

# GEORGIA STATUTE GLOSSARY

Georgia Coalition Against Domestic Violence

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## FAMILY VIOLENCE

**19-13-1 Family Violence:** 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” explicitly excludes “reasonable discipline administered by a parent to a child in the form of corporal punishment, restraint, or detention.

## STALKING

**16-5-90 Stalking; psychological evaluation:** (a) (1) A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person. For the purpose of this article, the terms “computer” and computer network” shall have the same meanings as set out in Code Section 16-9-92; the term “contact” shall mean any communication including without being limited to communication in person, by telephone, by mail, by broadcast, by computer, by computer network, or by any other electronic device; and the place or places that contact by telephone, mail broadcast, computer, computer network, or any other electronic device is deemed to occur shall be the place or places where such communication is received. For the purpose of this article, the term “place or places” shall include any public or private property occupied by the victim other than the residence of the defendant. For the purposes of this article, the term “harassing and intimidating” means a knowing and willful course of conduct directed at a specific person which causes emotional distress by placing such person in reasonable fear for such person’s safety or the safety of a member of his or her immediate family, by establishing a pattern of harassing and intimidating behavior, and which serves no legitimate purpose. This Code section shall not be construed to require that an overt threat of death or bodily injury has been made.

(2) A person commits the offense of stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-110, standing order issued under Code Section 19-1-1, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the harassment or intimidation of another person, broadcasts or publishes, including electronic publication, the picture, name, address, or

phone number of a person for whose benefit the bond, order, or condition was made and without such person's consent in such a manner that causes other persons to harass or intimidate such person and the person making the broadcast or publication knew or had reason to believe that such broadcast or publication would cause such person to be harassed or intimidated by others.

(b) Except as provided in subsection (c) of this Code section, a person who commits the offense of stalking is guilty of a misdemeanor.

(c) Upon the second conviction, and all subsequent convictions, for stalking, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than ten years.

(d) Before sentencing a defendant for any conviction of stalking under this Code section or aggravated stalking under Code Section 16-5-91, the sentencing judge may require psychological evaluation of the offender and shall consider the entire criminal record of the offender. At the time of sentencing, the judge is authorized to issue a permanent restraining order against the offender to protect the person stalked and the members of such person's immediate family and the judge is authorized to require psychological treatment of the offender as a part of the sentence, or as a condition for suspension or stay of sentence, or for probation.

**16-5-91 Aggravated stalking:** (a) A person commits the offense of aggravated stalking when such person, in violation of a bond to keep the peace posted pursuant to Code Section 17-6-110, temporary restraining order, temporary protective order, permanent restraining order, permanent protective order, preliminary injunction, or permanent injunction or condition of pretrial release, condition of probation, or condition of parole in effect prohibiting the behavior described in this subsection, follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person.

(b) Any person convicted of a violation of subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years and by a fine of not more than \$10,000.00. The provisions of subsection (d) of Code Section 16-5-90 apply to sentencing for conviction of aggravated stalking.

## TEMPORARY PROTECTION ORDERS

**19-13-2 Jurisdiction of Superior Court:** (a) Except for proceedings involving a nonresident respondent, the superior court of the county where the respondent resides shall have jurisdiction over all proceedings under this article.

(b) For proceedings under this article involving a nonresident respondent, the superior court where the petitioner resides or the superior court where an act involving family violence allegedly occurred shall have jurisdiction, where the act involving family violence meets the elements for personal jurisdiction provided for under paragraph (2) or (3) of Code Section 9-10-91.

**19-13-3 Filing of petition seeking relief from family violence; granting of temporary relief ex parte; hearing; dismissal of petition upon failure to hold hearing; procedural advice for**

**victims:** (a) A person who is not a minor may seek relief under this section by filing a petition with the superior court alleging one or more acts of family violence. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.

(b) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that family violence has occurred in the past and may occur in the future, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from violence. If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner.

(c) Within ten days of the filing of the petition under this article or as soon as practical thereafter, but in no case later than 30 days after the filing of the petition, a hearing shall be held at which the petitioner must prove the allegations of the petition by a preponderance of the evidence as in other civil cases. In the event a hearing cannot be scheduled within the county where the case is pending within the 30 day period the same shall be scheduled and heard within any other county of that circuit. If a hearing is not held within 30 days, the petition shall stand dismissed unless the parties otherwise agree.

