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BANISHMENT IN GEORGIA: A NEW APPROACH TO DOMESTIC VIOLENCE

Cameron Carpino*

CONTEMPORARY USE OF AN ANCIENT PUNISHMENT

The word banishment conjures up images of kings, knights, and scepters. It is hard to imagine that such a seemingly quaint punishment would have contemporary relevance. However, in a few states in America, banishment is still used as a punishment for crime.¹ The state of Georgia has recently attracted nationwide attention for its use of banishment.²

An offender may be banished from a certain county or counties, or from an entire judicial circuit,³ which often comprises several counties.⁴ Many states prohibit banishment,⁵ focusing on its lack of

* J.D. Candidate, May 2011, Research Editor 2010-2011 Georgia State University Law Review. The author would like to thank Chittam Thakore, Kevin Bradberry, and most importantly, her family, especially Ruby Carpino.

1. See Vesna Jaksic, *A New Type of Sentence for Criminal Offenders: Exile*, BROWARD DAILY BUS. REV. (Mass.), Dec. 14, 2007, at 9 (banishing offenders from a Massachusetts county and noting that a New Hampshire court had also banished an offender); Milo Ippolito, *Judge Rules: 'Banned in Buckhead'*, ATLANTA J.-CONST., Dec. 11, 2003, at B5; see, e.g., *Cobb v. State*, 437 So. 2d 1218 (Miss. 1983) (banishing an offender from a Mississippi county). For an example of another country using banishment, see also Alistair Munro, *Thug is Nicked Strolling Down Runway Drunk in Airport Alert*, DAILY REC. (Glasgow, Scotland), Sept. 27, 2008, at 30, available at 2008 WLNR 18350062.

2. Russ Bynum, *Giving Criminals the Boot—Georgia Prosecutor Favors Banishing Wrongdoers*, N.J. REC., Oct. 22, 2001, at A4, available at 2001 WLNR 9646287 (“Nationwide, banishment—which used to be . . . popular . . . has pretty much vanished from the scene Probably there’s more [banishment] in Georgia than any other state.”). Most of the discussion relating to banishment in Georgia has been focused on the state’s aggressive sex offender legislation. For thorough coverage of this issue, see Jacqueline Canlas-LaFlam, *Has Georgia Gone Too Far—or Will Sex Offenders Have To?*, 35 HASTINGS CONST. L.Q. 309 (Winter 2008); Amanda West, *The Georgia Legislature Strikes with a Vengeance! Sex Offender Residency Restrictions & the Deterioration of the Ex Post Facto Clause*, 57 CATH. U. L. REV. 239 (2007). For an interesting account of the personal experiences of one offender affected by the new Georgia sex-offender registry laws, see Lori Sue Collins, *My Life Before and After HB 1059*, 42 HARV. C.R.-C.L. L. REV. 501 (2007).

3. See, e.g., GA. CODE ANN. § 42-8-35 (2008).

4. See, e.g., Georgia County Selection Map, U.S. Census Bureau, http://quickfacts.census.gov/qfd/maps/georgia_map.html (last visited Mar. 17, 2011).

5. See Peter D. Edgerton, *Banishment and the Right to Live Where You Want*, 74 U. CHI. L. REV. 1023, 1030 (2007). *But see* *McVey v. State*, 863 N.E.2d 434, 448 (Ind. Ct. App. 2007) (“Conditions of probation that reduce the access to potential victims are reasonable.” (citing *Carswell v. State*, 721 N.E.2d 1255, 1259 (Ind. Ct. App. 1999))).

rehabilitative value⁶ and potentially damaging public policy implications,⁷ including “convict dumping.”⁸ However, while banishment has negative aspects, it still retains value as a penal tool, especially in domestic violence situations.⁹

Part I of this Note will discuss the history of banishment,¹⁰ specifically the use of banishment in Georgia,¹¹ and introduce the basic theories of domestic violence.¹² Part II will analyze the strengths and weaknesses of banishment, focusing on where banishment is and is not effective in preventing crime. Finally, Part III of this Note will propose that banishment should be reserved for only the most egregious repeat domestic violence offenders through the use of a multi-factor approach.

I. UNDERSTANDING BANISHMENT AND DOMESTIC VIOLENCE

A. Historical Context

Banishment has been defined as “a punishment . . . that forces a criminal to leave a city, place, or state for a period of time.”¹³ Used as a punitive criminal measure since the formation of the United States,¹⁴ banishment has been considered an extreme punishment

6. Joy Archer Yeager, *The Propriety of Conditioning Parole on Defendant's Not Entering Specified Geographical Area*, 54 A.L.R. 5TH 743 § 2(b) n.6 (1997) (citing *McCreary v. State*, 582 So. 2d 425 (Miss. 1991)); see discussion *infra* Part II.A.

7. *Crabtree v. State*, 112 P.3d 618, 621 (Wyo. 2005); *State v. Doughtie*, 74 S.E.2d 922, 924 (N.C. 1953) (“It is not sound public policy to make other states a dumping ground for our criminals.”); *People v. Baum*, 231 N.W. 95, 96 (Mich. 1930).

8. Rick Hirsch, *City Counterattacks for Convict Dumping*, MIAMI HERALD, May 10, 1985, at 1C, available at 1985 WLNR 283387.

9. See, e.g., Houston County District Attorney, *5 Reasons for Banishment*, <http://www.houstonda.org/houston-county-law-school/5-reasons-for-banishment.html> (last visited Mar. 17, 2011) (“If Tom’s main problem is that he harasses Suzy, and Suzy is glad to see him out of her hair by being banished, why not do that instead of prison?”).

10. See *infra* Part I.A.

11. See *infra* Part I.B–C.

12. See *infra* Part I.D.

13. Matthew D. Borrelli, *Banishment: The Constitutional and Public Policy Arguments Against this Revived Ancient Punishment*, 36 SUFFOLK U. L. REV. 469, 471 (2003).

14. *Id.* at 469. Banishment was also used in the ancient world. See *United States v. Abushar*, 761 F.2d 954, 959 (3d Cir. 1985) (quoting Gerald R. Miller, *Banishment—A Medieval Tactic in Modern Criminal Law*, 5 UTAH L. REV. 365, 365 (1957)); *Rutherford v. Blankenship*, 468 F. Supp. 1357, 1360 (W.D. Va. 1979); ROBERT FRANK MEIER, *CRIME AND SOCIETY* 356 (1989).

throughout history.¹⁵ Originally, the isolated nature of colonial villages and settlements made banishment a harsh sentence, as it was very difficult to relocate. If a person tried to join a new community without references, they would “likely be alienated and rejected.”¹⁶ Banishment was only used for the worst offenders who were considered a continuing threat to society.¹⁷ For various kinds of crimes, public shaming through the stocks or whipping was also used.¹⁸

B. Uses of Banishment

The use of banishment in Georgia dates back at least to 1782 when a statute that penalized treason was enacted.¹⁹ A subsequent statute passed in 1787 stated that “felons transported or banished from another state or . . . country could be arrested and removed beyond the limits of the state, not to return on penalty of death.”²⁰ In contemporary times, banishment is typically used as a condition of probation or as a condition of a suspended sentence.²¹ In Georgia, the period of banishment cannot be unlimited,²² but courts have imposed as much as a fifty-year banishment sentence.²³ While on probation, an offender does not have the same rights and expectations of

15. ARTHUR SHAPIRO, EVERYBODY BELONGS: CHANGING NEGATIVE ATTITUDES TOWARD CLASSMATES WITH DISABILITIES 146 (1999) (“[T]he severest form of punishment in ancient times was not execution but banishment.”); *see, e.g.*, State v. Doughtie, 74 S.E.2d 922, 924 (N.C. 1953) (“Through the ages the lot of the exile has been hard.”); HERBERT L. OSGOOD, THE AMERICAN COLONIES IN THE SEVENTEENTH CENTURY 282–83 (Peter Smith ed., Columbia Univ. Press 1957) (1904).

16. Andrea E. Yang, *Historical Criminal Punishments, Punitive Aims and Un-“Civil” Post-Custody Sanctions on Sex Offenders: Reviving the Ex Post Facto Clause as a Bulwark of Personal Security and Private Rights*, 75 U. CIN. L. REV. 1299, 1308 (Spring 2007).

17. *Id.* at 1307–08.

18. *Id.*

19. Cooper v. Telfair, 4 U.S. (4 Dall.) 14, 14–15 (1800) (quoting the Georgia law enacted in 1782 which provided “that all . . . persons . . . [found guilty of treason] are banished from said state”).

