

SOUTH CAROLINA COMMISSION ON PROSECUTION COORDINATION

DOMESTIC VIOLENCE CRIMES

CHANGES TO DV LAWS MADE BY DOMESTIC VIOLENCE REFORM ACT BECAME EFFECTIVE ON JUNE 4, 2015. BECAUSE OF THE ACT’S SAVINGS CLAUSE, VIOLATIONS OF REPEALED OR AMENDED STATUTES (SUCH AS THE OLD CDV AND CDVHAN CRIMES) ARE TO BE CHARGED UNDER THE OLD STATUTES AND THE PUNISHMENTS PROVIDED THEREIN ARE TO CONTROL.

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

- 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. *NOTES: (1) Definition of household member includes persons of the same sex who are married, who are divorced, or who have a child in common. (2) “Child” (for purposes of the “persons who have a child in common” definition) may include viable fetuses (see State v. McKnight, 352 S.C. 635, 576 S.E.2d 168 (2003); Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997)). (3) Looking to Boozer v. Boozer, 242 S.C. 292, 296, 130 S.E.2d 903, 905 (1963), “cohabitate” most likely means living together in an intimate relationship involving sexual relations or other “marital duties.” (4) In Doe v. State, Op. 27728 (S.C.S. Ct. November 17, 2017), Court held “male and female who are cohabiting or formerly have cohabited” definition must be read to include same-sex relationships.*
- Moderate bodily injury (MBI):** Physical injury that either involves prolonged loss of consciousness, causes temporary/moderate disfigurement, causes temporary loss of function of bodily member or organ, results in need for medical treatment requiring use of regional or general anesthesia, results in fracture or dislocation. Does NOT include 1-time treatment and subsequent observation of scratches, cuts, bruises, burns, or other minor injuries not requiring extensive medical care.
- Prior conviction of domestic violence:** Includes conviction of any crime, in any state, containing among its elements those in, or substantially similar to those in, Section 16-25-20(A) committed against a household member within 10 years prior to the incident date of the current offense. *NOTE: Elements of the base offense found in 16-25-20(A) are the same as those for the “old” crimes of CDV and CDVHAN; thus, convictions for those offenses are prior convictions of DV (unless statute requires prior conviction of specific DV crime by name or statute).*
- Protection Order (PO):** Includes order of protection, restraining order, condition of bond, or any other similar order issued in South Carolina or another state to protect a household member.

THREE DEGREES OF DOMESTIC VIOLENCE

Base Offense (BO) for ALL degree of Domestic Violence (1st, 2nd, and 3rd Degree) (16-25-20(A)): Defendant inflicted physical harm/injury to a household member **OR** offered/attempted to cause such with 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)	DV of a High and Aggravated Nature (DVHAN) §16-25-65
<p>Defendant committed the BO. 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>Defendant committed BO and either:</p> <ul style="list-style-type: none"> • Inflicted MBI or actions were accomplished by means likely to result in MBI; OR • Committed BO 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 ○ 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/threat of such force to block person’s access to phone or electronic communication device for purpose of preventing, obstructing, or interfering with report to law enforcement or request for assistance from emergency medical assistance (hereafter “TUPPARA”). 	<p>Defendant committed BO and either:</p> <ul style="list-style-type: none"> • Committed BO and has 2 or more prior DV convictions 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 ○ TUPPARA. 	<p>Defendant either:</p> <ul style="list-style-type: none"> • Committed BO under circumstances manifesting extreme indifference to the value of human life and GBI results; OR • Committed BO, with or without an accompanying battery, under circumstances manifesting extreme indifference to value of the human life and would reasonably cause a person to fear either GBI or death; OR • Violated a PO and, in the process, committed 1st degree DV. <p>Circumstances manifesting extreme indifference to value of human life include, but are not limited to, use of deadly weapon; DV against pregnant victim; in presence of minor; during commission of robbery, burglary, kidnapping, or theft; offense committed by impeding victim’s normal breathing or blood circulation by applying pressure to throat/neck or obstructing nose/mouth causing stupor/loss of consciousness for any period of time; and TUPPARA.</p>
How to Charge: UTT or arrest warrant		How to Charge: Arrest warrant	
Court Summary or General Sessions	Court: General Sessions <i>(not eligible for transfer court)</i>	Court: General Sessions <i>(not eligible for transfer court)</i>	Court: General Sessions <i>(not eligible for transfer court)</i>
Classification: Misdemeanor		Classification: Felony (also: Violent Crime, and Serious Offense)	
Penalties: 0–90 days and/or \$1000-2500	Penalties: 0–3 yrs and/or \$2500-\$5000	Penalties: 0–10 years	Penalties: 0–20 years