(d) Family violence shelter or social service agency staff members designated by the court may explain to all victims not represented by counsel the procedures for filling out and filing all forms and pleadings necessary for the presentation of their petition to the court. The clerk of the court may provide forms for petitions and pleading to victims of family violence and to any other persons designated by the superior court pursuant to this Code section as authorized to advise victims on filling out and filing such petitions and pleadings. The clerk shall not be required to provide assistance to persons in completing such forms or in presenting their case to the court. Any assistance provided pursuant to this Code section shall be performed without cost to the petitioners. The performance of such assistance shall not constitute the practice of law as defined in Code Section 15-19-51.

**19-13-4 Protective orders and consent agreements; contents; issuing copy of order to sheriff; expiration; enforcement:** (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 family violence. 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 have been satisfied. The orders or agreements may:

(1) Direct the respondent to refrain from such acts;

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household;

(3) Require a party to provide suitable alternate housing for a spouse, former spouse, or parent and the parties' child or children;

(4) Award temporary custody of minor children and establish temporary visitation rights;

(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 evection has not been ordered;

- (6) Order either party to make payments for the support of a minor child as required by law;
- (7) Order either party to make payments for the 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.

(b) A copy of the order shall be issued by the clerk of the superior court to the sheriff of the county wherein the order was entered and shall be retained by the sheriff as long as that order shall remain in effect.

(c) Any such orders granted under this Code section shall remain in effect for up to one year; provided, however, that upon the motion of a petitioner and notice to the respondent and after a hearing, the court in its discretion may convert a temporary order granted under this Code Section to an order effective for not more than three years or to a permanent order.

(d) A protective order issued pursuant to this Code section shall apply and shall be effective throughout this state. It shall be the duty of every superior court and of every sheriff, every deputy sheriff, and every state, county, or municipal law enforcement officer within this state to enforce and carry out the terms of any valid protective order issued by any court under the provisions of this Code section.

**19-13-6 Violation of a protective order:** A violation of an order issued pursuant to this article may be punished by an action for contempt or criminally punished as provided in Article 7 of Chapter 5 of Title 16.

**16-5-94 Restraining orders; protective orders:** (a) A person who is not a minor who alleges stalking by another person may seek a restraining order by filing a petition alleging conduct constituting stalking as defined in Code Section 16-5-90. A person who is not a minor may also seek relief on behalf of a minor by filing such a petition.

(b) Jurisdiction for such a petition shall be the same as for family violence petitions as set out in Code Section 19-13-2.

(c) Upon the filing of a verified petition in which the petitioner alleges with specific facts that probable cause exists to establish that stalking by the respondent has occurred in the past and may occur in the future, the court may order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from stalking. If the court issues an ex parte order, a copy of the order shall be immediately furnished to the petitioner.

(d) The court may grant a protective order or approve a consent agreement to bring about a cessation of conduct constituting stalking. Orders or agreements may:

- (1) Direct a party to refrain from such conduct;

(2) Order a party to refrain from harassing or interfering with the other;

(3) Award costs and attorney's fees to either party; and

(4) Order either or all parties to receive appropriate psychiatric or psychological services as a further measure to prevent the recurrence of stalking.

(e) The provisions of subsections (c) and (d) of Code Section 19-13-3, subsections (b), (c), and (d) of Code Section 19-13-4, and Code Section 19-13-5, relating to family violence petitions, shall apply to petitions filed pursuant to this Code section, except that the clerk of court may provide forms for petitions and pleadings to persons alleging conduct constituting stalking and to any other person designated by the superior court pursuant to this Code section as authorized to advise persons alleging conduct constituting stalking on filling out and filing such petitions and pleadings.

**19-13-16 Family Violence Intervention Programs (FVIP):** (a) A court, in addition to imposing any penalty provided by law, when sentencing a defendant or revoking a defendant's probation for an offense involving family violence, or when imposing a protective order against family violence, shall order the defendant to participate in a family violence intervention program, whether a certified program pursuant to this article or a program operated pursuant to Code Section 19-13-15, unless the court determines and states on record why participation in such a program is not appropriate.