20. United States v. Atienzo, No. 2:04-CR-00534 PGC, 2005 WL 3334758, at *3 (D. Utah Dec. 7, 2005).

21. Sanders v. State, 577 S.E.2d 94, 96 (Ga. Ct. App. 2003) (“Banishment is authorized in Georgia only as a reasonable condition of probation or suspension of a sentence.”).

22. *See id.*; Kerr v. State, 387 S.E.2d 355, 359 (Ga. Ct. App. 1989).

23. Presha v. State, 469 S.E.2d 293, 294–95 (Ga. Ct. App. 1996); *see also* Adams v. State, 527 S.E.2d 911, 912 (Ga. Ct. App. 2000) (affirming a thirty year banishment); Edwards v. State, 327 S.E.2d 559, 560–61 (Ga. Ct. App. 1985) (affirming a ten year banishment).

freedom that a non-offender would have,²⁴ so Georgia courts have resisted constitutional challenges to the reasonableness of banishment as well as attempts to classify it as cruel and unusual punishment under the state constitution.²⁵ The Supreme Court of Georgia has also refused to prohibit banishment, noting: “[I]f it is to be absolutely prohibited, it must be done by the legislature.”²⁶

Banishment has been used for crimes such as drug possession or sale,²⁷ burglary,²⁸ stalking,²⁹ assault³⁰ or battery,³¹ child molestation,³² prostitution,³³ and making terroristic threats to a judge.³⁴ Some applications of banishment have allowed limited entry into prohibited areas, such as entry for child visitation,³⁵ or with advance permission from the probation officer.³⁶ The goals of banishment are to remove the offenders from the community and reduce the temptation to repeat their crimes.³⁷ The Eleventh Circuit

24. See *Terry v. Hamrick*, 663 S.E.2d 256, 260 (Ga. 2008), *cert denied*, 129 S. Ct. 510 (2008); *Goode v. Nobles*, 518 S.E.2d 122, 123 (Ga. 1999) (quoting *Staley v. State*, 505 S.E.2d 491, 494 (Ga. Ct. App. 1998)); see also *People v. Smith*, 62 Cal. Rptr. 3d 316, 318 (Cal. Ct. App. 2007) (reversing a trial court decision finding no “valid basis for . . . ‘having a tight rein on someone who has been convicted [of a crime]’”); *United States v. Cothran*, 855 F.2d 749, 751 (11th Cir. 1988) (“Such limitations are permitted because the probationers have been convicted of crimes and have thereby given the state a compelling interest in limiting their liberty in order to effectuate their rehabilitation and to protect society.” (quoting *Owens v. Kelley*, 681 F.2d 1362, 1367 (11th Cir. 1982))). *But see* *Cross v. Huff*, 67 S.E.2d 124, 126 (Ga. 1951).

25. *State v. Collett*, 208 S.E.2d 472, 473 (Ga. 1974) (quoting WALTER MCELREATH, A TREATISE ON THE CONSTITUTION OF GEORGIA 442 (1912)).

26. *Id.* at 473.

27. *E.g.*, *Adams*, 527 S.E.2d at 912; *Presha*, 469 S.E.2d at 294.

28. *E.g.*, *Massey v. State*, 493 S.E.2d 255, 256 (Ga. Ct. App. 1997).

29. *E.g.*, *Williams v. State*, 470 S.E.2d 922, 923–24 (Ga. Ct. App. 1996).

30. *E.g.*, *Cobb v. State*, 437 So. 2d 1218, 1219 (Miss. 1983); *State v. Charlton*, 846 P.2d 341, 342 (N.M. Ct. App. 1992).

31. *E.g.*, *Dudley v. State*, 496 S.E.2d 341, 342 (Ga. Ct. App. 1998).

32. *E.g.*, *Phillips v. State*, 512 S.E.2d 32, 33 (Ga. Ct. App. 1999); *Ardeneaux v. State*, 484 S.E.2d 74, 74 (Ga. Ct. App. 1997).

33. *E.g.*, *People v. Pickens*, 542 N.E.2d 1253, 1254 (Ill. App. Ct. 1989) (banishing an offender from an area of the city where 95% of prostitution arrests occurred).

34. *E.g.*, Kathy Jefcoats, *Law & Order Clayton County: Man to be Banished for Threats to Judge*, ATLANTA J.-CONST., Sept. 20, 2006, at C3.

35. *McCreary v. State*, 582 So. 2d 425, 426 (Miss. 1991) (banishing the offender from entire state indefinitely but permitting limited entry for child visitation).

36. *United States v. Cothran*, 855 F.2d 749, 750 (11th Cir. 1988); *Edwards v. State*, 327 S.E.2d 559, 560–61 (Ga. Ct. App. 1985) (learning his business had caught fire, defendant was allowed to reenter the prohibited county after obtaining his probation officer’s permission).

37. *Cothran*, 855 F.2d at 752; *Shook v. State*, 684 S.E.2d 129, 131 (Ga. Ct. App. 2009); *Wyche v. State*, 397 S.E.2d 738, 739 (Ga. Ct. App. 1990) (banishing in this case “removes the offender from a

noted that banishment can provide the offender “[a] unique opportunity to start anew and break free of the environment and familiar influences which encouraged him to [commit crimes] in the first place.”³⁸ Other states that have considered banishment have found it to be unlawful and without rehabilitative value to the offender.³⁹ Although the views of the state courts are clear, the United States Supreme Court has yet to rule on whether banishment is illegal or violates the United States Constitution.⁴⁰

In comparison to banishment, “deportation is used to remove aliens, not citizens, who commit crimes in the United States.”⁴¹ It has consistently been held as an illegal exercise of judicial power when used as punishment for a crime for citizens.⁴² The decision to deport someone properly belongs to federal immigration officials and cannot usually be ordered by criminal courts at the state level.⁴³ While this Note is limited to requirements that the defendant leave the state or county, at least one state court has ordered that a defendant return to his home in another country while on probation.⁴⁴

locale in which he previously succumbed to the temptation of drugs”).

38. *Cothran*, 855 F.2d at 752.

39. Yeager, *supra* note 6.

40. Brief of Respondent-Appellee at 24, *Terry v. Hamrick*, 663 S.E.2d 256 (Ga. 2008) (No. S08A0170), *cert. denied*, 129 S. Ct. 510 (2008).

41. Borrelli, *supra* note 13, at 471; *see also Sanchez v. State*, 508 S.E.2d 185, 187 (Ga. Ct. App. 1998) (citing *United States v. Abushaar*, 761 F.2d 954 (3d Cir. 1985)).

42. *Sanchez*, 508 S.E.2d at 186 (“8 U.S.C. § 1229a(a)(3) specifies removal or deportation proceedings under that section as the ‘sole and exclusive procedure’ for removing *aliens* from the United States.”) (emphasis added). *But see* Jennifer Lewington & Peter Cheney, *Sentence for Sexual Abuse: Three Years’ Exile in Canada*, GLOBE & MAIL (Toronto, Can.), Oct. 23, 2006, at A1, available at 2006 WLNR 18356092.

43. *Sanchez*, 508 S.E.2d at 186–87 (quoting *United States v. Romeo*, 122 F.3d 941, 943 (11th Cir. 1997)). *But see* Lewington & Cheney, *supra* note 42.

44. *See* Lewington & Cheney, *supra* note 42 (discussing an American resident teacher who was exiled to Canada for having sexual contact with a student). *But see In re Babak S.*, 18 Cal. App. 4th 1077 (Cal. Ct. App. 1993) (invalidating a probation condition which required that the offender reside with relatives in Iran for the duration of his sentence).

C. Banishment in Georgia

1. Statutory Sources

Intrastate banishment in Georgia was authorized by the state Constitution as amended in 1877,⁴⁵ which provides: “[B]anishment beyond the limits of the state . . . shall [not] be allowed as a punishment for crime.”⁴⁶ Although the origins of this section are more than a century old, when a 1979 subcommittee meeting was held to revise other sections, the members, “unanimously agreed to leave that provision in its present form.”⁴⁷ Courts have interpreted the explicit prohibition against interstate banishment to implicitly sanction intrastate banishment.⁴⁸ The statutes in Georgia give judges latitude in fashioning sentences,⁴⁹ but the banishment must not be “unreasonable or otherwise fail[] to bear a logical relationship to the rehabilitative scheme of the sentence pronounced.”⁵⁰ Through the years, Georgia courts have consistently found that banishment is a reasonable condition of probation.⁵¹ Until recently, judges were permitted to banish an offender from any number of Georgia’s counties, including 158 of a total of 159 counties.⁵² In 2006, Georgia amended its probation statute⁵³ to prohibit banishment to any area smaller than a single judicial circuit or to an area that does not have a service or program that the offender is required to participate in as a condition of his sentence.⁵⁴ Although in most cases this amendment

45. Borrelli, *supra* note 13, at 471.

46. GA. CONST. art. I, § 1, para. 3 (2003) (emphasis added).

47. Dorothy T. Beasley, *The Georgia Bill of Rights: Dead or Alive?*, 34 EMORY L.J. 341, 387–88 (1985).

48. *State v. Collett*, 208 S.E.2d 472, 473 (Ga. 1974).

