

Understanding the Various Laws Relating to Domestic Abuse, Harassment and Stalking is Important Whether You Are a Victim or an Accused

STALKING, HARASSMENT AND ABUSE- WHAT YOUR LEGAL OPTIONS ARE IN FLORIDA



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In the not too distant past allegations of domestic violence, harassment, or stalking were not taken seriously by law enforcement or the court system. A victim who attempted to report a potentially dangerous situation was often ignored either because law enforcement considered domestic problems to be “personal” in nature and, therefore not the concern of the police, or because the police simply did not believe the victim when the complaint involved harassment or stalking. In the past couple of decades, however, laws across the country have changed dramatically. Domestic violence, harassment, and stalking are all taken very seriously now in most states, including Florida. A victim now has both civil and criminal options to pursue. Understanding the various laws relating to domestic abuse, harassment, and stalking is important whether you are a victim or an accused.

LEGAL DEFINITIONS OF DOMESTIC VIOLENCE, HARASSMENT, AND STALKING

People tend to use terms like “domestic violence”, “harassment”, and “stalking” to refer to a broad range of conduct; however, it is important to know the correct legal definitions. Florida Statute 741.28 defines domestic violence as:

“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.”

The legal definitions for harassment and stalking are found in Florida Statute 784.048 which reads, in pertinent parts, as follows:

“Harass means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.”

The same statute, in turn, defines the criminal offense of “Stalking” as follows:

“A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking.”

CIVIL VS. CRIMINAL

Domestic violence, harassment, and stalking are unusual in that they have both civil law and criminal law aspects to them. Domestic violence, for example, is a crime; however, it also becomes a civil law issue when it becomes an allegation in a divorce or custody lawsuit.

Stalking is also a crime; however, a victim of stalking may seek a civil restraining order, or injunction, against the alleged stalker. By the same token, the victim of domestic violence may seek a civil injunction prohibiting contact between the parties or a criminal court judge may issue a no contact order as part of the conditions for release if the alleged perpetrator was arrested and charged with domestic violence.



CRIMES AND PUNISHMENT FOR DOMESTIC VIOLENCE AND STALKING

In a domestic violence scenario the defendant often faces a variety of charges depending on the facts and circumstances of the case. If the facts do not appear to warrant more severe charges the defendant may only be charged with misdemeanor assault and battery. What many people fail to

realize is that a battery only requires the defendant to “actually and intentionally touch or strike another person against the will of the other.” Therefore, an intentional shove is a battery. If the alleged victim qualifies as a “household member” (as defined by Florida Statute 741.28(c)) then it becomes a domestic battery. Assault, for purposes of a criminal offense, is defined as “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.” Both assault and battery are misdemeanor offenses that carry a maximum term of incarceration of one year and a fine of up to \$1,000.

Misdemeanor assault and battery, however, are only the tip of the iceberg when it comes to potential criminal charges for a domestic violence situation. Often, the defendant is charged with much more serious felony



charges, such as aggravated assault or battery and/or domestic violence with bodily harm. If convicted of more serious charges the defendant faces mandatory jail time and a potentially lengthy prison sentence. Along with facing a term of incarceration, a conviction for domestic violence can have far

reaching consequences apart from the actual sentence handed down by the court. A domestic violence conviction, for instance, may disqualify the defendant for employment, prevent him or her from carrying a firearm, and can negatively impact visitation rights with minor children.

Stalking can also be charged as either a misdemeanor or a felony. If the stalking is accompanied by a credible threat or continues after a restraining order or court order is in place prohibiting contact, for example, the charge becomes a third degree felony and is punishable by up to five years in prison.

RESTRAINING ORDERS (INJUNCTIONS) AND NO CONTACT ORDERS

Understandably there is a significant amount of confusion when it comes to the types of orders that are available which prohibit contact from an alleged perpetrator and the alleged victim. One reason for the confusion is the variety of terms used to describe these order such as "Restraining Order", "Injunction", "Protective Order", and "No Contact Order". In the State of Florida, the proper legal term used for a civil order is an "Injunction for Protection". In a criminal case the term is "No Contact Order".