(b) The State Board of Pardons and Paroles, for a violation of parole for an offense involving family violence, shall require the conditional releasee to participate in a family violence intervention program, whether a certified program pursuant to this article or a program operated pursuant to Code Section 19-13-15, unless the State Board of Pardons and Paroles determines why participation in such a program is not appropriate.

**19-13-14 (FVIP) Standards and requirements for course content; course operators; certification of programs; maintenance of list of certified programs:** (a) The commission and the department shall establish standards and requirements concerning the content of courses, including, but not limited to, duration of courses, qualifications of instructors, program and certification fees, attendance requirements, and examinations. In order to be certified, a program shall meet the standards established by the commission and the department.

(b) Programs may be operated by any individual, partnership, corporation, association, civic group, club, county, municipality, board of education, school, or college or any public, private, or governmental entity.

**19-9-93 Foreign protective orders-full faith and credit:** A court of this state shall accord full faith and credit to an order issued by another state and consistent with this article which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Part 2 of this article.

**19-13-54 Foreign protective orders:** (a) A petitioner who obtains a valid foreign protective order may file that order by filing a certified copy of the foreign protective order with any clerk of court of the superior court in this state.

(b) Filing shall be without fee or cost.



(c) The clerk of court shall provide the petitioner with a receipt bearing proof of submission of the foreign protective order for entry in the registry.

(d) The clerk of court shall transmit to the registry a copy of the foreign protective order in the same manner as provided in Code Section 19-13-53.

(e) Foreign protective orders shall not be required to be contained on a standardized form or forms in order to be entered in the registry.

(f) Filing and registry of the foreign protective order in the registry shall not be prerequisites for enforcement of the foreign protective order in this state. (Code 1981, 19-13-54).

**16-5-95 Offense of violating a Family Violence order:** (a) A person commits the offense of violating a family violence order when the person knowingly and in a nonviolent manner violates the terms of a family violence temporary restraining order, temporary protective order, permanent restraining order, or permanent protective order issued against that person pursuant to Article 1 of Chapter 13 of Title 19, which:

(1) Excludes, evicts, or excludes and evicts the person from a residence or household;

(2) Directs the person to stay away from a residence, workplace, or school;

(3) Restrains the person from approaching within a specified distance of another person; or

(4) Restricts the person from having any contact, direct or indirect, by telephone, pager, facsimile, e-mail, or any other means of communication with another person, except as specified in the order.

(b) Any person convicted of a violation of subsection (a) of this Code section shall be guilty of a misdemeanor.

(c) Nothing contained in this Code section shall prohibit a prosecution for the offense of stalking or aggravated stalking that arose out of the same course of conduct; provided, however, that, for purposes of sentencing, a violation of this Code section shall be merged with a violation of any provision of Code Section 16-5-90 or 16-5-91 that arose out of the same course of conduct.

**24-9-103 Interpreters for the Hearing Impaired:** (a) The arresting law enforcement agency shall provide a qualified interpreter to any hearing impaired person whenever the hearing impaired person is taken into custody for allegedly violating any criminal law or ordinance of the state or any political subdivision thereof.

(b)(1) Except as provided in paragraph (2) of this subsection, the law enforcement agency shall immediately request a qualified interpreter from the department, and the department shall provide a qualified interpreter. No interrogation, warning, informing of rights, taking of statements, or other investigatory procedures shall be undertaken until a qualified interpreter has been provided; and no answer, statement, admission, or other evidence acquired from the hearing impaired person shall be admissible in any criminal or quasi-criminal proceeding unless such was knowingly and voluntarily given through and in the presence of a qualified interpreter. No hearing impaired person who has been taken into custody and who is otherwise eligible for release shall be detained because of the unavailability of a qualified interpreter.

(2) If a qualified interpreter is not available one hour after the hearing impaired person has been taken into custody and a request has been forwarded to the department, the arresting officer may interrogate or take a statement from such person, provided that such interrogation and answers thereto shall be in writing and shall be preserved and turned over to the court in the event such person is tried for the alleged offense.