49. *Id.*

50. *Collett*, 208 S.E.2d at 474; *see also* *Shook v. State*, 684 S.E.2d 129, 131 (Ga. Ct. App. 2009) (citing *Hallford v. State*, 657 S.E.2d 10, 13 (Ga. Ct. App. 2008)). The defendant has the burden to prove that the banishment condition is unreasonable. *See Collett*, 208 S.E.2d at 474; *Presha v. State*, 469 S.E.2d 293, 294 (Ga. Ct. App. 1996) (citation omitted). The Georgia Court of Appeals has also held that only the convicted person may be banished. *Parkerson v. State*, 274 S.E.2d 799, 799 (Ga. Ct. App. 1980) (invalidating a probation condition that also banished the defendant’s wife).

51. *Parkerson*, 274 S.E.2d at 799 (citing *Collett*, 208 S.E.2d at 474).

52. *Terry v. Hamrick*, 663 S.E.2d 256, 257 (Ga. 2008), *cert denied*, 129 S. Ct. 510 (2008).

53. *Id.* at 258 n.2; *see also* Brief of Respondent-Appellee at *20–21, *Terry*, 663 S.E.2d 256, (No. S08A0170).

54. GA. CODE ANN. § 42-8-35(a)(6) (2008).

enlarged the size of the restricted geographic area permitted,⁵⁵ there are several single-county circuits in the state, including the Rome, Dougherty, and Eastern judicial circuits.⁵⁶

2. *Houston County: Banishment Capital of the State*

Although many counties in Georgia use banishment,⁵⁷ Houston County, located in central Georgia,⁵⁸ has earned a reputation for favoring banishment and using it often.⁵⁹ Former Houston County District Attorney Kelly Burke has banished more than 400 defendants from the county.⁶⁰ Offenders are banished for a wide variety of crimes, including shoplifting⁶¹ and forgery,⁶² but Burke notes that he primarily “requires” banishment in drug-related crimes.⁶³

55. The original text of Georgia Code section 42-8-35(a)(6) stated “[r]emain within a specified location,” and the 2006 amendment added the qualification:

provided, however, that the court shall not banish a probationer to any area within the state: (A) That does not consist of at least one entire judicial circuit as described by Code Section 15-16-1; or (B) In which any service or program in which the probationer must participate as a condition of probation is not available.

2006 Ga. Laws 577, § 1 (as codified at GA. CODE ANN. § 42-8-35(a)(6) (2008)).

56. Georgia County Selection Map, *supra* note 4.

57. *E.g.*, Shook v. State, 684 S.E.2d 129, 130 (Ga. Ct. App. 2009) (Union County); *Terry*, 663 S.E.2d at 257 (Douglas County); Hallford v. State, 657 S.E.2d 10, 11 (Ga. Ct. App. 2008) (Richmond County); Adams v. State, 527 S.E.2d 911, 911 (Ga. Ct. App. 2000) (Chattooga County); Phillips v. State, 512 S.E.2d 32, 32 (Ga. Ct. App. 1999) (Bartow County); Massey v. State, 493 S.E.2d 255, 255 n.1 (Ga. Ct. App. 1997) (Thomas County); Ardeneaux v. State, 484 S.E.2d 74, 74 (Ga. Ct. App. 1997) (Hall County); Presha v. State, 469 S.E.2d 293, 294 (Ga. Ct. App. 1996) (Thomas County); Whitehead v. State, 429 S.E.2d 536, 538 (Ga. Ct. App. 1993) (Lowndes County); Garland v. State, 286 S.E.2d 330, 331 (Ga. Ct. App. 1981) (Grady County); Parkerson v. State, 274 S.E.2d 799, 799 (Ga. Ct. App. 1980) (Charlton County); State v. Collett, 208 S.E.2d 472 (Ga. 1974) (Cobb County); Jefcoats, *supra* note 34 (Clayton County); Becky Purser, *Rapist, Accused Killer Gets Life Term in Perry Trial*, MACON TEL. (Ga.), Aug. 28, 2009, available at 2009 WLNR 16772346 (Houston County); Amy Leigh Womack, *Massage Parlor Worker Banned from Bibb*, MACON TEL. (Ga.), July 22, 2009, available at 2009 WLNR 13926975 (Bibb County).

58. Georgia County Selection Map, *supra* note 4.

59. See Bynum, *supra* note 2; Paul Kish & Carl Lietz, *Banishment: Exile Permitted Under Current Georgia and Federal Criminal Law*, GA. FED. CRIM. LAW. BLOG, July 24, 2009, http://www.georgiafederalcriminallawyerblog.com/2009/07/banishment_exile_permitted_in.html.

60. Houston County District Attorney, *supra* note 9.

61. *E.g.*, Bynum, *supra* note 2.

62. Houston County Banishment Registry, <http://public.houstonda.org/listallban.asp> (last visited Mar. 16, 2010).

63. Houston County District Attorney, *Banishment from Houston County*, <http://houstonda.org/houston-county-law-school/banishment-from-houston-county.html> (last visited Mar. 17, 2011); see, e.g., Houston County District Attorney, *Drug Dealing=12 Yrs Prison & Banishment*, <http://houstonda.org/houston-county-law-school/banishment-from-houston-county.html>

D. Domestic Violence Theories and Remedies

Domestic violence is crime in which the offender and victim are part of the same household.⁶⁴ In Georgia, these crimes are prosecuted under Code section 19-13-1, which defines domestic violence as

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.⁶⁵

In a domestic violence situation, the offender exerts control over his or her partner or family member, which results in physical, verbal, or emotional abuse.⁶⁶ The pattern of violence tends to be cyclical,⁶⁷ with a pattern of building tension leading to the attack, followed by a “honeymoon” period when the offender behaves well⁶⁸ and gains the victim’s forgiveness.⁶⁹ The most tragic result of domestic violence is

(last visited Mar. 17, 2011) (defendant banished from Houston and all surrounding counties).

64. Michele M. Hughes, *Definitions*, 28 C.J.S. *Domestic Abuse and Violence* § 1 (2010). The definition of what a household means and whom it encompasses varies by statute. Michelle M. Huges, *Protected Persons*, 28 C.J.S. *Domestic Abuse and Violence* § 7 (2010) (“Spouses, persons living as spouses, former spouses, or persons who lived as spouses, are family or household members within the meaning of domestic abuse and violence statutes. Under other statutory provisions, a household member also includes a person who regularly resides in the household or who, previously . . . regularly resided in the household. Under some authority the protections of a domestic abuse act extend to persons who are ‘residing together’, whether they are involved in a sexual or romantic relationship or are just co-residents.”) (footnotes omitted).

65. GA. CODE ANN. § 19-13-1 (2004). Family violence battery is not a separate crime. See William H. Lindsley, *Family Violence Battery*, 20 GA. JUR. *Criminal Law* § 6:44 (2010).

66. Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1120 (2009) (quoting WomensLaw.org, *What is Domestic Violence?*, http://www.womenslaw.org/simple.php?sitemap_id=39#1 (last visited Mar. 16, 2011)).

67. Laura Beckerman, Book Note, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance, and Situational Couple Violence* by Michael P. Johnson, 24 BERKELEY J. GENDER L. & JUST. 75, 77 (2009).

68. Cycle of Violence, DomesticViolence.org, <http://www.domesticviolence.org/cycle-of-violence/> (last visited Mar. 16, 2011) (adapted from LENORE WALKER, *THE BATTERED WOMAN* (1979)).

69. See Lisa Marie De Sanctis, *Bridging the Gap Between the Rules of Evidence and Justice for*

murder-suicide, where the offender kills the victim and then himself.⁷⁰ Because of the intimate relationship between perpetrators of family violence and victims, the category of potential victims is extremely small—compared to the general public—and the offender repeatedly abuses the same victim.⁷¹ Statistically, the vast majority of victims are women.⁷²

A protective order⁷³ is a judicial tool often used in domestic violence situations. It limits or prohibits the offender from having contact with the victim⁷⁴ and may authorize eviction of the offender from the family home.⁷⁵ When the arrest or complaint is initially made, the victims may choose to file a temporary protective order.⁷⁶ This order lasts for one year unless extended or changed to a permanent order.⁷⁷ Violation of the protective order is in itself an offense that may be cause for arrest;⁷⁸ additionally, violations are often accompanied by acts of violence, which may provide a separate basis for arrest.⁷⁹

Victims of Domestic Violence, 8 YALE J.L. & FEMINISM 359, 369–70 (1996).

