

WHAT PROTECTION CAN YOU GET UNDER THE LAW IF YOUR BOYFRIEND BEHAVES IN A VIOLENT OR THREATENING WAY AGAINST YOU?

By: Elizabeth P. Coughter
MichieHamlett, Attorneys at Law
500 Court Square, Suite 300
P.O. Box 298
Charlottesville, VA 22902-0298
(434) 951-7229
ecoughter@michiehamlett.com

In light of the recent tragedy in our community involving the murder of a University of Virginia Women's Lacrosse team member by her alleged boyfriend from the men's lacrosse team, some may wonder what measures the victim could have taken to protect herself under the law. In Virginia, there are statutes regarding assault and battery, stalking, and family abuse.

In addressing the provisions regarding family abuse, the term for family abuse is defined in Va. Code §16.1-228 as:

any act involving violence, force, or threat including, but not limited to, any forceful detention, which results in bodily injury or places one in reasonable apprehension of bodily injury and which is committed by a person against such person's family or household member.

Of critical importance in addressing the question raised in this article is the definition of "family or household member." That definition is as follows:

(i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any

children of either of them then residing in the same home with the person. Va. Code §16.1-228.

Apparently, the State of Virginia is in the minority of the states, by failing to provide for the protection of individuals who are in a dating relationship as opposed to having been in a marital or cohabiting relationship, or having been related by blood kinship.

The protective order statutes are civil in nature, not criminal. A protective order for family abuse may provide multiple remedies. Those include the following:

1. Prohibiting future acts of family abuse;
2. Prohibiting contact between the parties as a court may deem appropriate;
3. Prohibiting contact with the abused family or household members;
4. Granting the petitioner exclusive possession of the residence;
5. Enjoining the offender from terminating any utility service to the residence;
6. Granting the victim temporary possession of a motor vehicle;
7. Requiring the abuser to provide suitable alternative housing for the victim or other family members; and,
8. Any other relief necessary to protect the victim and family or household members.

On the criminal side, any person who commits an assault and battery may be guilty of a Class 1 misdemeanor. Va. Code §18.2-57. Additionally, any person who commits an assault and battery against a family or household member is also guilty of a Class 1 misdemeanor. Va. Code §18.2-57.2. Under this latter Code section, if a warrant is issued, then the magistrate shall also issue an emergency protective order pursuant to Va. Code §16.1-253.4. “Family or household member” is defined the same as it is for civil protective orders.

The definition of “assault” or “assault and battery” is as follows:

An assault is any attempt or offer with force or violence to do corporal hurt to another, whether from malice or from wantonness, as by striking at him, or even holding up one’s fist at him in a threatening or insulting manner, or pointing a weapon at him within reach...

Battery is the actual infliction of corporal hurt on another (e.g., the least touching of another’s person), willfully or in anger, whether by the party’s own hand, or by some means set in motion by him. *Jones v. Commonwealth*, 184 Va. 679, 681, 36 S.E.2nd 571 (1946).

The penalty for a Class 1 misdemeanor is as follows:

Any person who commits a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious

conviction, color or national origin, the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement. Va. Code §18.2-11.

There are other community based programs available to a person who pleads guilty to a first offense of assault and battery against a family or household member. Va. Code §18.2-57.3.

A civil action for stalking is permitted under Va. Code §8.01-42.3; this allows the victim to seek compensatory damages. Stalking is defined as the act of any person “who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know, that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person’s family or household member is guilty of a Class 1 misdemeanor.” In addition, upon a finding of guilt and the sentence imposed, the court may enter an order prohibiting contact between the defendant and the victim or the victim’s family or household member. Notice is also required to be given prior to release of the perpetrator from a correctional facility.

74th District Delegate Joe Morrissey is attempting to update the state law to provide for legislation that would allow a person to take out a protective order against his or her dating partner. Richmond Times Dispatch, May 30, 2010. Presumably, this legislation will be considered at the meeting of the next General Assembly.

In conclusion, if one has been assaulted or battered by anyone, criminal charges should be instituted, or at a minimum, a complaint registered with the local police. Until protective orders for family abuse are enlarged to include persons who are dating one another, criminal charges may be one’s only option. If one is in an abusive relationship, seek help with local service agencies or sympathetic friends or family members. Do not endure the abuse alone.