

SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

DOMESTIC VIOLENCE CRIMES

CHANGES TO DV LAWS MADE BY THE DOMESTIC VIOLENCE REFORM ACT BECAME EFFECTIVE ON JUNE 4, 2015. BECAUSE OF THE WORDING OF THE repealed or amended statutes (such as the old CDV and CDVHAN crimes) are to be charged under the old statutes and the punishments provided therein and after the effective date of the Act are to be charged/prosecuted under, sentenced under, and/or controlled by the new and amended statutes (crimes) and

DEFINITIONS (§16-25-10) (see other side for more definitions):

Deadly weapon: any pistol, dirk, slingshot, metal knuckles, razor, or other instrument which can be used to inflict deadly force.

Great bodily injury (GBI): Bodily injury that causes substantial risk of death or serious, permanent disfigurement or protracted loss or impairment.

Household member: Spouse, former spouse, persons who have a child in common, or male and female who are living together or have cohabitated.

Moderate bodily injury (MBI): Physical injury that either involves prolonged loss of consciousness, causes temporary/moderate disfigurement, causes member or organ, results in need for medical treatment requiring use of regional or general anesthesia, results in fracture or dislocation. Does NOT include observation of scratches, cuts, bruises, burns, or other minor injuries not requiring extensive medical care.

Protection Order (PO): From South Carolina or another state – order of protection, restraining order (see other side for more information), or conditional

THREE DEGREES OF DOMESTIC VIOLENCE (NEW)

Base Element (BE) for ALL degree of Domestic Violence (1st, 2nd, and 3rd Degree): Defendant inflicted physical harm/injury to a household member **OR** offered/attempted to cause such with the apparent present ability under circumstances reasonably creating fear of imminent peril.

Third Degree 16-25-20(D)	Second Degree 16-25-20(C)	First Degree 16-25-20(B)
<p>The evidence shows the defendant committed the BE. In other words, the defendant either:</p> <ul style="list-style-type: none"> • actually inflicted physical harm or injury to a household member or • offered or attempted to cause such harm or injury with the apparent present ability under circumstances reasonably creating fear of imminent peril. 	<p>The evidence shows defendant committed BE and either:</p> <ul style="list-style-type: none"> • Inflicted MBI or actions were accomplished by means likely to result in MBI; OR • Committed BE and has 1 prior DV conviction within past 10 years; OR • Committed 3rd degree DV and either: <ul style="list-style-type: none"> ○ was in the process of violating a PO; or ○ defendant knew or should have known the victim is pregnant; or ○ minor was present or perceived the event; or ○ offense committed during a robbery, burglary, kidnapping, or theft; or ○ offense committed by impeding victim’s breathing or air flow; or ○ offense committed using physical force or threat of such force to block a person’s access to phone/any electronic communication device with purpose of preventing or interfering with report to law enforcement or request for assistance from emergency medical assistance. 	<p>The evidence shows defendant committed BE and either:</p> <ul style="list-style-type: none"> • Committed BE and has 2 or more prior DV conviction within past 10 years; OR • Inflicted GBI or actions accomplished by means likely to result in GBI; OR • Used firearm while committing BE; OR • Committed 2nd degree DV and either: <ul style="list-style-type: none"> ○ was in the process of violating a PO; or ○ defendant knew/should have known victim pregnant; or ○ minor was present or perceived the event; or ○ offense committed during a robbery, burglary, kidnapping, or theft; or ○ offense committed by impeding victim’s breathing or air flow; or ○ offense committed using physical force or threat of such force to block a person’s access to phone/any electronic communication device with purpose of preventing or interfering with report to law enforcement or request for assistance from emergency medical assistance.
<p>How to Charge UTT or arrest warrant</p>	<p>How to Charge UTT or arrest warrant</p>	<p>How to Charge Arrest warrant</p>
<p>Court Magistrate/Municipal or General Sessions</p>	<p>Court General Sessions <i>(not eligible for transfer court)</i></p>	<p>Court General Sessions <i>(not eligible for transfer court)</i></p>
<p>Classification: Misdemeanor</p>		<p>Classification: Felony (also: Violent Crime)</p>
<p>Penalties 0–90 days and/or \$1000–2500</p>	<p>Penalties 0–3 yrs and/or \$2500-\$5000</p>	<p>Penalties 0–10 years</p>

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OTHER DOMESTIC VIOLENCE-RELATED CRIMES

ADDITIONAL DEFINITIONS (§16-25-10) (see other side for more definitions):

Firearm: pistol, revolver, rifle, shotgun, machine gun, submachine gun, or assault rifle designed to fire or is capable of firing fixed cartridge ammunition discharged by an explosive, but does not include an antique firearm as defined in 18 U.S.C. 921(a)(16).

