A. A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, any adult or emancipated minor household member on behalf of any other family or household member who</p>	<p><u>OKLA. STAT. ANN. tit. 22, § 60.1</u> (West): “Domestic abuse” means any act of physical harm or the threat of imminent physical harm which is committed</p>

	<p>is a minor or incompetent, any minor age sixteen (16) or seventeen (17) years, or any adult victim of a crime may seek relief under the provisions of the Protection from Domestic Abuse Act.</p> <p>1. The person seeking relief may file a petition for a protective order with the district court in the county in which the victim resides, the county in which the defendant resides, or the county in which the domestic violence occurred.</p>	<p>by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who is currently or was previously an intimate partner or family or household member;</p>
Oregon	<p><u>OR. REV. STAT. ANN. § 107.718 (West):</u> (1) When a person files a petition under ORS 107.710, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the petitioner has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition, that there is an imminent danger of further abuse to the petitioner and that the respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child, the court shall, if requested by the petitioner, order:</p> <p>(b) That the respondent be required to move from the</p>	<p><u>OR. REV. STAT. ANN. § 107.710 (West):</u> (1) Any person who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under <u>ORS 107.700 to 107.735</u>, if the person is in imminent danger of further abuse from the abuser.</p> <p><u>OR. REV. STAT. ANN. § 107.705 (West):</u> As used in <u>ORS 107.700 to 107.735</u>: (1) "Abuse" means the occurrence of one or more of the following acts between family or household members:</p> <p>(a) Attempting to</p>

	<p>petitioner’s residence, if in the sole name of the petitioner or if it is jointly owned or rented by the petitioner and the respondent, or if the parties are married to each other;</p> <p>(c) That the respondent be restrained from entering, or attempting to enter, a reasonable area surrounding the petitioner’s current or subsequent residence if the respondent is required to move from petitioner’s residence;</p> <p>(e) That the respondent be restrained from intimidating, molesting, interfering with or menacing the petitioner, or attempting to intimidate, molest, interfere with or menace the petitioner;</p> <p>(f) That the respondent be restrained from intimidating, molesting, interfering with or menacing any children in the custody of the petitioner, or attempting to intimidate, molest, interfere with or menace any children in the custody of the petitioner;</p> <p>(g) That the respondent be restrained from entering, or attempting to enter, on any premises and a reasonable area surrounding the premises when it appears to the court that such restraint is necessary to prevent the respondent from</p>	<p>cause or intentionally, knowingly or recklessly causing bodily injury.</p> <p>(b) Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury.</p> <p>(c) Causing another to engage in involuntary sexual relations by force or threat of force.</p>
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	intimidating, molesting, interfering with or menacing the petitioner or children whose custody is awarded to the petitioner;	
Pennsylvania	<p><u>23 PA. STAT. AND CONS. STAT. ANN. § 6105 (West)</u> : “If you are the victim of domestic violence, you have the right to go to court and file a petition requesting an order for protection from domestic abuse pursuant to the Protection From Abuse Act (23 Pa.C.S. Ch. 61), which could include the following:</p> <p>(1) An order restraining the abuser from further acts of abuse. (2) An order directing the abuser to leave your household. (3) An order preventing the abuser from entering your residence, school, business or place of employment. (4) An order awarding you or the other parent temporary custody of or temporary visitation with your child or children. (5) An order directing the abuser to pay support to you and the minor children if the abuser has a legal obligation to do so.”</p>	<p><u>23 PA. STAT. AND CONS. STAT. ANN. § 6102 (West)</u>: “Abuse.” The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood: (1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon. (2) Placing another in reasonable fear of imminent serious bodily injury. (3) The infliction of</p>

		<p>false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment). (4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services). (5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury. The definition of this paragraph applies only to proceedings commenced under this title and is inapplicable to any criminal prosecutions commenced under Title 18 (relating to crimes and offenses).</p>
Rhode Island	<p><u>15 R.I. GEN. LAWS ANN. § 15-15-3 (West)</u> : (a) A person, or a parent, custodian, or legal guardian on behalf of a</p>	<p><u>15 R.I. GEN. LAWS ANN. § 15-15-1 (West)</u> : (4) “Domestic abuse” means:</p>