70. Judith S. Kaye, *Shaping State Courts for the New Century: What Chief Judges Can Do*, 61 ME. L. REV. 356, 361 (2009) (“The domestic violence cases, too often begin[] with an assault . . . and end[] with a murder/suicide.”); Diane L. Rosenfeld, *Correlative Rights and the Boundaries of Freedom: Protecting the Civil Rights of Endangered Women*, 43 HARVARD C.R.-C.L. L. REV. 257, 259 (2008) (“With distressing frequency, domestic violence ends, not in escape and reconstruction of the woman's life, but in murder or murder/suicide.”).

71. Carissa Byrne Hessick, *Violence Between Lovers, Strangers, and Friends*, 85 WASH. U. L.R. 343, 375 n.122 (2007) (citing Jeffery Fagan, *Cessation of Family Violence: Deterrence and Dissuasion*, 11 CRIME & JUST. 377, 397 (1989) (“consistent finding that spousal abuse is often repeated”)).

72. MATTHEW R. DUROSE ET. AL., U.S. DEP'T OF JUST., No. NCJ 207846, FAMILY VIOLENCE STATISTICS: INCLUDING STATISTICS ON STRANGERS AND ACQUAINTANCES 10 (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvs.pdf> (reporting that violent crimes committed between 1998–2002 women victims comprised 73.4% of the family violence crimes).

73. A protective order is defined as “[a] court order prohibiting or restricting a party from engaging in conduct . . . that unduly . . . burdens [another] party.” BLACK'S LAW DICTIONARY 577 (3d Pocket ed. 2006). Georgia's protective order statute is codified at GA. CODE ANN. §§ 19-13-3, -4 (2003).

74. GA. CODE ANN. § 19-13-4(a)(9) (2004).

75. GA. CODE ANN. § 19-13-4(a)(5) (2004).

76. GA. CODE ANN. § 19-13-3 (2004).

77. GA. CODE ANN. § 19-13-4(c) (2004).

78. GA. CODE ANN. § 19-13-6 (2004).

79. See, e.g., *Terry v. Hamrick*, 663 S.E.2d 256 (Ga. 2008), cert denied, 129 S.Ct. 510 (2008); *Crabtree v. State*, 112 P.3d 618, 619–20 (Wyo. 2005).

E. Terry v. Hamrick

Gregory Mac Terry's case⁸⁰ has attracted nationwide scrutiny and brought renewed interest in the issue of banishment.⁸¹ Terry had a history of violent behavior toward his ex-wife, and she had obtained a protective order against him.⁸² This order was in effect when he kidnapped and assaulted her.⁸³ The case is noteworthy because Terry was banished from 158 of Georgia's 159 counties for the kidnapping and assault.⁸⁴ The only county in which Terry could lawfully be present was Toombs⁸⁵—200 miles from his Douglas County home.⁸⁶

II. BANISHMENT IN ACTION

A. Policy Concerns

The most commonly cited reason for rejecting banishment is that it only shifts offenders to a different area, making them another jurisdiction's problem.⁸⁷ This phenomenon can provoke retaliation from neighboring areas.⁸⁸ For example, Miami's mayor announced a plan to sue Santa Monica, California for "dumping a convicted sex offender" in their city, after the California police provided the offender with a plane ticket to Miami.⁸⁹ As noted in *State v.*

80. Terry, 663 S.E.2d at 256.

81. See Jason S. Alloy, "158-County Banishment" in *Georgia: Constitutional Implications Under the State Constitution and the Federal Right to Travel*, 36 GA. L. REV. 1083 (2002).

82. Terry, 663 S.E.2d at 259.

83. *Id.* at 257, 259.

84. *Id.* at 257.

85. *Id.*

86. Paul Kish & Carl Lietz, *Banishment: Exile Permitted Under Current Georgia and Federal Criminal Law*, GA. FED. CRIM. LAW. BLOG, July 24, 2009, http://www.georgiafederalcriminallawyerblog.com/2009/07/banishment_exile_permitted_in.html.2009/07/banishment_exile_permitted_in.html.

87. Becky Purser, *More Than 500 People Have Been Banished from Houston County*, <http://www.houstonda.org/local-headlines/more-than-500-people-have-been-banished-from-houston-county.html> (last visited Mar. 17, 2011) ("[W]holesale use of banishment would result in simply shuffling people around the state.").

88. See, e.g., Hirsch, *supra* note 8.

89. *Id.* The Chief of the Santa Monica Police Department bought a ticket to Miami for convicted rapist and child abuser Weston Hill. *Id.* Hill was subsequently arrested twice within two weeks. *Id.* In the past, other law enforcement agencies also sent convicts to Miami, some of whom were mentally challenged. *Id.*

Doughtie,⁹⁰ this practice will not encourage positive relations within and among the states.⁹¹

In some areas, instead of direct retaliation, the counties that end up with banished offenders start banishing as well.⁹² This phenomenon is happening in Bibb County, Georgia,⁹³ which is directly adjacent to Houston County.⁹⁴ Most recently, a sixty-four-year-old massage parlor worker was banished from Bibb and moved to Atlanta.⁹⁵ In Dekalb County, Georgia, judges are banishing drug dealers from Dekalb and the surrounding counties,⁹⁶ prompting the District Attorney in nearby Cherokee County⁹⁷ to state: “We’ll return the favor.”⁹⁸

In addition, this problem is evident where an offender is banished from one place and later commits the same crime in the new area. In *Krack v. State*,⁹⁹ a New Mexico pharmacist admitted to molesting children and was banished from the state as part of a “[p]re-prosecution [d]iversion” plan.¹⁰⁰ At his new home in Alaska, Krack used drugs to entice and molest numerous young boys.¹⁰¹ Krack’s

90. *State v. Doughtie*, 74 S.E.2d 922, 924 (N.C. 1953) (invalidating a suspended two-year road sentence).

91. *Crabtree v. State*, 112 P.3d 618, 622 (Wyo. 2005); *Doughtie*, 74 S.E.2d at 924 (“It is not sound public policy to make other states a dumping ground for our criminals.”); *People v. Baum*, 231 N.W. 95, 96 (Mich. 1930); see also STEPHEN L. WASBY, *CIVIL LIBERTIES: POLICY AND POLICY MAKING* 115 (Rowman & Littlefield 1977) (1976).

92. Celia Sibley, *Dekalb DA Seeks Banishment: He Would Not Let Drug Dealers Return*, ATLANTA J.-CONST., Dec. 17, 1998, at E, available at 1998 WLNR 3476022.

93. Celeste Smith, *Woman’s Sentence Includes Banishment from Bibb County*, FOX 24 (Macon, Ga.), July 22, 2009, <http://www.fox24.com/news/local/51394052.html?corder=regular>.

94. Georgia County Selection Map, *supra* note 4.

95. Womack, *supra* note 57.

96. Sibley, *supra* note 92; Russ Bynum, Associated Press, *Georgia Communities Put Criminals on First Bus Out of Town*, L.A. TIMES, Nov. 11, 2001, at 31, available at 2001 WLNR 10508982. Although banishment may seem like a tool mostly used in smaller, rural counties, an Atlanta City Court judge banished a man from the downtown Buckhead district due to misbehavior in the area bars and nightclubs. Ippolito, *supra* note 1.

97. Georgia County Selection Map, *supra* note 4.

98. Sibley, *supra* note 92.

99. *Krack v. State*, 973 P.2d 100 (Alaska Ct. App. 1999).

100. *Id.* at 101, 105.

101. *Id.* A case similar to *Krack* is *Phillips v. State*, 512 S.E.2d 32 (Ga. Ct. App. 1999), where the offender was sentenced to prison time and banishment for sodomy, child molestation, and sexual exploitation in 1990. *Id.* at 32–33. After being released from incarceration, Phillips violated his probation in 1994 by victimizing more children, and pled guilty to aggravated child molestation and eight counts of sodomy. *Id.* at 33.

abuse of local children continued for more than a decade.¹⁰² In *Krack*, there was no connection between the children and the offender—they were simply his preferred category of victims.¹⁰³ When choosing their victims, child molesters often identify children who appear vulnerable in some way;¹⁰⁴ they do not select their victims based on existing social relationships. Therefore, it is unsurprising that *Krack*'s pattern of offense continued long after his banishment from New Mexico.