**15-6-77 TPO filing fees and requirements for providing interpreters:** No fee or cost shall be assessed for any service rendered by the clerk of superior court through entry of judgment in family violence cases under Chapter 13 of Title 19 or in connection with the filing, issuance, registration, or service of a protection order or a petition for a prosecution order to protect a victim of domestic violence, stalking, or sexual assault. A petitioner seeking a temporary protective order or a respondent involved in a temporary protective order hearing under the provisions of Code Section 19-13-3 or 19-13-4 shall be provided with a foreign language or sign language interpreter when necessary for the hearing on the petition. The reasonable cost of the interpreter shall be paid by the local victim assistance funds as provided by Article 8 of Chapter 21 of this title. The provisions of this paragraph shall control over any other conflicting provisions of law and shall specifically control over the provisions of Code Sections 15-6-77.1, 15-6-77.2, and 15-6-77.3.

## **VIOLENT CRIMES**

**16-5-23 Simple battery:** (a) A person commits the offense of simple battery when he or she either:

(1) Intentionally makes physical contact of an insulting or provoking nature with the person of another; or

(2) Intentionally causes physical harm to another.

(b) Except as otherwise provided in subsections (c) through (h) of this Code section, a person convicted of the offense of simple battery shall be punished as for a misdemeanor.

(c) Any person who commits the offense of simple battery against a person who is 65 years of age or older or against a female who is pregnant at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(d) Any person who commits the offense of simple battery in a public transit vehicle or station shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. For purposes of this Code section, "public transit vehicle" has the same meaning as in subsection (c) of Code Section 16-5-20.

(e) Any person who commits the offense of simple battery against a police officer, law enforcement dog, correction officer, or detention officer engaged in carrying out official duties shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(f) If the offense of simple battery is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished for a misdemeanor of a high and aggravated nature. In no event shall this subsection be applicable to corporal punishment administered by a parent or guardian to a child or administered by a person acting in loco parentis.

(g) A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173,

relating to home health care and hospices, who commits the offense of simple battery against a person who is admitted to or receiving services from such facility, person, or entity shall be punished for a misdemeanor of a high and aggravated nature.

(h) Any person who commits the offense of simple battery against a sports official while such sports official is officiating an amateur contest or while such sports official is on or exiting the property where he or she will officiate or has completed officiating an amateur contest shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. For the purposes of this Code section, the term "sports official" means any person who officiates, umpires, or referees an amateur contest at the collegiate, elementary or secondary school, or recreational level.

**16-5-23.1 Battery:** (a) A person commits the offense of battery when he or she intentionally causes substantial physical harm or visible bodily harm to another.

(b) As used in this Code section, the term "visible bodily harm" means bodily harm capable of being perceived by a person other than the victim and may include, but is not limited to, substantially blackened eyes, substantially swollen lips or other facial or body parts, or substantial bruises to body parts.

(c) Except as provided in subsections (d) through (l) of this Code section, a person who commits the offense of battery is guilty of a misdemeanor.

(d) Upon the second conviction for battery against the same victim, the defendant shall be punished by imprisonment for not less than ten days nor more than 12 months, by a fine not to exceed \$1,000.00, or both. The minimum sentence of ten days for a second offense shall not be suspended, probated, deferred, stayed, or withheld; provided, however, that it is within the authority and discretion of the sentencing judge to:

(1) Allow the sentence to be served on weekends by weekend confinement or during the nonworking hours of the defendant. A weekend shall commence and shall end in the discretion of the sentencing judge, and the nonworking hours of the defendant shall be determined in the discretion of the sentencing judge; or

(2) Suspend, probate, defer, stay, or withhold the minimum sentence where there exists clear and convincing evidence that imposition of the minimum sentence would either create an undue hardship upon the defendant or result in a failure of justice.

(e) Upon a third or subsequent conviction for battery against the same victim, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years. The minimum sentence provisions contained in subsection (d) of this Code section shall apply to sentences imposed pursuant to

this subsection.

(f) If the offense of battery is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons living or formerly living in the same household, then such offense shall constitute the offense of family violence battery and shall be punished as follows:

(1) Upon a first conviction of family violence battery, the defendant shall be guilty of and punished for a misdemeanor; and

(2) Upon a second or subsequent conviction of family violence battery against the same or another victim, the defendant shall be guilty of a felony and shall be punished by imprisonment for not less than one nor more than five years. In no event shall this subsection be applicable to reasonable corporal punishment administered by parent to child.

(g) Any person who commits the offense of battery in a public transit vehicle or station shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. For purposes of this Code section, "public transit vehicle" has the same meaning as in subsection (c) of Code Section 16-5-20.