Prior conviction of domestic violence: includes conviction of any crime, in any state, containing among its elements those enumerated in, or substantially similar to, Section 16-25-20(A) that is committed against a household member within the 10 years prior to the incident date of the current offense.

Unlawful Shipping, Transport, Receipt or Possession of a Firearm or Ammunition (STRPFA) – §16-25-30

Unlawful for person to ship, transport, receive or possess firearm or ammunition **IF** (with controlling statutory subsection):

16-25-30(A)(1)	§16-25-30(A)(2)	§16-25-30(A)(3)	§16-25-30(A)(4)
Defendant has either: <ul style="list-style-type: none"> • EVER been convicted of DVHAN, OR • been convicted of 1st Degree DV, or an equivalent offense in another state, and the STRPFA occurred within 10 years from the later of the date of the conviction or release from imprisonment on the 1st Degree DV (or its out-of-state equivalent). 	Defendant: <ul style="list-style-type: none"> • convicted of 2nd Degree DV or an equivalent offense in another state, AND • the STRPFA occurred within 3 years from the later of the date of the conviction or release from imprisonment on the 2nd Degree DV (or its out-of-state equivalent), AND • trial court made specific findings and concluded the defendant caused MBI. 	Trial court, when sentencing defendant for one of the following offenses, specifically ordered that defendant could not ship, transport, receive or possess firearm or ammunition: <ul style="list-style-type: none"> • 2nd or 3rd Degree DV; or • DV in another state containing the elements of 2nd or 3rd Degree DV; AND Defendant STRPFA'd within 3 years from the later of the date of conviction or release from imprisonment on 1 st Degree DV (or its out-of-state equivalent).	Defendant, who is subject to a PO issued by family court or court of common pleas (protection order for purposes of this section). NOT include permanent or emergency orders issued under §16-3-1910. <ul style="list-style-type: none"> • Order contains specific findings of harm, BI, assault or attempted/assault offered/attempted to cause physical harm to household member with present circumstances reasonable to believe imminent peril, AND • court specifically ordered that defendant not STRPFA.

NOTE: As set forth above, in order for the crime of STRPFA to apply, a defendant must either be currently under a PO or have been convicted of 2nd, or 3rd degree DV. **The wording of the statute does NOT allow for a charge to be based on a prior conviction of CDV or CDVHAN.**

Classification: Felony	Classification: Misdemeanor	Classification: Misdemeanor
Penalties: 0–5 years and/or \$0–2000	Penalties: 0–3 years and/or \$0–1000	Penalties: 0–3 years and/or \$0–1000

Unlawful Possession of Firearm: §16-23-500
 Act removed CDVHAN from violent crimes list in §16-1-60, but added DVHAN. The Act's savings clause preserved CDVHAN occurring prior to June 4, 2015. *In regard to §16-23-500, the removal of CDVHAN from the violent crime list in §16-1-60, conviction of CDVHAN, caught with gun or ammunition on June 3 could be charged under §16-23-500, but, if caught on June 4, 2015, it would be charged under §16-23-500.*

Violation of New Types of Restraining Orders

Under §§16-3-1910 and 16-3-1920, permanent and emergency restraining orders may be issued by the courts for the purpose of protecting a victim of or a person at risk of domestic violence.

Violation of Permanent Restraining Order (PRO): §16-3-1910

What: new type of restraining order that may be issued either by general sessions or family court at time defendant is convicted of offense or by common pleas court in county where defendant committed crime.

Duration: a PRO remains in effect for time period judge specifies.

Arrest: LE shall arrest a defendant who violates PRO after service and notice of the PRO is provided to defendant.

Penalty: depends upon the underlying criminal offense. If it was a felony, then the violation is a felony punishable by 0–5 years. If it was a misdemeanor, then the violation is a misdemeanor punishable by 0–3 years and/or \$0–2000.

Violation of Emergency Restraining Order (ERO): §16-3-1920

What: new type of restraining order that may be issued by a magistrate court at time defendant committed the crime, defendant lives when the application is filed, or if defendant cannot be found, where complainant lives. The magistrate is to provide a court of common pleas jurisdiction over the area where the complainant and defendant live.

Duration: an ERO remains in effect until a hearing on a PRO. If complainant does not request issuance of PRO, the ERO no longer remains in effect.

Arrest: LE shall arrest a defendant who violates a ERO after service and notice. *An arrest warrant is NOT required.*

Penalty: depends upon the underlying criminal offense. If it was a felony, then the violation is a felony punishable by 0–5 years. If it was a misdemeanor, then the violation is a misdemeanor punishable by 0–3 years and/or \$0–2000.

Violation of Order of Protection (§16-25-20(H))

A defendant who violates a valid South Carolina order of protection or a valid PO issued in another state, tribe or territory is guilty of a misdemeanor, punishable by 0–3 years and/or \$0–1000.