	<p>minor child or the director of the department of children, youth and families (“DCYF”) or its designee for a child in the custody of DCYF, pursuant to §§ 40-11-7 and 40-11-7.1, <u>suffering from domestic abuse or sexual exploitation as defined in § 15-15-1</u>, may file a complaint in the family court requesting any order that will protect and support her or him from abuse or sexual exploitation</p>	<p>The occurrence of one or more of the following acts between present or former family members, parents, stepparents, a plaintiff parent’s minor child(ren) to which the defendant is not a blood relative or relative by marriage, adult plaintiffs who are or have been in a substantive dating or engagement relationship within the past one year and who are (either individually or together) parents of minor children, or persons who are or have been in a substantive dating or engagement relationship within the past one year in which at least one of the persons is a minor:</p> <ul style="list-style-type: none"> (i) Attempting to cause or causing physical harm; (ii) Placing another in fear of imminent serious physical harm; (iii) Causing another to engage involuntarily in sexual relations by force, threat of force, or duress;
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		<p>or (iv) Stalking or cyberstalking. "Stalking" means harassing another person or willfully, maliciously, and repeatedly following another person with the intent to place that person in reasonable fear of bodily injury. "Cyberstalking" means transmitting any communication by computer to any person or causing any person to be contacted for the sole purpose of harassing that person or his or her family.</p> <p>(8) "Sexual exploitation" means the occurrence of any of the following acts by any person who knowingly or willfully encourages, aids, or coerces any child under the age of eighteen (18) years:</p> <p>(i) Recruiting, employing, enticing, soliciting, isolating, harboring, transporting, providing, persuading, obtaining, or maintaining, or so attempting, any minor for the</p>
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		<p>purposes of commercial sex acts or sexually explicit performances; or selling or purchasing a minor for the purposes of commercial sex acts.¹</p> <p>(A) “Commercial sex act” means any sex act or sexually explicit performance on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.</p> <p>(B) “Sexually explicit performance” means an act or show, intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, or videotaped.</p>
<p>South Carolina</p>	<p><u>S.C. CODE ANN. § 20-4-40:</u> There is created an action known as a “Petition for an Order of Protection” in cases of abuse to a household member.</p>	<p><u>S.C. CODE ANN. § 20-4-20:</u> (a) “Abuse” means: (1) physical harm, bodily injury, assault, or the threat of physical harm; (2) sexual criminal offenses, as otherwise defined by statute,</p>

		<p>committed against a family or household member by a family or household member. (*NOTE: Part (b) not applicable here was ruled as unconstitutional)</p>
<p>South Dakota</p>	<p><u>S.D. CODIFIED LAWS § 25-10-3</u>: There exists an action known as a petition for a protection order in cases of domestic abuse. Procedures for the action are as follows: (1) A petition under this section may be made by any person in a relationship described in § <u>25-10-3.1</u> against any other person in such a relationship; (2) A petition shall allege the existence of domestic abuse and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the domestic abuse; and (3) A petition for relief may be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties. However, if there is any other lawsuit, complaint, petition, or other action pending between the parties, any new petition made pursuant to this section shall be made to the judge previously assigned to the pending lawsuit, petition, or other</p>	<p><u>S.D. CODIFIED LAWS § 25-10-1</u> : (1) “Domestic abuse,” physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury when occurring between persons in a relationship described in § <u>25-10-3.1</u>. Any violation of § <u>25-10-13</u> or chapter 22-19A or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between persons in such a relationship;</p>

	action, unless good cause is shown for the assignment of a different judge.	
Tennessee	<p><u>TENN. CODE ANN. § 36-3-606 (West)</u>: a) A protection order granted under this part to protect the petitioner from domestic abuse, stalking, sexual exploitation of a minor, sexual assault, or a human trafficking offense may include, but is not limited to:</p>	<p><u>TENN. CODE ANN. § 36-3-601 (West)</u>: “Domestic abuse” means committing abuse against a victim, as defined in subdivision (5); “Abuse” means inflicting, or attempting to inflict, physical injury on an adult or minor by other than accidental means, placing an adult or minor in fear of physical harm, physical restraint, malicious damage to the personal property of the abused party, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by an adult or minor, or placing an adult or minor in fear of physical harm to any animal owned, possessed, leased, kept, or held by the adult or minor; “Stalking victim” means any person, regardless of the</p>