(h) Any person who commits the offense of battery against a female who is pregnant at the time of the offense shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(i) Any person who commits the offense of battery against a teacher or other school personnel, engaged in the performance of official duties or while on school property shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years or a fine of not more than \$10,000.00, or both.

(j) Except as otherwise provided in subsection (e) and paragraph (2) of subsection (f) of this Code section, any person who commits the offense of battery against a person who is 65 years of age or older shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature.

(k) A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, who commits the offense of battery against a person who is admitted to or receiving services from such facility, person, or entity shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years, or a fine of not more than \$2,000.00, or both.

(l) Any person who commits the offense of battery against a sports official while such sports official is officiating an amateur contest or while such sports official is on or exiting the property where he or she will officiate or has completed officiating an amateur contest shall, upon conviction thereof, be punished for a misdemeanor of a high and aggravated nature. For purposes of this Code section, the term "sports official" means any person who officiates, umpires, or referees an amateur contest at the collegiate, elementary or secondary school, or recreational level.

**16-5-24 Aggravated battery:** (a) A person commits the offense of aggravated battery when he or she maliciously causes bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member thereof.

(b) Except as provided in subsections (c), (d), (e), (f), (g), and (h) of this Code section, a person convicted of the offense of aggravated battery shall be punished by imprisonment for not less than one nor more than 20 years.

(c) A person who knowingly commits the offense of aggravated battery upon a peace officer while the officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than ten nor more than 20 years.

(d) Any person who commits the offense of aggravated battery against a person who is 65 years of age or older shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(e)(1) As used in this subsection, the term "correctional officer" shall include superintendents, wardens, deputy wardens, guards, and correctional officers of state, county, and municipal penal institutions who are certified by the Georgia Peace Officer

Standards and Training Council pursuant to Chapter 8 of Title 35 and employees of the Department of Juvenile Justice who are known to be employees of the department or who have given reasonable identification of their employment. The term "correctional officer" shall also include county jail officers who are certified or registered by the Georgia Peace Officer Standards and Training Council pursuant to Chapter 8 of Title 35.

(2) A person who knowingly commits the offense of aggravated battery upon a correctional officer while the correctional officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than ten nor more than 20 years.

(f) Any person who commits the offense of aggravated battery in a public transit vehicle or station shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years. For purposes of this Code section, "public transit vehicle" has the same meaning as in subsection (c) of Code Section 16-5-20.

(g) Any person who commits the offense of aggravated battery upon a student or teacher or other school personnel within a school safety zone as defined in paragraph (1) of subsection (a) of Code Section 16-11-127.1 shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(h) If the offense of aggravated battery is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years.

**16-5-21 Aggravated assault:** (a) A person commits the offense of aggravated assault when he or she assaults:

(1) With intent to murder, to rape, or to rob;

(2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; or

(3) A person or persons without legal justification by discharging a firearm from within a motor vehicle toward a person or persons.

(b) Except as provided in subsections (c), (d), (e), (f), (g), (h), and (i) of this Code section, a person convicted of the offense of aggravated assault shall be punished by imprisonment for not less than one nor more than 20 years.

(c) A person who knowingly commits the offense of aggravated assault upon a peace officer while the peace officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(d) Any person who commits the offense of aggravated assault against a person who is 65 years of age or older shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years.

(e)(1) As used in this subsection, the term "correctional officer" shall include superintendents, wardens, deputy wardens, guards, and correctional officers of state, county, and municipal penal institutions who are certified by the Georgia Peace Officer Standards and Training Council pursuant to Chapter 8 of Title 35 and employees of the Department of Juvenile Justice who are known to be employees of the department or who have given reasonable identification of their employment. The term "correctional officer" shall also include county jail officers who are certified or registered by the Georgia Peace Officer Standards and Training Council pursuant to Chapter 8 of Title 35.

(2) A person who knowingly commits the offense of aggravated assault upon a correctional officer while the correctional officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(f) Any person who commits the offense of aggravated assault in a public transit vehicle or station shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years. For purposes of this Code section, "public transit vehicle" has the same meaning as in subsection (c) of Code Section 16-5-20.