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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 or from which a shot or projectile is discharged by an explosive, but does not include an antique firearm as defined in 18 U.S.C. 921(a)(16).

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

Unlawful Shipping, Transport, Receipt or Possession of a Firearm of Ammunition (STROPFA) – §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)	§16-25-30(A)(5)
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 STROPFA 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 STROPFA 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 STROPFA'd within 3 years from the later of the date of conviction or release from imprisonment on 2 nd or 3 rd Degree DV (or its out-of-state equivalent).	Defendant, who is subject to valid protection order issued by family court or court of another state (<i>protection order for purposes of §16-25-30 does NOT include permanent or emergency restraining orders issued under §16-3-1910</i>), STROPFA'd AND <ul style="list-style-type: none"> • Order contains specific findings of physical harm, BI, assault or that defendant offered/attempted to cause physical harm/injury to household member with present ability under circumstances reasonable creating fear of imminent peril, AND • court specifically ordered that defendant could not STROPFA. 	Same as (A)(4) except valid protection order issued by court of another state, tribe or territory (rather than a S.C. court).

NOTE: Because of the wording of the statute, it does **NOT** appear that a charge under §16-25-30 can be based on a prior conviction of CDV or CDVHAN (convictions under the prior versions of §§16-25-20 and 16-25-65); however, the appellate courts have not yet addressed this issue.

Classification: Felony	Classification: Misdemeanor	Classification: Misdemeanor
Penalties: 0–5 years and/or \$0–2000	Penalties: 0–3 years and/or \$0–1000	Penalties: 0–30 days and/or \$0–500

Violation of New Types of Restraining Orders – Permanent Restraining Orders (PROs) and Emergency Restraining Orders (EROs)

Under §§16-3-1910 and 16-3-1920, PROs and EROs may be issued by the courts for the purpose of protecting a victim of or witness to a crime from a defendant. They can **only** be issued if there is a defendant is **convicted** of a qualifying offense, which is defined in §16-3-1900(3) as “an offense against the person of an individual when physical or psychological harm occurs, including both common law and statutory offenses contained in [§§]16-3-1700, 16-3-1710, 16-3-1720, 16-3-1730, 16-25-20, 16-25-30, 16-25-65 and 23-3-430; [CSC]offenses pled down to [ABHAN]; [DV] offenses pled down to [ABHAN]; and the common law offense of attempt, punishable pursuant to §16-1-80.” *Because of the wording of §16-3-1900(3), it appears that a PRO or ERO CAN BE issued based upon a conviction of CDV or CDVHAN (convictions under prior versions of §§16-25-20 and 16-25-65); the appellate courts, however, have not yet addressed this issue.*

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 (0–5 years); if a misdemeanor, then the violation is a misdemeanor (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 in the county where either defendant committed the crime, defendant lives when the application is filed, **or**, if defendant is not a resident of South Carolina or cannot be found, where complainant lives. The magistrate is to provide a copy of any ERO issued to LEAs having 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 seek a PRO within 45 days of issuance of ERO, the ERO no longer remains in effect.

Arrest: LE shall arrest a defendant who violates an ERO after service and notice of the ERO is provided to defendant. *An arrest warrant is NOT required at time of arrest (but will eventually be needed).*

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

Violation of Order of Protection (§16-25-20(H)) (not a new crime)

Defendant who violates valid S.C. order of protection issued pursuant to Chapter 4, Title 20, or valid PO issued in another state/tribe/territory is guilty of a misdemeanor (0–30 days and \$0–500).

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