DOMESTIC VIOLENCE - BACKGROUND AND DEFINITIONS:

FEDERAL LAW:

   a. However, in United States v. Morrison, 120 S. Ct. 1740 (2000), the Supreme Court held that the Commerce Clause did not provide Congress with authority to enact the civil remedy provision of VAWA (§ 13981). The provision was not a regulation of activity that substantially affected interstate commerce, gender-motivated crimes of violence were not economic activity, and the provision contained no jurisdictional element establishing that a federal cause of action was in pursuance of Congress’ power to regulate interstate commerce. Although, state-sponsored gender discrimination could violate equal protection under certain circumstances, the Fourteenth Amendment did not prohibit or provide a shield against private conduct; it prohibits only state action, and is directed at conduct of a State or state actor. The conduct at issue in this case is that of a private individual.
   b. The Court further rejected the argument that Congress may regulate non-economic violent criminal conduct based solely on that conduct’s aggregate effect on interstate commerce and stated that they “can think of no better example of police power which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.” Id. at 1754.

2. Federal Definition of Domestic Violence: A “misdemeanor crime of domestic violence” is defined as a misdemeanor under Federal or State Law that involves the use, attempted use, or threatened use of physical force against a person by a current or former spouse, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, or by a person similarly situated to a spouse who is protected by the domestic or family violence
laws of the State or tribal jurisdiction in which the injury occurred or where
“Physical force” as used in this statute has been clarified to include
“offensive touching” as the phrase is used in common law; the “physical
force” referred to in the statute can be either direct force or indirect force.


a. Offenses:
(i) Crossing a State Line. - Under this provision a person who travels
across a state line or enters or leaves Indian Country with the
intent to injure, harass, or intimidate that person’s spouse or
immediate partner, and who, in the cause of or as a result of such
travel, intentionally commits a crime of violence and thereby
causes bodily injury to such spouse or intimate partner shall be
punished as provided in subsection (b).

(ii) Causing the crossing of a state line. - A person who causes a
spouse or intimate partner to cross a state line or to enter or
leave Indian Country by force, coercion, duress, or fraud and, in
the course or as a result of that conduct, intentionally commits a
crime of violence and thereby causes bodily injury to the person’s
spouse or intimate partner, shall be punished as provided in
subsection (b).

b. Penalties: A person who violates this section or section 2261A shall be
fined under this title and imprisoned:
(i) For life or any term of years, if death of the victim results;

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

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

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

(v) For not more than 5 years, in any other case, or both fined and
imprisoned.

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


The portion of the Violence Against Women Act that makes it a federal crime to cause bodily injury to one’s spouse after crossing state lines with the intent to do so, 18 U.S.C. § 2261(a)(2), does not exceed Congress’ authority under the Commerce Clause. The court pointed out that § 2261(a)(2) requires the crossing of a state line, and therefore placed the criminal activity squarely in interstate commerce.

4. Full Faith and Credit, 18 U.S.C. § 2265:

The Violence against Women Act requires all states and Indian nations to give full faith and credit to restraining orders and orders of protection against domestic violence that meet the federal definition if the respondent was given notice and an opportunity to be heard. The mandatory injunction forms used in Florida were created in part to qualify under the federal statute, including the written finding that the petitioner is a victim of domestic violence and/or petitioner has reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence.

FLORIDA STATE LAW:

1. Florida Statutes

a. Chapter 741 is the Exclusive Method to Obtain an Injunction. No other remedies, including an injunction under Florida Rule of Civil Procedure 1.610, may be utilized to obtain an injunction against domestic violence. Campbell v. Campbell, 584 So. 2d 125 (Fla. 4th DCA 1991); see Florida Family Law Rule of Procedure 12.610(a) and § 61.052(6).

   • Section 741.30, not chapter 61, is the appropriate vehicle for a domestic violence injunction. Shaw-Messer v. Messer, 755 So. 2d 776 (Fla. 5th DCA 2000).

   • In addition to § 741.28, a number of other Florida statutes address issues associated with domestic violence cases, including injunctions (§ 741.31), civil actions for damages (§ 768.35), confidentiality (§§ 39.908, 741.401, 741.465), evidentiary issues (§ 90.5036) and mediation (§ 44.102). These related sections will be discussed further in this outline.
b. Criminal cases: The court may issue a no contact order as a condition of pre-trial release in certain criminal cases. § 903.047(1)(b).

c. Other types of Injunctions available in Florida:
   - Dating Violence Injunction. § 784.046.
   - Sexual Violence Injunction. § 784.046.
   - Repeat Violence Injunction. § 784.046.
   - Stalking Injunction. § 784.0485.

2. Applicable Rules of Procedure:

   b. Pre-trial discovery is available in injunction cases including: depositions (rule 12.290), interrogatories (rule 12.340), production of documents (rule 12.350), examination of persons (rule 12.360), and requests for admission (rule 12.370). However, the mandatory disclosure required under Florida Family Law Rule of Procedure 12.285 for most family law cases is not available in domestic, repeat, dating, and sexual violence, or stalking injunction proceedings.

   c. Procedures for temporary and final injunctions for protection against domestic violence are governed by Florida Family Law Rule of Procedure 12.610. In conjunction with this rule, the Florida Supreme Court has approved a series of standardized domestic violence forms, which include petitions for various types of injunctions and mandatory injunction forms. Judges are required to use the injunction forms when making determinations in domestic violence cases. Modifications of the mandatory injunction forms themselves must be approved by the Supreme Court of Florida.