(g) A person convicted of an offense described in paragraph (3) of subsection (a) of this Code section shall be punished by imprisonment for not less than five nor more than 20 years.

(h) Any person who commits the offense of aggravated assault involving the use of a firearm upon a student or teacher or other school personnel within a school safety zone as defined in paragraph

(1) of subsection (a) of Code Section 16-11-127.1 shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(i) If the offense of aggravated assault is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years.

**16-5-41 False imprisonment:** (a) A person commits the offense of false imprisonment when, in violation of the personal liberty of another, he arrests, confines, or detains such person without legal authority.

(b) A person convicted of the offense of false imprisonment shall be punished by imprisonment for not less than one nor more than ten years.

**16-6-1 Rape:** "A person commits the offense of rape when he has carnal knowledge of a female forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ". There is no implicit marital exclusion within the rape statute.

**16-6-2 Aggravated sodomy:** When a person "performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another" with force and against the will of the other persons.

**16-6-22.2 Aggravated sexual battery:** When a person intentionally penetrates with a foreign object the sexual organ or anus of another person without the consent of that person. For the purpose of the Code section, the term, “foreign object” refers to any article or instrument other than the sexual organ of the person. According to case law, the definition of “foreign object” is not limited to inanimate objects, but includes human appendages.

**16-6-4 Child molestation:** When a person “does any immoral or indecent act to or in the presence of or with any child under the age of 14 years of age with the intent to arouse or satisfy the sexual desires of either the child or the person”.

## **CRIMINAL REPORTING, ARREST & SENTENCING**

**17-4-20.1 Family Violence Reporting:** shall be completed whenever an officer investigates an allegation that domestic violence occurred. The required report shall be filled out whether or not an arrest is made and submitted to the Georgia Bureau of Investigation.

If an officer decides not to make an arrest or decides to arrest one or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting one or more parties. If both parties of a domestic violence incident are arrested, each level of the chain of command is required to review the incident to determine compliance with the intent of the law and this policy.

**17-4-20.1 Primary Aggressor:** (a) Whenever a law enforcement officer responds to an incident in which an act of family violence, as defined in Code Section 19-13-1, has been committed, the officer shall not base the decision of whether to arrest and charge a person on the specific consent of the victim or on a request by the victim solely or on consideration of the relationship of the parties. No officer investigating an incident of family violence shall threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention.

(b) Where complaints of family violence are received from two or more opposing parties, the officer shall evaluate each complaint separately to attempt to determine who was the primary aggressor. If the officer determines that one of the parties was the primary physical aggressor, the officer shall not be required to arrest any other person believed to have committed an act of family violence during the incident. In determining whether a person is a primary physical aggressor, an officer shall consider:

- (1) Prior family violence involving either party;
- (2) The relative severity of the injuries inflicted on each person;
- (3) The potential for future injury; and
- (4) Whether one of the parties acted in self-defense.

(c) Whenever a law enforcement officer investigates an incident of family violence, whether or not an arrest is made, the officer shall prepare and submit to the supervisor or other designated person a written report of the incident entitled 'Family Violence Report.' Forms for such reports shall be designed and provided by the Georgia Bureau of Investigation. The report shall include the following:

- (1) Name of the parties;
- (2) Relationship of the parties;

- (3) Sex of the parties;
- (4) Date of birth of the parties;
- (5) Time, place, and date of the incident;
- (6) Whether children were involved or whether the act of family violence was committed in the presence of children;
- (7) Type and extent of the alleged abuse;
- (8) Existence of substance abuse;
- (9) Number and types of weapons involved;
- (10) Existence of any prior court orders;
- (11) Type of police action taken in disposition of case, the reasons for the officer's determination that one party was the primary physical aggressor, and mitigating circumstances for why an arrest was not made;
- (12) Whether the victim was apprised of available remedies and services; and
- (13) Any other information that may be pertinent.

(d) The report provided for in subsection (c) of this Code section shall be considered as being made for statistical purposes only and where no arrests are made shall not be subject to the provisions of Article 4 of Chapter 18 of Title 50. However, upon request, a defendant who has been arrested for an act of family violence or the victim shall be entitled to review and copy any report prepared in accordance with this Code section relating to the defendant.

