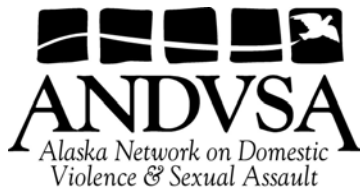


Women's Legal Rights Handbook

2007 Edition



WOMEN'S LEGAL RIGHTS HANDBOOK

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The Alaska Network on Domestic Violence & Sexual Assault and the Alaska Joint State-Federal Courts Gender Equality Task Force first updated this handbook in 1998. This sixth edition has been revised to reflect changes in the law since the last printing in 2004. The Alaska Network on Domestic Violence & Sexual Assault's Legal Advocacy Project will continue to update the handbook on a regular basis.

This handbook is designed to inform women in Alaska about the law and how it applies to them, but it is not intended to serve as legal advice nor to replace the services of an attorney.

The information in this handbook is based upon the law in effect on January 1, 2007. However, laws are subject to change by the courts and the legislature. For advice about a specific legal problem or for more in-depth information, you should contact an attorney.

Any corrections or suggestions to the handbook should be sent to Kari Robinson with the Legal Advocacy Project at 130 Seward Street Suite 209, Juneau, AK 99801 907-586-5643 ext. 24. Initial copies of the handbook are free and can be requested from the Legal Advocacy Project.

This handbook can also be found online at www.andvsa.org

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Chapter One

INTRODUCTION

Alaska has passed a state equal rights amendment guaranteeing Alaskan women the legal right to be treated equally. However, women often face problems exercising this right: they may have difficulty obtaining work because of their sex; they may be unable to collect support from former husbands; they may not obtain a fair property settlement when leaving a non-marital relationship; or they may face discrimination or harassment in their workplace.

This handbook outlines legal rights affecting women in various areas. Be aware, however, that the law can change and is sometimes difficult to interpret. If you have a legal problem, try to consult an attorney or government agency.

SOURCES OF YOUR RIGHTS

The law concerning your rights is a combination of:

- the Constitutions of the United States and the State of Alaska;
- statutes passed by federal or state legislatures;
- regulations passed by government agencies;
- court rules enacted by the courts; and
- federal and state case law.

Examples of the above include:

- Title VII of the Civil Rights Act of 1964, a federal law prohibiting discrimination in employment.
- The 1972 amendment to the Alaska Constitution that includes an equal rights provision that reads: "No

person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin."

- The federal Violence Against Women Act and the Alaska Domestic Violence Prevention and Victim Protection Act of 1996.
- Regulations passed by the Department of Health and Social Services regulating day care facilities.
- Alaska Civil Rule 90.3, which establishes standard rules and formulas for child support in divorce and child custody cases.

CONSTITUTIONS, STATUTES, RULES, REGULATIONS, AND COURT DECISIONS

Courts interpret federal and state laws, regulations, and constitutions in individual cases. Much law is set by the

written opinions of judges at the Supreme Court and Court of Appeals levels of the legal system. The decisions or cases are published in books called reporters. You can check statutes, rules, regulations, constitutional provisions, or cases yourself if there is a state law library in your area. Ask the librarian for assistance.

Relevant statutes, regulations, rules, and cases are cited throughout this book. The following abbreviations are used:

AS- Alaska Statutes
 AAC- Alaska Administrative Code
 USC- United States Code
 CFR- Code of Federal Regulations
 ARCP- Alaska Rules of Civil Procedure
 ARE- Alaska Rules of Evidence
 P.2d- Pacific Reporter (Second)

The numbers before and after the abbreviations refer to chapters and sections of the laws. The citation for cases gives the names of the parties, volume, reporter, page number, state, and year of decision, as in *Smith v. Jones*, 830 P.2d 437 (Alaska 1992).

CIVIL AND CRIMINAL LAW

The law is divided into two broad areas:

- civil law, where persons or institutions sue each other (such as divorce/child custody actions,

domestic violence protective orders); and

- criminal law, where the government prosecutes someone for committing a crime.

Civil cases result in damages or a determination of each party's rights. Criminal cases result in fines, probation, or jail sentences. Some actions involve both civil and criminal law.

FEDERAL AND STATE LAW

Federal law involves constitutional guarantees and statutes. Federal statutes do not usually govern family life. The federal government generally leaves the areas of inheritance, divorce, parent and child relationships, and juvenile delinquency to the state.

State laws vary. This is particularly true concerning marriage and family life. Do not assume that the law of another state applies in Alaska or that Alaska laws apply in other states.