		<p>relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of the offense of stalking, as defined in <u>§ 39-17-315</u>;</p> <p>“Sexual assault victim” means any person, regardless of the relationship with the perpetrator, who has been subjected to, threatened with, or placed in fear of any form of rape, as defined in <u>§ 39-13-502</u>, <u>§ 39-13-503</u>, <u>§ 39-13-506</u> or <u>§ 39-13-522</u>, or sexual battery, as defined in <u>§ 39-13-504</u>, <u>§ 39-13-505</u>, or <u>§ 39-13-527</u>;</p>
<p>Texas</p>	<p><u>TEX. FAM. CODE ANN. § 83.001</u> (West 2023): (a) If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed</p>	<p><u>TEX. FAM. CODE ANN. § 71.004</u> (West 2023): “Family violence” means:</p> <p>(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;</p> <p>(2) abuse, as that term is defined by <u>Sections</u></p>

	<p>family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant.</p>	<p><u>261.001(1)(C), (E), (G), (H), (I), (J), (K), and (M)</u>, by a member of a family or household toward a child of the family or household; or (3) dating violence, as that term is defined by <u>Section 71.0021</u>. <u>TEX. FAM. CODE ANN. § 261.001 (West 2023)</u>: “Abuse” includes the following acts or omissions by a person: (A) mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning; (B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child’s growth, development, or psychological functioning; (C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm; (D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child; (E) sexual conduct harmful</p>
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		<p>to a child’s mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or disabled individual under <u>Section 21.02, Penal Code</u>, indecency with a child under <u>Section 21.11, Penal Code</u>, sexual assault under <u>Section 22.011, Penal Code</u>, or aggravated sexual assault under <u>Section 22.021, Penal Code</u>;</p> <p>(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;</p> <p>(G) compelling or encouraging the child to engage in sexual conduct as defined by <u>Section 43.01, Penal Code</u>, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under <u>Section 20A.02(a)(7) or (8), Penal Code</u>, solicitation of prostitution under <u>Section 43.021, Penal Code</u>, or compelling prostitution under <u>Section 43.05(a)(2), Penal Code</u>;</p> <p>(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by <u>Section 43.21, Penal Code</u>, or pornographic;</p> <p>(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner</p>
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		<p>or to the extent that the use results in physical, mental, or emotional injury to a child;</p> <p>(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;</p> <p>(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by <u>Section 43.25, Penal Code</u>;</p> <p>(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under <u>Section 20A.02(a)(5), (6), (7), or (8), Penal Code</u>, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or</p> <p>(M) forcing or coercing a child to enter into a marriage.</p> <p><u>TEX. FAM. CODE ANN. § 71.0021 (West 2023)</u>: (a) “Dating violence” means an act, other than a defensive measure to protect oneself, by an actor that:</p> <p>(1) is committed against a victim or applicant for a protective order:</p> <p>(A) with whom the actor has or has had a dating relationship; or</p> <p>(B) because of the victim’s or applicant’s marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and</p> <p>(2) is intended to result in</p>
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		physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.
Utah	<p><u>UTAH CODE ANN. § 78B-7-403</u> (West 2023): (1) An individual may seek a protective order if the individual is subjected to, or there is a substantial likelihood the individual will be subjected to:</p> <p>(a) <u>abuse by a dating partner</u> of the individual; or (b) dating violence by a dating partner of the individual.</p>	<p><u>UTAH CODE ANN. § 78B-7-102</u> (West 2023): (1) “Abuse” means, except as provided in <u>Section 78B-7-201</u>, intentionally or knowingly causing or attempting to cause another individual physical harm or intentionally or knowingly placing another individual in reasonable fear of imminent physical harm. (*NOTE: This statute has been amended by a house bill however, the definition of abuse does not change.)</p>
Vermont	<p><u>VT. STAT. ANN. tit. 15, § 1103</u> (West 2023): (a) Any family or household member may seek relief from abuse by another family or household member on behalf of himself or herself or his or her children by filing a</p>	<p><u>VT. STAT. ANN. tit. 15, § 1101</u> (West 2023): (1) “Abuse” means the occurrence of one or more of the following acts between family or household members:</p> <p>(A) Attempting to cause or causing physical harm. (B) Placing another in fear of imminent serious physical harm. (C) Abuse to children as defined in 33 V.S.A. chapter 49, subchapter 2. (D) Stalking as defined in 12</p>