(e) Each police department, including local precincts and county sheriff departments, shall report, according to rules and regulations of the Georgia Crime Information Center, all family violence incidents, both arrests and nonarrests, to the Georgia Bureau of Investigation, which shall compile and analyze statistics of family violence crimes and cause them to be published annually in the Georgia Uniform Crime Reports. An offense shall be counted for each incident reported to the police. A zero shall be reported if no incidents have occurred during the reporting period.

[17-4-40 \(Warrant Application Process\) Persons who may issue warrants for arrest of offenders against penal laws:](#) (b) (1) If application is made for a warrant by a person other than a peace officer or law enforcement officer and the application alleges the commission of an offense against the penal laws, the judge or other officer shall schedule a warrant application hearing as provided in this subsection. O.C.G.A. 17-4-40. (b) (4) At the warrant application hearing, the rules regarding admission of evidence at a commitment hearing shall apply. The person seeking the warrant shall have the customary rights of presentation of evidence and cross-examination of witnesses. The person whose arrest is sought may cross-examine the person or persons applying for the warrant and any other witnesses testifying in support of the application at the hearing. The person whose arrest is sought may present evidence that probable cause does not exist for his or her arrest. The judge ... shall have the right to limit the presentation of evidence and the cross-examination of witnesses to the issue of probable cause. (b) (5) At the warrant application hearing, a determination shall be made whether or not probable cause exists for the issuance of a warrant for the arrest of the person whose arrest is sought. If the judge finds that probable cause exists, the warrant may issue instanter.

[17-10-7 Punishment of repeat offenders; punishment and eligibility for parole of persons convicted of fourth felony offense:](#) Under Georgia's "Two Strikes You're Out" law,



effective January 1, 1995, defendants convicted for the second time of a “serious violent felony” must be given a mandatory sentence of life in prison without parole. The law applies to seven violent crimes: murder or felony murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy and aggravated sexual battery. (pg. 80, “Women and the Law, A Guide to Women’s Legal Rights in Georgia” the Georgia Commission on Women).

## ADVOCATE CONFIDENTIALITY, PRIVILEGE & MANDATORY REPORTING

**50-18-72 Confidentiality of advocate records:** When public disclosure not required; disclosure of exempting legal authority

(a) Public disclosure shall not be required for records that are:

(1) Specifically required by the federal government to be kept confidential;

**19-7-5 (Mandated Reporting Law) Reporting of child abuse:** Reporting of child abuse; when mandated or authorized; content of report; to whom made; immunity from liability; report based upon privileged communication; penalty for failure to report.

The purpose of this Code section is to provide for the protection of children. It is intended that mandatory reporting will cause the protective services of the state to be brought to bear on the situation in an effort to prevent abuses, to protect and enhance the welfare of children, and to preserve family life wherever possible. This Code section shall be liberally construed so as to carry out the purposes thereof.

**24-5-509 Communications between victim of family violence or sexual assault and agents providing services to such victim; termination of privilege:** (a) As used in this Code section, the term:

(1) "Agent" means a current or former employee or volunteer of a program who has successfully completed a minimum of 20 hours of training in family violence and sexual assault intervention and prevention at a Criminal Justice Coordinating Council certified victim assistance program.

(2) "Family violence" shall have the same meaning as provided in Code Section 19-13-1.

(3) "Family violence shelter" means a program whose primary purpose is to provide services to family violence victims and their families that is not under the direct supervision of a law enforcement agency, prosecuting attorney's office, or a government agency.

(4) "Family violence victim" means a person who consults a family violence shelter for the purpose of securing advice or other services concerning an act of family violence, an alleged act of family violence, or an attempted act of family violence.

(5) "Government agency" means any agency of the executive, legislative, or judicial branch of government or political subdivision or authority thereof of this state, any other state, the District of Columbia, the United States and its territories and possessions, or any foreign government or international governmental or quasi-governmental agency recognized by the United States or by any of the several states.

(6) "Negative effect of the disclosure of the evidence on the victim" shall include the impact of the disclosure on the relationship between the victim and the agent and the delivery and accessibility of services.

(7) "Program" means a family violence shelter or rape crisis center.

(8) "Rape crisis center" means a program whose primary purpose is to provide services to sexual assault victims and their families that is not under the direct supervision of a law enforcement agency, prosecuting attorney's office, or a government agency.