There have also been allegations that some uses of intrastate banishment have been veiled attempts to exile the offender from the entire state.¹⁰⁵ Before the Georgia statute was amended in 2006,¹⁰⁶ offenders were commonly banished from all but one county¹⁰⁷—generally rural and isolated Echols County.¹⁰⁸ Many offenders, faced with the dim prospects available in such a small area,¹⁰⁹ chose instead to leave the state,¹¹⁰ often planning to relocate near family members.¹¹¹ The result is that the offenders do not commit crimes in the state, but the state has no way to monitor their progress.¹¹²

102. *Krack*, 973 P.2d at 101. Two of *Krack*'s victims committed suicide, one immediately after being contacted during the investigation of this case. *Id.*

103. *Krack*'s targeted victims in both New Mexico and Alaska were young boys. *Id.*

104. See John B. Murray, *Psychological Profile of Pedophiles and Child Molesters*, 134 J. PSYCHOL. 211, 219 (2000).

105. See, e.g., *Terry v. Hamrick*, 663 S.E.2d 256, 258 (Ga. 2008), cert. denied, 129 S. Ct. 510 (2008).

106. See *supra* note 55.

107. Brenden Sager, *Banished Vanish at Georgia 'Gulag': Echols County Prisoners Simply Flee State*, ATLANTA J.-CONST., Sept. 30, 2001, at C1; see, e.g., *Terry*, 663 S.E.2d at 258.

108. Sager, *supra* note 107; Terry Dickson, *Don't Ruin Echols' Slice of Heaven*, FLA. TIMES-UNION, Jan. 9, 2008, at B1. However, at least one court has affirmed banishment from every county but Echols, although the amended statute requires that the area be no smaller than a judicial circuit. *Robbins v. Smith*, No. 1:08-CV-1351-TWT, 2009 WL 3158177, at *6 (N.D. Ga. Sept. 25, 2009).

109. Sager, *supra* note 107, at C1 ("There are no restaurants, hotels or banks. There is [only] one traffic light . . . [and] no incorporated town [in Echols].").

110. Sager, *supra* note 107, at C8. Despite the fact that Dekalb County has banished over 200 offenders to Echols County, the Sheriff stated in 2001 that no offenders had ever reported there. Sager, *supra* note 107, at C8. But in 2008, a man did present himself at the Sheriff's Office, stating that his probation officer sent him to live in Echols. Dickson, *supra* note 108. The Sheriff called the banishing court, stating that he "didn't want riffraff banished here from another court." Dickson, *supra* note 108. For more on the community reaction to banished offenders being sent to Echols County see Lindsay Isaacs, *Rural County Baffled by Judges' Punishment*, AM. CITY & COUNTY (Nov. 2001) available at http://americacityandcounty.com/mag/government_qarural_county_baffled/.

111. Sager, *supra* note 109, at C8.

112. *State v. Doughtie*, 74 S.E.2d 922, 924 (N.C. 1953).

One of the most commonly cited weaknesses of banishment is a lack of rehabilitative value¹¹³ because relocating the offender does not provide them with any tools to avoid reoffending. As illustrated by *Krack*,¹¹⁴ the offender simply arrives in a new place and remains a continuing threat to the community.¹¹⁵ With the amendments to the Georgia statute concerning banishment,¹¹⁶ the legislature is attempting to ensure that banished offenders receive the services they need and will therefore be less prone to reoffend.

Banishment also removes offenders from any family structure or support system they may have.¹¹⁷ Taking away that lifeline potentially makes it even more difficult for most offenders to make better choices in their lives.¹¹⁸ However, as former Houston County District Attorney Kelly Burke has noted, the offender was engaged in criminal activity, so the family network had clearly not been effective thus far.¹¹⁹

One of the main goals of banishment is to separate the offender from the environment and people that influenced him to commit a crime.¹²⁰ In some cases, particularly with younger,¹²¹ non-repeat offenders, this could potentially be effective.¹²² By distancing the

113. Yeager, *supra* note 6.

114. *See supra* notes 99–103.

115. In contrast, domestic violation sentencing often includes mandated batterer intervention classes aimed at resolving the causes of violence, including aggression, jealousy, poor parenting skills, and low self-esteem. Larry W. Bennett & Oliver J. Williams, *Intervention Programs for Men Who Batter*, in SOURCEBOOK ON VIOLENCE AGAINST WOMEN 261, 263 (Claire M. Renzetti et al. eds., 2001); Alan Rosenbaum & Penny Leisring, *Group Intervention Programs for Batterers*, in DOMESTIC VIOLENCE OFFENDERS: CURRENT INTERVENTIONS, RESEARCH, AND IMPLICATIONS FOR POLICIES AND STANDARDS 57, 58–63 (Robert A. Geffner & Alan Rosenbaum eds., 2001).

116. *See supra* note 55.

117. Purser, *supra* note 87.

118. *Id.* (“[B]anishment may set up an offender for failure when the justice system should encourage success.”).

119. Burke, *supra* note 9.

120. *See sources cited supra* note 37.

121. *See, e.g.*, Eric Stirgus, *Clayton Tries to Evict Troublesome Teens*, ATLANTA J.-CONST., Nov. 18, 2006, at A1 (referencing a Clayton County juvenile court judge who banished a fifteen year-old girl from the subdivision where she was temporarily living with a relative because she beat up another teen).

122. Debra Carlton Harrell, *Tlingit Man Says He’s Transformed After Year Alone: The Lessons of Banishment*, SEATTLE POST INTELLIGENCER, Jan. 15, 1998, at A1, available at 1998 WLNR 1996655. After pleading guilty to assault and robbery at age sixteen, a tribal court in Washington sentenced the offender to eighteen months banishment on several remote Alaskan islands with minimal provisions. *Id.*

offender from the “wrong crowd”¹²³ they have been associating with (often the complaint of parents),¹²⁴ the temptation to reoffend would theoretically be reduced.¹²⁵

Banishment is often used in offenses involving sale or possession of drugs.¹²⁶ The goal is to separate the offender from his customers or the dealers he usually purchases from, which would theoretically make it difficult for him to restart his criminal enterprise without those connections.¹²⁷ However, to a possibly unemployed offender in a new place, selling drugs loses none of its original attractiveness—fast, easy money with little effort.¹²⁸

Similarly, the offenders banished for drug possession who have a genuine addiction problem will not be helped by this “geographic cure.”¹²⁹ Although criminals convicted of drug crimes are often touted as the ideal candidates for banishment,¹³⁰ the supporting arguments fail to withstand critical scrutiny. The public will likely support banishment to rid their community of drug problems,¹³¹ but banishment is not an effective approach in these cases.

123. RICHARD M. LERNER, *THE GOOD TEEN: RESCUING ADOLESCENCE FROM THE MYTHS OF THE STORM AND STRESS YEARS* 6 (2007).

124. JEFFREY JENSEN ARNETT, *INTERNATIONAL ENCYCLOPEDIA OF ADOLESCENCE* 375 (2007). One of the main purposes of probation, where banishment is often included, is to distance the offender from criminal temptations or undesirable influences. *Inman v. State*, 183 S.E.2d 413, 415 (Ga. Ct. App. 1971).

125. ROBERT V. HECKEL & DAVID M. SHUMAKER, *CHILDREN WHO MURDER: A PSYCHOLOGICAL PERSPECTIVE*, at xvi (2001) (“The juvenile justice system has a much higher rate of success than the adult correctional system.”).

126. *See, e.g.*, *Adams v. State*, 527 S.E.2d 911, 912 (Ga. Ct. App. 2000); *Presha v. State*, 469 S.E.2d 293, 294 (Ga. Ct. App. 1996).

127. Burke, *supra* note 9.

128. Peter Duffy, *Life of Crime, and Time Behind Bars, Inspire a Drug Dealer to Turn Author*, N.Y. TIMES, Apr. 12, 2009, at A24; Dominic Ippolito, *My Life as a Drug Dealer*, NEWSWEEK, Aug. 1, 2005, <http://www.newsweek.com/2005/07/31/my-life-as-a-drug-dealer.html>. In addition, it seems unlikely that the new area would be devoid of a supply of customers, given the drug problem Georgia is currently facing, especially with methamphetamine. EDWARD WILLETT, *SPEED* 29–30 (2008); HERBERT C. COVEY, *THE METHAMPHETAMINE CRISIS: STRATEGIES TO SAVE ADDICTS, FAMILIES, AND COMMUNITIES* 36–37 (2007).