TRIBAL LAW AND COURTS

Native Alaskan tribes have distinct legal rights and powers. For example, the federal Indian Child Welfare Act [25 U.S.C. §1901 *et seq.*] limits the State's intervention and powers in cases involving the placement or adoption of Native Alaskan children. Tribes also

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have power to decide issues involving tribal members, including regulation of domestic relations among members, rules of inheritance for members, and determination of tribal status. [*Matter of F.P.*, 843 P.2d 1214 (Alaska 1992).]

The authority of Alaska tribes and tribal courts to decide issues involving non-tribal members and property issues is unsettled. Legal disputes involving Alaska Natives or their lands may be subject to tribal custom, law, or rules that apply with the same force and effect as state or federal laws.

GOING TO COURT

Where possible, it is advisable to have the assistance of an attorney if you are sued or wish to sue someone. [*See Chapter Two for more information.*] The Alaska Court System has many handbooks on rights, remedies, and use of the court system that you might find helpful. The handbooks are free and available at any state court. Some of the handbooks that are available include:

- What is a Guardian Ad Litem?
- Child in Need of Aid Proceedings
- Mental Health Commitments
- Misdemeanor Arraignments
- Depositing Your Will
- Court Administered Child Custody/ Visitation Investigations

- Legal Resources Information Pamphlet
- Understanding Alaska's Domestic Violence Protective Order Process
- Teaching Kids About Courts: Educational programs for students sponsored by the Alaska Court System

FAMILY LAW SELP-HELP CENTER

You can access the Family Law Self-Help Center (FLSHC) providing information, court forms, and assistance on how to navigate the legal system for the general public on the topics of divorce, dissolution, child custody, and child support.

Chapter Two

LEGAL REPRESENTATION

Women with legal problems should consult with an attorney if possible. If the legal problem is complex, she may need to retain an attorney to represent her. This is the ideal; however, there are circumstances (usually lack of money) that may force a woman to represent herself.

When do I need an attorney?

The best time to see an attorney is before a problem occurs – not when you are in legal trouble. Preventative law can save time, trouble, and money. Many situations involving legal rights and responsibilities can be handled without the assistance of an attorney. However, if you are about to undertake a major obligation or if circumstances are confusing, consult an attorney. An attorney can analyze the legal implications of a situation, offer advice, and decide how best to protect your rights.

To help you decide if you need an attorney, ask yourself these questions:

- What is at stake?
- What are the consequences if the problem is ignored?
- Are there other ways to solve the problem?
- How much is it likely to cost to hire an attorney?
- Am I knowledgeable about the law

governing this problem?

Some of the circumstances that may require professional legal assistance are:

- buying or selling real estate;
- major financial transactions;
- signing a lease or contract with major financial considerations;
- marriage, divorce, child custody, or adoption;
- if you are involved in a lawsuit;
- if you are arrested or charged with a crime;
- starting or closing a business;
- drafting a Will or other estate planning;
- if you have tax concerns or financial problems;
- when you have a serious accident; and
- when you make appearances, applications or appeals to government agencies or boards.

Why can't I handle my own legal problems?

You may represent yourself in court and handle your own legal matters. Self-help "kits," pro se packets, and preprinted forms are sometimes available. However, these items may not consider individual needs, differences, and complications.

Many laws are complex and are frequently changed. Attorneys are trained to explain the law, to provide legal assistance, and to be aware of court procedures, filing requirements, deadlines, and other details which a non-attorney could easily overlook. This role is important since judges and court personnel are not allowed to give you legal advice.

REPRESENTING YOURSELF

If possible, make an appointment with an attorney for a consultation. Some attorneys give reduced rates for the first half hour or hour consultation. If you decide to pay for a short consultation, try to prepare for it in advance. Think about the questions that are most important to ask. You may want to prepare notes to take with you.

One of the things to keep in mind if you must represent yourself is to put things in writing. Keep notes on conversations

and phone calls, including dates, times, names, and summaries of conversations. Follow-up with a letter whenever possible .

Keep letters short, concise, and businesslike. If possible, use plain businesslike stationery. Keep copies of all correspondence. Keep copies of information that may be useful such as receipts, tax records, and licenses.

If you need something done by a certain time, set a clear deadline in a letter. You may want to send letters by certified mail if you need to have a record that they were received.

Be punctual and businesslike when you meet with people. If possible, arrange childcare so you are able to give your full attention to the attorney. Prepare for meetings and think about which documents you may need to have with you.