	<p>complaint under this chapter.</p>	<p>V.S.A. § 5131(6). (E) Sexual assault as defined in 12 V.S.A. § 5131(5). <u>VT. STAT. ANN. tit. 12, § 5131 (West 2023)</u>: (6) “Stalk” means to engage purposefully in a course of conduct directed at a specific person that the person engaging in the conduct knows or should know would cause a reasonable person to: (A) fear for his or her safety or the safety of a family member; or (B) suffer substantial emotional distress as evidenced by: (i) a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death; or (ii) significant modifications in the person’s actions or routines, including moving from an established residence, changes to established daily routes to and from work that cause a serious disruption in the person’s life, changes to the person’s employment or work schedule, or the loss of a job or time from work. <u>VT. STAT. ANN. tit. 12, § 5131 (West 2023)</u>: “Sexually assaulted the plaintiff” means that the defendant engaged in conduct that meets elements of lewd and lascivious conduct as defined in <u>13 V.S.A. § 2601</u>, lewd and lascivious conduct with a child as defined in <u>13 V.S.A. § 2602</u>, sexual assault as defined in <u>13 V.S.A. § 3252</u>, aggravated sexual assault as defined in <u>13 V.S.A. § 3253</u>, use of a child in a sexual performance as defined in <u>13 V.S.A. § 2822</u>, or consenting to a sexual performance as</p>
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		defined in <u>13 V.S.A. § 2823</u> , and that the plaintiff was the victim of the offense.
Virginia	<u>2023 Va. Legis. Serv. Ch 620 (H.B. 1897) (West)</u> : A. In cases of family abuse , including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § 16.1–253.1, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner.	<u>VA. CODE ANN. § 16.1-228 (West 2023)</u> : “ Family abuse ” means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person’s family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury .
Washington *Language specifically cites criminal acts	<u>WASH. REV. CODE ANN. § 7.105.100 (West 2023)</u> : (1) There exists an action known as a petition for a protection order. The following types of petitions for a protection order may be filed: (a) A petition for a domestic	<u>WASH. REV. CODE ANN. § 10.99.020 (West 2023)</u> : (4) “ Domestic violence ” includes but is not limited to any of the following crimes when committed either by (a) one family or household member against another family or household member, or (b) one intimate partner against another intimate partner: (i) Assault in the first degree (<u>RCW 9A.36.011</u>); (ii) Assault in the second degree (<u>RCW 9A.36.021</u>);

	<p>violence protection order, which must allege the existence of domestic violence committed against the petitioner or petitioners by an intimate partner or a family or household member.</p>	<p>(iii) Assault in the third degree (<u>RCW 9A.36.031</u>); (iv) Assault in the fourth degree (<u>RCW 9A.36.041</u>); (v) Drive-by shooting (<u>RCW 9A.36.045</u>); (vi) Reckless endangerment (<u>RCW 9A.36.050</u>); (vii) Coercion (<u>RCW 9A.36.070</u>); (viii) Burglary in the first degree (<u>RCW 9A.52.020</u>); (ix) Burglary in the second degree (<u>RCW 9A.52.030</u>); (x) Criminal trespass in the first degree (<u>RCW 9A.52.070</u>); (xi) Criminal trespass in the second degree (<u>RCW 9A.52.080</u>); (xii) Malicious mischief in the first degree (<u>RCW 9A.48.070</u>); (xiii) Malicious mischief in the second degree (<u>RCW 9A.48.080</u>); (xiv) Malicious mischief in the third degree (<u>RCW 9A.48.090</u>); (xv) Kidnapping in the first degree (<u>RCW 9A.40.020</u>); (xvi) Kidnapping in the second degree (<u>RCW 9A.40.030</u>); (xvii) Unlawful imprisonment (<u>RCW 9A.40.040</u>); (xviii) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location,</p>
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		<p>a protected party’s person, or a protected party’s vehicle (chapter 7.105 RCW, or <u>RCW 10.99.040, 10.99.050, 26.09.300, *26.10.220, 26.26B.050, 26.44.063, 26.44.150, or 26.52.070</u>, or any of the former RCW 26.50.060, 26.50.070, 26.50.130, and 74.34.145); (xix) Rape in the first degree (<u>RCW 9A.44.040</u>); (xx) Rape in the second degree (<u>RCW 9A.44.050</u>); (xxi) Residential burglary (<u>RCW 9A.52.025</u>); (xxii) Stalking (<u>RCW 9A.46.110</u>); and (xxiii) Interference with the reporting of domestic violence (<u>RCW 9A.36.150</u>).</p>
<p>Washington D.C. *Specific language in the statute itself equating domestic violence to “an offense punishable as a criminal offense.”</p>	<p>D.C. CODE ANN. § 16-1003 (West 2023): (a) A person 16 years of age or older may petition the Domestic Violence Division for a civil protection order against a respondent who has allegedly committed or threatened to commit: (1) An intrafamily offense, where the petitioner is the victim, or, if the offense is punishable under § 22-1001 or § 22-1002,</p>	<p><u>D.C. CODE ANN. § 16-1001 (West 2023)</u>: (8) “Intrafamily offense” means: (A) An offense punishable as a criminal offense against an intimate partner, a family member, or a household member; or (B) An offense punishable as cruelty to animals, under § 22-1001 or § 22-1002, against an animal that an intimate partner, family member, or household member owns, possesses, or controls.</p>