129. THOMAS NORDEGREN, *THE A–Z ENCYCLOPEDIA OF ALCOHOL AND DRUG ABUSE* 307 (2002); JAMES GRAHAM, *VESSELS OF RAGE, ENGINES OF POWER: THE SECRET HISTORY OF ALCOHOLISM* 19, 70 (1994).

130. *See sources cited supra* note 63.

131. This inference is drawn from public support for banishing sex-offenders. Damien Cave, *Roadside Camp for Miami Sex Offenders Leads to Lawsuit*, N.Y. TIMES, July 10, 2009, at A14 (“These laws are always universally popular The public loves it.”) (internal quotation marks omitted).

B. *Strengths of Banishment*

Banishment is less expensive than other forms of punishment, especially incarceration.¹³² While some offenders need to be incarcerated because of the severity of their crimes, others merely need to be separated from the area and the victim. In this way, banishment is similar to incarceration because it also removes the offender from his home base for a certain period of time but has the additional benefit of conserving valuable state and county resources.¹³³ However, because banishment means that the offender will be serving his probation or parole outside the area, the sentencing court has no way to monitor his progress.¹³⁴ There are also concerns that courts may be imposing banishment where it is not appropriate—motivated by the cost savings and efficiency.¹³⁵

Another economic benefit of banishment is that the offenders are allowed to continue working and therefore can pay child support or alimony.¹³⁶ A fear of losing their only means of financial support—the offender’s paycheck—often keeps victims in abusive situations.¹³⁷ Therefore, after the incident, that fear can be alleviated while still keeping the victim out of danger by utilizing banishment.

When given a choice between banishment and incarceration, offenders often choose banishment.¹³⁸ In 2006, a teacher convicted of abusing one of his students was given the option of serving his

132. GA. DEP’T. OF CORR., FY2009 COST OF ADULT OFFENDER SANCTIONS (2010) <http://www.dcor.state.ga.us/pdf/CorrectionsCosts.pdf> (reporting that the average annual incarceration cost per offender in Georgia is \$16,502, compared to \$377 per year for an offender on probation, which is usually how banishment is implemented).

133. *See id.*

134. *State v. Doughtie*, 74 S.E.2d 922, 924 (N.C. 1953).

135. *Alhusainy v. Superior Court*, 48 Cal. Rptr. 3d 914, 917 (Cal. Ct. App. 2006).

136. *Burke*, *supra* note 9.

137. Judith A. Wolfer, *Top 10 Myths about Domestic Violence*, 42 MD. B.J. 38, 40 (June 2009); Whitley R.P. Kaufman, *Self Defense, Imminence, and the Battered Woman*, 10 NEW CRIM. L. REV. 342, 348 (2007); LYN SHIPWAY, DOMESTIC VIOLENCE: A HANDBOOK FOR HEALTH PROFESSIONALS 10 (2004).

138. *Hart v. State*, 613 S.E.2d 107, 111 (Ga. Ct. App. 2005) (noting that the defendant suggested banishment in an effort to avoid more jail time); *Burke*, *supra* note 63 (“[D]efendants have said that they would go to trial before they would agree to be banished, but . . . all backed down.”); *see Sager*, *supra* note 107.

sentence in prison or being exiled to Canada, where his family resided.¹³⁹ The offender chose to leave the country.¹⁴⁰

C. Focus on Alternative Methods

As discussed above, protective orders are often used to protect victims from their offenders. Although they theoretically accomplish the same goal as banishment, these orders suffer from several weaknesses that ultimately put the victim at risk.

First, to obtain a protective order, the victim is usually required to petition the court.¹⁴¹ This is dangerous because the offender considers it the victim's fault that he is not allowed to go to his home or see his children, increasing feelings of anger and resentment.¹⁴² After charges are filed, prosecutors can request a "no-contact" order,¹⁴³ which separates the victims from the process because the prosecutors, not the victims, are the ones requesting the order.

Second, a protective order is only effective if the consequences have a sufficient deterrent influence on the offender.¹⁴⁴ For some offenders, the order is "just a piece of paper."¹⁴⁵ This is especially the case when offenders think they have nothing to lose—as in instances when offenders threaten suicide.¹⁴⁶ In *Terry*, the offender was under a

139. Lewington & Cheney, *supra* note 42.

140. *Id.* The sentence led to a public outcry in Canada, and the offender was promptly arrested upon entering the country and later deported. Omar El Akkad, *Canada Seeks to Expel U.S. Sex Offender*, GLOBE & MAIL (Toronto, Can.), Oct. 27, 2006, at A1, available at 2006 WLNR 18647270; Canadian Press, *Sex Offender Ordered Out but Deportation is Delayed as Former Teacher Launches Appeal*, GLOBE & MAIL (Toronto, Can.), Dec. 19, 2006, at A9, available at 2006 WLNR 22087085.

141. GA. CODE ANN. § 19-13-3(a) (2003).

142. Rosenfeld, *supra* note 70, at 258 (citing Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65–66 (1991) (describing "retribution assault," in which a batterer attacks his partner to punish her for seeking protection from him in the courts)).

143. Victim advocacy services may assist with this process. Protection Order Advocacy Program, *Protection Orders*, http://protectionorder.org/?page_id=12 (last visited Mar. 17, 2011).

144. Deborah White-Labora, *Every Judge's Nightmare: When a Domestic Violence Case Turns Lethal*, 31-FALL FAM. ADVOC. 36, 39 (2008).

145. In addition, some violations go unpunished, strengthening the offender's disregard for the provisions of the order. Rosenfeld, *supra* note 70, at 258. The psychological impact of domestic violence can also mean that victims do not report violations to law enforcement. *Id.* at 259 (relating the story of a woman who was beaten by her husband and hospitalized, but did not report this as a violation of the protective order she had obtained against him; her husband contacted her numerous times in violation of the order and eventually murdered her at a battered women's shelter).

146. White-Labora, *supra* note 144.

protective order when he kidnapped and assaulted his ex-wife.¹⁴⁷ During the ordeal, Terry held a pair of scissors to his wife's chest, threatening to kill her and then commit suicide.¹⁴⁸ Terry completely disregarded the potential repercussions of violating the order because of his dangerous obsession¹⁴⁹ with his ex-wife.

Third, in most cases the offender has to get fairly close to the victim or the victim's home or workplace, or engage in harassing contact before he can be arrested for violating the order.¹⁵⁰ Therefore, the victim is already in the zone of danger for a period of time before the violation actually occurs.¹⁵¹ This is damaging to the victim's state of mind and sense of well-being, which is what the order is intended to protect, in addition to preventing physical violence.¹⁵²

D. Recurring Concepts

An underlying theme in cases where banishment was inappropriate is that there was no connection between the victim and the offender.¹⁵³ For example, in *Whitehead v. State*,¹⁵⁴ the defendant pled guilty to armed robbery and aggravated assault against two motel patrons.¹⁵⁵ Whitehead was sentenced to prison time as well as banishment from the judicial circuit upon his release on parole.¹⁵⁶

147. Terry v. Hamrick, 663 S.E.2d 256, 259 (Ga. 2008), *cert denied*, 129 S. Ct. 510 (2008).

148. *Id.*

149. *Id.* Terry sent his ex-wife numerous letters from jail, stating, "If [I] can't have [you] nobody can," and also threatening what would happen after he was released, "even if it's after a hundred years." Brief of Respondent-Appellee at *11, Terry, 663 S.E.2d 256 (No. S08A0170).

150. See GA. CODE ANN. § 16-5-95 (2003).

151. Additionally, it may be too late to protect the victim once the violation has occurred. JANE NUSBAUM FELLER, NATIONAL CENTER ON CHILD ABUSE AND NEGLECT, WORKING WITH THE COURTS IN CHILD PROTECTION 29 (1992).

152. Susan Keilitz et al., *Selected Findings and Implications Drawn From: The Effectiveness of Civil Protection Orders reprinted in* JEREMY TRAVIS, LEGAL INTERVENTIONS IN FAMILY VIOLENCE: RESEARCH FINDINGS AND POLICY IMPLICATIONS, AM. BAR ASS'N 47, 47-48 (1998).

153. See, e.g., Krack v. State, 973 P.2d 100, 105 (AK Ct. App. 1999); Dudley v. State, 496 S.E.2d 341, 342 (Ga. Ct. App. 1998) (banishing a former Chief of Police for using pepper spray on arrestees); Whitehead v. State, 429 S.E.2d 536, 537 (Ga. Ct. App. 1993) (armed robbery of motel patrons).

154. Whitehead v. State, 429 S.E.2d 536 (Ga. Ct. App. 1993).

155. *Id.* at 537.