Representing yourself is no substitute for having an attorney represent you. If at all possible, make arrangements to get legal counsel. If you cannot pay for an attorney, you may qualify for free help from Alaska Legal Services. [*See the Resource Directory at the back of this handbook for the office nearest you.*] You also should check whether you or a relative is entitled to legal help through a union benefit plan. You might consider

borrowing money to ensure that you are well represented.

FAMILY LAW SELF-HELP CENTER

The Family Law Self-Help Center is a free statewide public service provided by the Alaska Court System dedicated to helping self-represented people achieve a better understanding of family law procedures, increasing access to family law courts, and facilitating quicker resolution of family law matters. The Center also provides referrals to social service and legal organizations and government agencies. The following services are available:

- Self-Help Center Website:
www.state.ak.us/courts/selfhelp.htm
The website provides comprehensive information about divorce, dissolution, child custody, child support, and paternity. The page is easy to use and has detailed information and downloadable forms and instructions for virtually all commonly experienced situations.
- Statewide Telephone Helpline:
907-264-0851 / 1-866-279-0851
The statewide Helpline is available to anyone without a lawyer and strives to provide appropriate legal education to help people help themselves. In a typical call, the facilitator first explains that the

Center can provide legal information, not legal advice or strategy, and confirms that there is no attorney representing the caller. The facilitator then asks the caller basic information to determine the type of case, the procedural posture, and identify what the caller is trying to accomplish. The facilitator will provide background information about the issue at hand, present options, and discuss specific forms. If the person needs additional assistance, the facilitator will schedule a follow-up call. The facilitator cannot review forms for accuracy or completeness.

- Free Self-help Computer/Printer Workstations:
In cooperation with Alaska Legal Services Corporation, the Family Law Self-Help Center has deployed seven workstations at various courts for use by self-represented people in any type of civil case. These workstations provide access to unlimited internet service, Microsoft Word and Excel software, and telephones with local access and pre-programmed speed dialing to relevant statewide providers. The self-help workstations are located in Anchorage, Fairbanks, Juneau, Ketchikan, Kenai, Kodiak, and Palmer.

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How can I find an attorney?

There are several ways to locate an attorney:

- If you know an attorney, ask for a recommendation to an attorney who handles the type of case you have.
- Ask a friend who has had a similar case to recommend the attorney they used.
- Check the Yellow Pages of the telephone directory under Attorneys Fields of Practice to locate an attorney who works in the area of law you need.
- Contact the Alaska Bar Association to obtain a list of attorneys who belong to a particular section of the Alaska Bar Association that deals with your type of case, e.g. family law or bankruptcy.

The Alaska Bar Association also provides a service called Lawyer Referral. [See the Resource Directory at the end of this handbook for contact information.] This service will give you the names of three attorneys who consider referrals of the kind of case you have and who guarantee to charge a set fee for the first half hour of the appointment.

You may find it in your best interest to interview more than one attorney regarding their fee schedule, attitude,

and experience with your particular problem. If you do not feel comfortable with an attorney you have interviewed, it is okay to interview and choose another attorney.

Can I change attorneys?

You have a right to expect competent representation. If you are unhappy with the attorney you chose to handle your case, there are several things you can do:

- Talk with your attorney to express your concerns. You may want to send a letter that outlines your specific complaints. Allow the attorney an opportunity to correct the problem.
- If you are still dissatisfied, you may discharge your attorney. In most instances, you may inform the attorney of your decision to terminate her/his services, and the attorney must then withdraw from representation. In some situations, withdrawal may be obtained only by order of the court. You and your attorney have a contractual relationship. Even if you discharge an attorney, you may have to pay a reasonable amount for the work already done on your case, as well as for costs that have already been incurred.
- If you believe that your attorney has acted improperly, you may contact

the Alaska Bar Association Office for more information about your rights.

LEGAL FEES

When should legal fees and costs be discussed?

It is appropriate and important to discuss fees when you first visit an attorney. You have a right to know how you will be charged, how much the case is likely to cost, and when you have to pay.

Various factors and arrangements may influence the costs of legal services. Your attorney can explain how fees are computed and may outline options available to you. The attorney can sometimes provide a reasonable estimate of the time and costs involved in serving your particular needs.

Your attorney will want you to be satisfied not only with the service provided, but also with the fee you are charged. Candid discussions about fees and your ability to pay will avoid misunderstandings and help you decide if you want to retain the attorney.

Should I expect to pay an initial consultation fee?

Policy and practices vary. Don't hesitate to ask about the initial consultation fee

when calling for an appointment with an attorney. Some attorneys have a policy of "no charge for the initial consultation," while others charge for a client's first visit.

If after an initial visit you decide not to take further action, you are under no obligation to proceed. However, you will be expected to pay for the initial visit unless you are advised or promised otherwise.