(9) "Services" means any services provided to a victim by a program including but not limited to crisis hot lines, safe homes and shelters, assessment and intake, counseling, services for children who are victims of family violence or sexual assault, support in medical, administrative, and judicial systems, transportation, relocation, and crisis intervention. Such term shall not include mandatory reporting as required by Code Section 19-7-5 or 30-5-4.

(10) "Sexual assault" shall have the same meaning as provided in Code Section 17-5-70.

(11) "Sexual assault victim" means a person who consults a rape crisis center for the purpose of securing advice or other services concerning a sexual assault, an alleged sexual assault, or an attempted sexual assault.

(12) "Victim" means a family violence victim or sexual assault victim.

(b) No agent of a program shall be compelled to disclose any evidence in a judicial proceeding that the agent acquired while providing services to a victim, provided that such evidence was necessary to enable the agent to render services, unless the privilege has been waived by the victim or, upon motion by a party, the court finds by a preponderance of the evidence at a pretrial hearing or hearing outside the presence of the jury that:

(1) In a civil proceeding:

(A) The evidence sought is material and relevant to factual issues to be determined;

(B) The evidence is not sought solely for the purpose of referring to the victim's character for truthfulness or untruthfulness; provided, however, that this subparagraph shall not apply to evidence of the victim's prior inconsistent statements;

(C) The evidence sought is not available or already obtained by the party seeking disclosure; and

(D) The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim; or

(2) In a criminal proceeding:

- (A) The evidence sought is material and relevant to the issue of guilt, degree of guilt, or sentencing for the offense charged or a lesser included offense;
- (B) The evidence is not sought solely for the purpose of referring to the victim's character for truthfulness or untruthfulness; provided, however, that this subparagraph shall not apply to evidence of the victim's prior inconsistent statements;
- (C) The evidence sought is not available or already obtained by the party seeking disclosure; and
- (D) The probative value of the evidence sought substantially outweighs the negative effect of the disclosure of the evidence on the victim.
- (c) If the court finds that the evidence sought may be subject to disclosure pursuant to subsection (b) of this Code section, the court shall order that such evidence be produced for the court under seal, shall examine the evidence in camera, and may allow disclosure of those portions of the evidence that the court finds are subject to disclosure under this Code section.
- (d) The privilege afforded under this Code section shall terminate upon the death of the victim.
- (e) The privilege granted by this Code section shall not apply if the agent was a witness or party to the family violence or sexual assault or other crime that occurred in the agent's presence.
- (f) The mere presence of a third person during communications between an agent and a victim shall not void the privilege granted by this Code section, provided that the communication occurred in a setting when or where the victim had a reasonable expectation of privacy.
- (g) If the victim is or has been judicially determined to be incompetent, the victim's guardian may waive the victim's privilege.
- (h) In criminal proceedings, if either party intends to compel evidence based on this Code section, the party shall file and serve notice of his or her intention on the opposing party at least ten days prior to trial, or as otherwise directed by the court. The court shall hold a pretrial hearing in accordance with subsection (b) of this Code section and determine the issue prior to trial.

## UNAUTHORIZED PRACTICE OF LAW (UPL)

**15-19-51 Unauthorized practice of law forbidden:** (a) It shall be unlawful for any person other than a duly licensed attorney at law: (1) To practice or appear as an attorney at law for any person other than himself in any court of this state or before any judicial body; (2) To make it a business to practice as an attorney at law for any person other than himself in any of such courts; (3) To hold himself out to the public or otherwise to any person as being entitled to practice law; (4) To render or furnish legal services or advice; (5) To furnish attorneys or counsel; (6) To render legal services of any kind in actions or proceedings of any nature; (7) To assume or use or advertise the title of "lawyer," "attorney," "attorney at law," or equivalent terms in any language in such manner as to convey the impression that he is entitled to practice law or is entitled to furnish legal advice, services, or counsel; or (8) To advertise that

either alone or together with, by, or through any person, whether a duly and regularly admitted attorney at law or not, he has, owns, conducts, or maintains an office for the practice of law or for furnishing legal advice, services, or counsel. (b) Unless otherwise provided by law or by rules promulgated by the Supreme Court, it shall be unlawful for any corporation, voluntary association, or company to do or perform any of the acts recited in subsection (a) of this Code section.