156. *Id.* at 538. The defendant also argued that because the written sentence stated "leave the area of the Southern Judicial Circuit . . . and do not return into said area *at any time*," it constituted banishment for an unlimited duration and was therefore unlawful. *Id.* (emphasis added). When banishment is included in a sentence that also requires incarceration, courts have interpreted the banishment to last

The victims were strangers to the defendant, and because they were staying at a motel, were likely not from the area. Therefore, banishing the defendant from the locality did not serve to protect those outside the locality.¹⁵⁷ In situations like this, separating the offenders from the area does not prevent further criminal behavior¹⁵⁸ or protect the public in general. Especially where crimes such as child molestation¹⁵⁹ or drug offenses¹⁶⁰ are at issue, offenders likely have no particular attachment to a specific location. In these situations banishment is not appropriate because it does not recognize the fact that geography has little connection to the crime; it only serves to move the crime to another, far away dark alley.¹⁶¹ If the location did not contribute to the crime in some way, changing the location will not prevent the future crime.

III. GEORGIA SHOULD ADOPT A MULTI-FACTOR APPROACH

Banishment should only be used in the most egregious domestic violence cases to protect the victim. Domestic violence involves a close social and intimate relationship between the victim and the offender.¹⁶² In many cases, the offender abuses the victim repeatedly.¹⁶³ The basis for the violence is the offender's connection to the victim, which manifests in extreme jealousy¹⁶⁴ and abusive

only as long as the complete sentence. For example, in *Whitehead*, the banishment was not "forever" because the court held that it was only in effect for the twenty-year sentence, only six years of which were to be served on probation. *Id.*; see also *Wyche v. State*, 397 S.E.2d 738, 739 (Ga. Ct. App. 1990); *Parrish v. State*, 355 S.E.2d 682, 683 (Ga. Ct. App. 1987).

157. After committing armed robbery, the defendant was arrested in his car at another motel, possibly suggesting that he planned to commit a similar crime. *Whitehead*, 429 S.E.2d at 537. If *Whitehead's* preferred targets were motel guests (perhaps because the victims would not remain in the area, reducing the chance he would be apprehended), shifting him to another place may only change the scenery for his exploits.

158. *Krack*, 973 P.2d at 105.

159. See discussion of *Krack supra* Part II.A.

160. See *supra* Part II.A for discussion of banishment for drug-related crimes.

161. Sager, *supra* note 107, at C8.

162. See sources cited *supra* note 64.

163. EVE S. BUZAWA & CARL G. BUZAWA, DOMESTIC VIOLENCE: THE CRIMINAL JUSTICE RESPONSE 45 (3d ed. 2003) (1994) (citing STRAUS ET AL., BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY (1980) ("[A]bout two-thirds of batterers repeat their assault within 1 year, averaging about six new assaults.")).

164. DEBORAH LOCKTON & RICHARD WARD, DOMESTIC VIOLENCE 17-18 (1997); KATHLEEN

incidents. Therefore, removing the offender from the area, and out of close proximity of the victim, will prevent violence toward the victim, while the offender is of comparatively little danger to the citizens in the new area.

There are several key factors that courts should examine to determine whether banishment is appropriate in a situation. The absence of a factor would not necessarily mean that banishment would be inappropriate because other factors may weigh strongly toward the application of banishment.¹⁶⁵

A preliminary concern with banishment is whether the restriction is sufficiently connected to the crime. If not, the use of banishment is not justified. In *People v. Coleman*,¹⁶⁶ the court affirmed Coleman's banishment from New York City because there was "a sufficient nexus between the geographic restriction and victim safety as well as recidivism."¹⁶⁷ The defendant was a resident of a different state who came to New York because of his connection to the victim.¹⁶⁸ Banishing the defendant from all of New York City was reasonable because it gave the victim freedom to change jobs or residences without being concerned about the possibility of encountering the offender.¹⁶⁹ By prohibiting the defendant from entering the city, the court was able to hopefully prevent similar confrontations in the future.¹⁷⁰

Under the first factor, courts should consider the character and length of the parties' relationship. For example, a long-term relationship with multiple abusive incidents would be more appropriate for banishment than when an offender was only briefly acquainted with the victim and there was a single abusive incident.

FULLERTON BERNHARD, *JEALOUSY: ITS NATURE AND TREATMENT* 31 (1986) ("Criminologists throughout the world find that jealousy is a leading cause or motive for homicide, wife-battering, and domestic violence in general.")

165. *See, e.g., infra* note 172.

166. *People v. Coleman*, 812 N.Y.S.2d 857 (N.Y. Sup. Ct. 2006).

167. *Id.* at 861 n.6.

168. *Id.* at 858 n.1.

169. *Id.* at 859.

170. The court's reasoning was based in part on the fact that the defendant had previously violated multiple protective orders, which demonstrates that another incident would have been likely to occur if the defendant was not barred from entering the area where the victim lived and worked. *Id.* at 860.

When a pattern of abuse is evident in a relationship that course of conduct is likely to continue as long as the victim is present.¹⁷¹ Therefore, removing the offender from the location through banishment may prevent future abuse against the victim.

Second, the court should consider the severity of the crime and the degree of the victim's injuries. The extent of the injury and magnitude of the crime should aid the court in determining whether the victim is in such danger that banishment would be appropriate. However, even when the victim's physical injuries are fairly minor, banishment may still be suitable when other factors are present in the scenario.¹⁷²

A third factor takes account of whether the victim's fear of the offender circumscribes her life. When a victim has already gone through the process to obtain a protective order that failed to protect her, she may feel unsafe as she moves through her daily activities. In many domestic violence situations, the offenders' abuse is motivated by irrational jealousy,¹⁷³ which leads them to obsessively stalk their victims even after the relationship is over.¹⁷⁴ For example, in *Terry*, the defendant continued to send the victim and their son "boxes full" of letters from jail, despite numerous requests to stop.¹⁷⁵ If the victim's quality of life is severely diminished by the offender, banishment would be an appropriate way to restore her freedom and prevent further contact.

Fourth, the court should consider whether the victim previously obtained a protective order against the offender. If so, this prior order would demonstrate that the first level of punishment was not adequate to deter the offender. In *Coleman*,¹⁷⁶ the defendant had violated several protective orders—which was one of the reasons that

171. See *supra* note 71 and accompanying text.

172. See, e.g., *Terry v. Hamrick*, 663 S.E.2d 256 (Ga. 2008), *cert. denied*, 129 S. Ct. 510 (2008) (upholding banishment where the defendant showed a continuing obsession with the victim, even though she suffered only slight physical injuries during the kidnapping).

173. MARGI LAIRD MCCUE, *DOMESTIC VIOLENCE: A REFERENCE HANDBOOK* 7, 11, 59 (2d ed. 2008).

174. Buzawa & Buzawa, *supra* note 163, at 116 ("[V]ictims . . . related how they were terrorized even after restraining orders were imposed and . . . continued to receive harassing mail and calls even after the attacker was incarcerated.").

175. Brief of Respondent-Appellee at *8, *9 n.3, *Terry*, 663 S.E.2d 256 (Ga. 2008) (No. S08A0170).

176. *People v. Coleman*, 812 N.Y.S.2d 857 (N.Y. Sup. Ct. 2006).

led the court to affirm his banishment.¹⁷⁷ In some domestic violence situations the offenders likely will not be given lengthy prison sentences but instead will have to complete probation,¹⁷⁸ so banishment could function as an enhancement to the sentence.

Another factor is the offender's past criminal history. If there is no prior criminal conduct, it is more likely that the offender's violent tendencies are only expressed in connection with the victim.¹⁷⁹ In addition, an offender with a criminal record is more likely to repeat the abuse¹⁸⁰ and therefore poses a greater risk of future danger for the victim. By examining the offender's prior record, the court can more accurately determine whether banishment is appropriate.

A general area of concern is determining whether the victim is in such serious danger of being harmed by the offender that banishment is reasonable. This could be shown by a trend of escalating violence¹⁸¹ or threats made by the offender. The Georgia Court of Appeals, in *Wilson v. State*,¹⁸² affirmed banishment where the defendant had initially made harassing phone calls to the victim and her family, which eventually culminated in threats to kill the victim's child.¹⁸³ In *Alhusainy v. Superior Court*,¹⁸⁴ the offender was arrested for attacking his daughter and was banished from the state of California for ten years.¹⁸⁵ Alhusainy had a history of abusing his family, and his wife had obtained an emergency protective order the

177. *Id.* at 860–61.

178. See ELAINE WEISS, FAMILY & FRIENDS' GUIDE TO DOMESTIC VIOLENCE: HOW TO LISTEN, TALK, AND TAKE ACTION WHEN SOMEONE YOU CARE ABOUT IS BEING ABUSED 89 (2003).