Is a written fee agreement necessary?

A clear understanding of fees is important to the attorney-client relationship. No matter which fee arrangement you agree to, the attorney must provide a written agreement if the fee exceeds \$500. An attorney must advise you in writing or if she or he does not have malpractice insurance of a required amount. The attorney must advise you in writing later if that insurance drops below that amount or is terminated. If you have any questions about the written agreement, you should ask questions and clarify them before you sign. You should keep a copy of the signed agreement.

Who is responsible for the fee?

As the client, you are responsible for paying legal fees and expenses. In some court cases, a judge may award a partial

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or full fee to be paid by an opposing party.

When is the fee payable?

In many cases, an attorney will require a deposit before agreeing to handle your matter. Such payment can assure the attorney's availability and may be applied to initial work and expenses. Attorneys must follow strict regulations for the safekeeping and accounting of these deposits and all client funds.

Fee arrangements vary depending on the type of service, personal preferences, and attorney practices and policies. Be sure you understand your options and obligations when your case is first discussed.

What if I think the fee is too high?

If you have questions about a bill, contact your attorney and discuss it. Most attorneys maintain detailed records of time spent and expenses associated with each case and can itemize or thoroughly explain any charges you think are confusing or improper.

Can I do anything to reduce legal expenses?

The following suggestions may help reduce legal costs:

- Gather pertinent information before meeting with your attorney. Write down names, addresses, and telephone numbers of all persons involved in the matter.
- Be organized. Bring letters, documents, and other relevant papers to the first meeting with your attorney. Summarize essential facts. Write down questions you want the attorney to answer.
- Be concise in all interviews with the attorney.
- Answer questions fully and honestly.
- Avoid unnecessary telephone calls to the attorney.
- Be informed and keep your attorney informed. Discuss ways you can help, such as obtaining documents, lining up witnesses or providing other assistance to reduce costs.

If you are getting divorced but have no legal benefits or money, you still should consult an attorney. Ask if the attorney will take your case for future court-ordered attorney fees or go to court to get your spouse to give you money to pay your attorney. The attorney you choose may be willing to wait for a fee at the end of the case if you can help pay costs along the way.

You must have a written fee agreement between yourself and your attorney in the form of a letter or a contract if the

fee exceeds \$500. This agreement can keep you from later having a dispute over your bill. You can tell the attorney not to work more than a specified number of hours and not to run up high costs in your case without telling you what she or he is doing.

Divorce case fees are usually charged by the hour. Personal injury and some employment cases are usually handled on a contingent fee basis, which generally means the attorney receives a portion of any recovery actually received and the client pays the costs of representation.

Some laws, such as the federal Equal Employment Opportunity Act, award attorney's fees if you win. In Alaska, a spouse may have to give the other spouse money for attorney fees in a divorce if that spouse has more assets or earning power. Alaska courts give the winning side an attorney's fee award in some cases. [Civil Rule 82.]

WORKING WITH AN ATTORNEY

Do not be intimidated by your attorney. Do not hesitate to ask questions even if you are embarrassed. Remember, your attorney is there to help you and answer your questions.

Ask what you can do to save money on your legal bill, e.g., gathering your own

bank information, medical records, or employment records. Also, ask the attorney what documents and information you should bring in to the office on your first visit.

Be aware that attorneys charge for their time. You will be billed for the time spent talking with your attorney both in the office and on the telephone. Try to call only when necessary. Ask the attorney's secretary questions that are not legal in nature.

Realize that your attorney only provides legal services. The attorney is not your counselor, parent, minister, etc. Many people have emotional issues associated with their legal problems, especially if they are getting a divorce. Many domestic violence programs and women's resource centers have trained advocates who can help you sort out your feelings and discuss your options.

If you are not happy with the service you are getting from an attorney, you can always fire that attorney and hire another one. Some women stay with attorneys that are not working out for them because they think it will be too expensive to change. In some instances, a woman may be better off making a change in attorneys and incurring the costs associated with the change. If you need to fire your attorney, ask for a copy of your file so that you can give it to

your new attorney.

LEGAL ASSISTANTS/ PARALEGALS

Many attorneys employ legal assistants (also known as paralegals) to help them with their work. Legal assistants cannot represent people in state or federal courts. In some instances, they can represent a client in administrative hearings before the Workers' Compensation Board, Social Security Administration, Wage and Hour Administration, etc. Working with an attorney who has a legal assistant can save you money since the assistant's hourly rate is usually considerably lower than the attorney's hourly rate. Legal assistants are also employed by many governmental agencies.