A No Contact Order is often issued as a condition of a defendant's pre-trial release when domestic violence or stalking charges have been filed against the defendant. As the term implies, a No Contact Order typically orders the defendant not to have contact, in any form, with the alleged victim in the case. It is important for a defendant to understand that any contact with the alleged victim is considered a violation of the order even if the alleged victim initiates the contact. Violating a No Contact Order comes with serious consequences. Not only can additional charges be filed against the defendant but the court will likely revoke his or her bail, meaning that the defendant must remain in custody until the original case is resolved. If the alleged victim wishes to resume contact it is imperative that he or she consult with an experience Florida criminal law attorney prior to violating the order. In some cases, the order can be lifted by filing the appropriate motions with the court.

Although similar to its criminal court counterpart, an Injunction for Protection is a civil matter. The process for obtaining an injunction is



unique in that it is one of the rare times when a judge may issue an “ex parte” order. An “ex parte” order means that the Respondent was not allowed the opportunity to respond before the order was issued. When a Petition for an Injunction for Protection is filed, a judge will typically review it within 24 hours. If the judge is convinced that the Petitioner is at risk from the Respondent the judge will issue a temporary order based only the allegations presented by the Petitioner. The Respondent will then be given the opportunity to respond to those allegations at a hearing held in the near future.

To obtain an Injunction for Protection the alleged victim must petition the appropriate civil court for the correct type of injunction. To ensure that you choose the correct type of injunction and that you prepare the documents correctly it is best to consult with an experienced Florida criminal law attorney. Florida offers four different types of injunctions:

- **Domestic Violence** – requires the parties to be spouses, former spouses, or persons related by blood or marriage who are residing or have resided together as a family, or individuals who are residing together or have resided together as if family, or individuals who have a child in common. Used when the violence or stalking has occurred or when the Petitioner believes it will occur.
- **Repeat Violence** – can be used for neighbors, co-workers or other situations where the parties do not qualify for other types of injunctions. Requires two acts of violence or stalking on separate occasions with at least one occurring in the last six months.
- **Sexual Violence** – used when an act was reported to law enforcement and the Petitioner is cooperating with the prosecution OR when the Respondent was sentenced to prison for certain sexual crimes and is scheduled to be released within the next 90 days.

- **Dating Violence** – requires the parties to (1) have been in a dating relationship within the past 6 months (2) have had an expectation of affection or sexual involvement and (3) have been involved over time and on a continuous basis, excluding individuals who have engaged in ordinary fraternization in a business or social context. Used when violence or stalking has occurred or the Petitioner reasonably believes it will occur.

In the 21st century domestic violence, harassment, and stalking are taken very seriously by law enforcement and the court system. In fact, the laws and procedures have become complex enough that it is best to consult with a Florida criminal law attorney if you find yourself accused of a domestic violence or stalking crime or if you are a victim in need of protection.

Pinellas County, [Injunctions for Protection/Restraining Orders](#)

Online Sunshine, [Florida Statutes 741.30](#)

Online Sunshine, [Florida Statutes 741.28](#)

Online Sunshine, [Florida Statutes 748.048](#)

WomensLaw.org, [Restraining Orders](#)

ABOUT THE AUTHORS



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Florida criminal defense lawyer, Amanda Powers Sellers, has aggressively defended thousands of Florida criminal cases. With over nine years of criminal jury trial experience, she has the necessary background to represent cases ranging from Driving under the Influence (DUI) to

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Amanda is a seasoned litigator and an aggressive negotiator. With a wealth of experience she has proven that her gentle, but aggressive style of criminal defense litigation consistently achieves results for her clients.

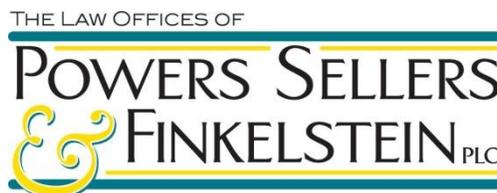


Jenna C. Finkelstein

Florida criminal defense attorney, Jenna Finkelstein, has over sixty (60) criminal jury trials to her credit. Her experience defending individuals charged with crimes in the state of Florida ranges from domestic battery to DUI Manslaughter, Sexual Battery, First Degree Murder and all

crimes in between.

She is passionate about the law and promises personal attention to all of her clients and their individual needs. Jenna is a seasoned trial attorney who knows the legal system and its players. Jenna and her team at the Law Offices of Powers Sellers & Finkelstein, PLC, are committed to fighting for you.



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