179. RICHARD L. DAVIS, DOMESTIC VIOLENCE: FACTS AND FALLACIES 19 (1998) (citing a study where most of the offenders did not have a prior criminal record, which "'indicat[ed] [that] . . . [the] offenders [were] not deviant outside of the family'").

180. LOCKTON, *supra* note 164, at 83–84 (1997) ("[A]busers without criminal histories . . . re-abused less than those with prior . . . criminal histories. . . . 'It may be that most male abusers do not have criminal records, but the vast majority brought to court by their victims for [protective orders] do.'").

181. SHIPWAY, *supra* note 137, at 178 ("It is extensively documented that over time domestic abuse and violence escalate in both frequency and severity . . .").

182. *Wilson v. State*, 260 S.E.2d 527 (Ga. Ct. App. 1979).

183. *Id.* at 529–30 (banishing the defendant from Hall County, Georgia as a condition of a suspended sentence).

184. *Alhusainy v. Superior Court*, 48 Cal. Rptr. 3d 914 (Cal. Ct. App. 2006).

185. *Id.* at 916–19 (striking the banishment condition because the defendant was required to flee the state and leave his sentencing frozen in limbo unless he returned to California and was caught).

previous year.¹⁸⁶ More recently, the defendant had threatened to kill his children and wife if she sought a divorce.¹⁸⁷ Though the court vacated the sentence,¹⁸⁸ Alhusainy's banishment was appropriate because he had repeatedly abused his family and threatened murder, placing the victims in a dangerous and volatile situation.¹⁸⁹ It was also more equitable to make the defendant leave the area because his ex-wife was raising their four children there.¹⁹⁰

A. Case Applications

Two recent cases demonstrate the potential benefits of the multi-factor approach proposed in this Note.¹⁹¹ Both have similar factual scenarios, but the courts reached different results over the appropriateness of banishment. The Wyoming court's rejection of banishment in *Crabtree v. State*¹⁹² represents the majority view that banishment is never acceptable.¹⁹³ However, the Georgia court's affirmance of banishment in *Terry v. Hamrick*,¹⁹⁴ a nearly identical case, supports the theory that banishment can be appropriate in certain domestic violence situations.

In *Terry*, the offender's ex-wife had previously obtained a protective order,¹⁹⁵ which Terry violated by kidnapping and assaulting her.¹⁹⁶ There was no showing that Terry was dangerous in any way to other people besides his wife. While the victim suffered great emotional harm when the defendant abducted her,¹⁹⁷ she

186. *Id.* at 916.

187. *Id.*

188. However, the court overturned the banishment on procedural grounds. *Id.* at 919 (noting also that public policy prohibits banishment from the entire state). The trial court had instructed the defendant to leave the state immediately (prior to his sentencing hearing) and prohibited him from re-entering California. *Id.* at 916–17. Because he was required to vacate the area prior to sentencing, he was essentially forced to become a fugitive from justice, which led the court to issue a bench warrant for his arrest. *Id.* The court held that this scenario was improper and overturned the condition. *Id.* at 917.

189. *Id.* at 916.

190. *See* Alhusainy v. Superior Court, 48 Cal. Rptr. 3d 914 (Cal. Ct. App. 2006).

191. *See* discussion *supra* Part III.

192. *Crabtree v. State*, 112 P.3d 618 (Wyo. 2005).

193. *See supra* notes 6–8.

194. *Terry v. Hamrick*, 663 S.E.2d 256 (Ga. 2008), *cert. denied*, 129 S. Ct. 510 (2008).

195. *Id.* at 259.

196. *Id.*

197. Brief of Respondent-Appellee at *6, *8, *Terry*, 663 S.E.2d 256 (No. S08A0170).

suffered only minor physical injuries,¹⁹⁸ so a long prison term would have been unlikely.¹⁹⁹ The court's goal here should be to protect the victim while ensuring that the defendant receives a sentence proportionate to the crime—a sentence that is tailored to the situation involved. The unique feature of this case was that Terry was banished from most of Georgia,²⁰⁰ but the court considered the victim's freedom to live her life without fear, and still found the condition reasonable.²⁰¹ Through his actions, Terry revealed that his ex-wife would not be adequately protected by a protective order. Here the factor approach establishes that banishment was appropriately used as the next level of severity after a protective order.

In *Crabtree*,²⁰² the defendant was convicted of felony family violence battery and banished from Natrona County, Wyoming.²⁰³ The defendant and the victim had been romantically involved for four years, and the relationship was often violent.²⁰⁴ Terry and his ex-wife had a similarly long and tumultuous history.²⁰⁵ As in *Terry*, the length and negative character of the relationship supports the use of banishment under the first factor.

During the attack the defendant pushed the victim down and bit her several times, but apparently the victim did not suffer any serious physical injury.²⁰⁶ This incident was the defendant's third conviction of battery against a household member, which elevated the charge to a felony.²⁰⁷ The *Terry* victim suffered similarly minor physical injuries,²⁰⁸ but banishment was appropriate because the other factors

198. *Id.* at *10.

199. See WEISS, *supra* note 178 (“[L]ess than two percent of all abusers ever serve jail time.”); Lisa G. Lerman & Naomi R. Cahn, *Legal Issues in Violence Toward Adults in CASE STUDIES IN FAMILY VIOLENCE* 97 (Robert T. Ammerman & Michel Hersen eds., 2d ed. 2000).

200. *Terry*, 663 S.E.2d at 258 (noting banishment from all but one Georgia county).

201. *Id.* at 259; see Brief of Respondent-Appellee at *9, *10, *Terry*, 663 S.E.2d 256 (No. S08A0170).

202. *Crabtree v. State*, 112 P.3d 618 (Wyo. 2005).

203. *Id.* at 620.

204. *Id.* at 619.

205. *Terry*, 663 S.E.2d at 259 (“[F]or years Terry had followed a violent course of conduct toward his ex-wife.”).

206. See *Crabtree*, 112 P.3d at 619.

207. *Id.* at 619.

208. Brief of Respondent-Appellee at *10, *Terry*, 663 S.E.2d 256 (No. S08A0170).

in the analysis support its application. Here the totality of the circumstances leads to the same result.

Crabtree had previously been arrested for attacking the victim and was under a protective order when the abuse at issue occurred.²⁰⁹ The court noted that the most recent attack was motivated by the defendant's anger with the victim regarding his related legal problems.²¹⁰ By violating the order and physically abusing his girlfriend, the defendant showed the court that the customary protective measures implemented in such cases would not deter future violence. As the court stated in *Terry*, "[T]he very facts of this case show the inefficacy of such orders as applied to [the defendant]."²¹¹ This conduct supported use of banishment under the second factor in both cases. There is little detail in the *Crabtree* case regarding the victim's fear of the defendant, but she had applied for a protective order,²¹² which implies a degree of apprehension under the third factor.

Banishment should not replace incarceration, but banishment should be used instead when incapacitation is not (or is no longer) necessary to punish the offender and protect the public.

GOING FORWARD

Banishment has a long history in the United States and throughout the world.²¹³ Although the majority of courts prohibit its use, banishment retains value as a punitive tool in certain situations, particularly where the offender's relationship to the victim is what drives the crime. In cases like those described in the previous section,²¹⁴ standard criminal justice methods have been ineffective, as evidenced by the offenders' violations of protective orders. When typical approaches are unsuccessful, courts should be open to

209. *Crabtree*, 112 P.3d at 619.

210. *Id.* at, 619.

211. *Terry*, 663 S.E.2d at 259.

212. *Crabtree*, 112 P.3d at 619.

213. See discussion *supra* Part I.A.

214. E.g., *Terry*, 663 S.E.2d 256; *Crabtree*, 112 P.3d 618.

adopting different tactics. Georgia courts are currently pursuing this approach through the use of banishment.²¹⁵

Banishment should be limited to a certain category of domestic violence cases²¹⁶ through use of a multi-factor approach, which would reduce the negative ramifications of banishment that are prevalent when it is applied indiscriminately. The factors include: the character and length of the parties' relationship, the severity of the crime as well as the degree of the victim's injuries, how the victim's fear of the offender circumscribes her life, and lastly, whether the victim previously obtained a protective order against the offender.

The unique attributes of domestic violence render it an ideal area for applying banishment, and by utilizing this multi-factor approach, Georgia courts can limit its use to the most egregious cases, in which the victim is at a significant risk of future attack.

215. *See supra* note 2.

216. For example, banishment should be limited to only the most egregious repeat domestic violence cases. *E.g., Terry*, 663 S.E.2d 256.