	<p>where the victim is an animal that the petitioner owns, possesses, or controls;</p> <p>(2) Sexual assault, where the petitioner is the victim;</p> <p>(3) Trafficking in labor or commercial sex acts, as described in § 22-1833, where the petitioner is the victim; or</p> <p>(4) Sex trafficking of children, as described in § 22-1834, where the petitioner is the victim.</p>	
West Virginia	<p>W. VA. CODE ANN. § 48-27-501 (West 2023): (a) Upon final hearing, the court shall enter a protective order if it finds, after hearing the evidence, that the petitioner has proved the allegations of <u>domestic violence</u> by a preponderance of the evidence.</p>	<p>W. VA. CODE ANN. § 48-27-202 (West 2023): “Domestic violence” or “abuse” means the occurrence of one or more of the following acts between family or household members, as that term is defined in section two hundred four of this article:</p> <p>(1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;</p> <p>(2) Placing another in reasonable apprehension of physical harm;</p> <p>(3) Creating fear of physical harm by harassment, stalking, psychological</p>

		<p>abuse or threatening acts; (4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and (5) Holding, confining, detaining or abducting another person against that person’s will.</p>
<p>Wisconsin</p>	<p><u>WIS. STAT. ANN. § 813.12 (West 2023)</u>: A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to refrain from committing acts of domestic abuse against the petitioner, to avoid the petitioner’s residence, except as provided in par. (am), or any other location temporarily occupied by the petitioner or both, or to avoid contacting or causing any person other than a party’s attorney or a law enforcement officer to contact the petitioner unless the</p>	<p><u>WIS. STAT. ANN. § 813.12 (West 2023)</u>: “Domestic abuse” means any of the following engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult caregiver against an adult who is under the caregiver’s care, by an adult against his or her adult former spouse, by an adult against an adult with whom the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common:</p> <ol style="list-style-type: none"> 1. Intentional infliction of physical pain, physical injury or illness. 2. Intentional impairment of physical condition. 3. A violation of s. 940.225(1), (2) or (3). 4. A violation of s. 940.32. 5. A violation of s. 943.01, involving property that belongs to the individual. 6. A threat to engage in the conduct under subd. 1., 2., 3., 4., or 5. <p>WIS. STAT. ANN. § 940.225 (West 2023): Sexual assault</p>

	<p>petitioner consents in writing, to refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet, to allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet, or any combination of these remedies requested in the petition, or any other appropriate remedy not inconsistent with the remedies requested in the petition</p>	<p>Wis. STAT. ANN. § 940.32 (West 2023): Stalking Wis. STAT. ANN. § 943.01 (West 2023): Damage to property</p>
<p>Wyoming</p>	<p><u>WYO. STAT. ANN. § 35-21-103</u> (West 2023): (a) A victim of domestic abuse may petition the court under this act by filing a petition with the circuit court clerk or the district court clerk if the county does not have a circuit</p>	<p><u>WYO. STAT. ANN. § 35-21-102</u> (West 2023): “Domestic abuse” means the occurrence of one (1) or more of the following acts by a household member but does not include acts of self defense: (A) Physically abusing, threatening to physically abuse, attempting to cause or causing physical harm or acts which unreasonably restrain the personal liberty of any household member; (B) Placing a household</p>

	court for an order of protection.	member in reasonable fear of imminent physical harm ; or (C) Causing a household member to engage involuntarily in sexual activity by force, threat of force or duress.
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