3. Assistance from Clerks:
   a. The clerk of the court shall provide forms and assist petitioners in seeking both injunctions for protection against domestic violence and enforcement for a violation of an injunction. § 741.30(2)(c)(1). Florida Family Law Rule of Procedure 12.610(b)(4)(A) broadens this obligation to require that the clerk of court also provide forms and assistance to petitioners seeking injunctions for protection against repeat, dating, and sexual violence, and stalking.

   b. The clerk of court cannot assess a filing fee for petitions for injunction against domestic violence. § 741.30(2)(a).
DOMESTIC VIOLENCE DEFINITIONS:

a. **Domestic violence** means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any other criminal offense resulting in physical injury or death of one family or household member by another family or household member. § 741.28(2).

b. **Assault** is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. § 784.011(1). An assault is a misdemeanor of the second degree, punishable as provided in §§ 775.082 or 775.083. § 784.011(2).

c. **Battery** is committed if someone (1) actually and intentionally touches or strikes another person against the will of the other, OR (2) intentionally causes bodily harm to another person. § 784.03. A battery is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. § 784.03(1)(b).
   - A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree, punishable as provided in §§ 775.082, 775.083, or § 775.084. For purposes of this subsection, “conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered. § 784.03(2).

d. **Felony battery** is committed if someone (1) actually and intentionally touches or strikes another person against the will of the other; and (2) causes great bodily harm, permanent disability, or permanent disfigurement. § 784.041(1).
   - A person commits domestic battery by strangulation if the person knowingly and intentionally, against the will of another, impedes the normal breathing or circulation of the blood of a family or household member or of a person with whom he or she is in a dating relationship, so as to create a risk of or cause great bodily harm by applying pressure on the throat or neck of the other person or by blocking the nose or mouth of the other person. This paragraph does not apply to any act of medical diagnosis, treatment, or prescription which is authorized under the laws of this state. § 784.041(2)(a).
   - Felony battery and domestic battery by strangulation are a third degree felony and punishable as set out above as provided in §§ 775.082, 775.083, or 775.084. See also section (f) above.
e. **Aggravated battery** occurs if someone while committing battery: (1) intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or (2) uses a deadly weapon. Furthermore, a person commits aggravated battery if victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. § 784.045. Aggravated battery is a second degree felony, punishable as provided in §§ 775.082, 775.083, and 775.084. § 784.045(2).

f. The general view is that consent is not a defense to battery.

- **Lyons v. State**, 437 So. 2d 711, 712 (Fla. 1st DCA 1983).

- **State v. Conley**, 799 So. 2d 400 (Fla. 4th DCA 2001). “A view of the law that a victim of domestic violence can consent to the batteries and injuries perpetrated on him or her is incompatible with both the general law of battery and the specific legislative intent expressed in § 741.2901(2)....”

- See also **State v. Conley**, 799 So. 2d 400 (Fla. 4th DCA 2001). Judge Warner concurs in a separate opinion, finding that the lower court made an additional error in finding that consent to a battery is a defense. Consent is only a defense in cases of sexual battery, not domestic violence.

g. **Stalking** is defined as any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking. Stalking is a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083. § 784.048(2).

h. **Cyber-Stalking** means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. § 784.048(1)(d). See Branson v. Rodriguez-Linares, 143 So. 3d 1070 (Fla. 2d DCA 2014). Petitioner received approximately 300 emails in one and one-half months. The court held that stalking and cyberstalking can be sufficient to establish the act of “violence” as required by the domestic violence statute, as long as the cyberstalking was directed at a family or household member.

i. **Aggravated stalking** is defined as any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person, and makes a credible threat to that person a felony of the third degree, punishable as provided in §§ 775.082, 775.083, or 775.084. § 784.048(3).
• Any person who, after an injunction for protection against repeat violence, sexual violence, or dating violence, pursuant to § 784.046, or an injunction for protection against domestic violence pursuant to § 741.30, or after any other court-imposed prohibition of conduct toward the subject person or that person’s property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in §§ 775.082, 775.083, or 775.084. § 784.048(4).

• Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a minor under 16 years of age commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in §§ 775.082, 775.083, or 775.084. § 784.048(5).

b. Sexual Cyber Harassment occurs when someone publishes a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an internet website without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. § 784.049(2)(c). The crime is a misdemeanor of the first degree, however, if a person has a prior conviction for the same crime and commits a second or subsequent crime, the crime is a felony of the third degree. The new law allows a law enforcement officer to arrest, without an arrest warrant, any person that he or she has probable cause to believe has violated the law. § 784.049(4)(a). The statute also provides that the victim may initiate a civil action against a person who violates this law and such civil action may include an injunction, monetary damages, and reasonable attorney fees and costs. § 784.049(5).