COMPLAINTS ABOUT ATTORNEYS

Attorneys are required to practice in accordance with the Alaska Rules of Professional Conduct (ethical standards for attorneys). A violation of these rules can subject the attorney to discipline by the Bar Association or the Alaska Supreme Court.

If you think your attorney is not acting in your best interests, you may file a complaint against the attorney with the Alaska Bar Association and they will

review and investigate as needed. [*See the Resource Directory at the end of this handbook for contact information.*] The Bar Association provides a form for you to fill out. Just because you do not like the way things turned out does not necessarily mean that your attorney acted in bad faith or did not serve you as well as possible.

FEE DISPUTES

You may file a complaint (known as a petition) with the Alaska Bar Association if you think you were overcharged by your attorney. The Bar Association has a form to use for filing this petition. An arbitration panel, which is a group of three people (one of whom is not an attorney), will rule on the claim if it exceeds \$5,000. If the dispute involves less than \$5,000, one member of the Panel will hear your case. The decision of the Arbitration Panel is final unless it is appealed in accordance with AS 09.43. The fee arbitration service is provided free of charge to you unless, in an unusual case, it is "complex" arbitration. [Alaska Bar Rules 34-42.]

FUND FOR PROTECTION OF CLIENTS

The Alaska Bar Association administers a Lawyers' Fund for Client Protection to provide reimbursement when an attorney has taken money or property by

dishonesty and there is no other source for reimbursement. You may apply for assistance by filling out an application through the Bar Association. You should first report any dishonest conduct to the Bar Counsel of the Bar Association because, generally, no money will be reimbursed to you until the counsel completes any disciplinary action. [Alaska Bar Rules 45-60.]

Chapter Three

EMPLOYMENT

Employment discrimination is one of the most common complaints in employment disputes. It can include sex discrimination, sexual harassment, age discrimination, religious discrimination, discrimination because of a physical or mental disability, pregnancy discrimination, or discrimination based upon a person's race, ethnicity, national origin, or religion. If you believe that you are a victim of employment discrimination, you should know about the federal, state, and local laws designed to protect you.

In addition to discrimination, other common complaints in employment disputes involve wrongful termination, including breach of contract and breach of the covenant of good faith and fair dealing, wage and hour violations, and violations of whistleblower statutes.

EMPLOYMENT DISCRIMINATION

What is employment discrimination?

Discrimination occurs when an employer treats an employee differently in hiring, firing, paying wages, promotions, work assignments, awarding benefits, or other terms and conditions of employment because of certain attributes of the employee, such as the employee's sex, race, or age.

How can this chapter be helpful?

The following is an overview and general discussion of employment law. If you think that you have been a victim of an illegal employment practice, including discrimination, you should discuss the facts of your situation with

someone who is familiar with these laws. You can contact your human resources or personnel representative, a private attorney through the Lawyer Referral Service of the Alaska Bar Association, and/or one of the local, state, or federal agencies listed at the end of this chapter and in the Resource Directory at the end of handbook. There are important time limits on filing a complaint of employment discrimination. You should file your complaint as soon as possible with one of the local, state, or federal agencies. In general, you must file your complaint within 300 days for the Equal

It is important to contact one of the local, state, or federal agencies as soon as possible to determine your legal rights and options.

Employment Opportunity Commission (EEOC) and 180 days for the Alaska State Commission on Human Rights (ASCHR).

What are the Alaska laws regarding employment discrimination?

Alaska's comprehensive Human Rights Act provides protection from a wide variety of discriminatory practices. It prohibits the following:

- The Alaska Human Rights Act (AS 18.80.220) prohibits discrimination on the basis of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, and pregnancy or parenthood. These are the protected classes under state law.
- Employers may not discriminate in compensation or in a term, condition, or privilege of employment because a person is a member of one of the protected classes, unless the reasonable demands of the job require a distinction. [AS 18.80.220 (a) (1).]
- Labor organizations may not discriminate against members of the protected classes. [AS 18.80.220 (a) (2).]
- Employers, employment agencies or others, such as newspapers, may not advertise jobs in such a way as to discriminate against members of the

protected classes. [AS 18.80.220 (a) (3) & (6).]

- Employers, labor organizations or employment agencies may not retaliate against a person who has opposed practices forbidden under the Human Rights Act. [AS 18.80.220 (a) (4).]
- Employers may not pay women less than men for the same work. [AS 18.80.220 (a) (5).]

Under Alaska law, discrimination is prohibited by any employer (even with only one employee), labor union, or employment agency. However, certain non-profit clubs, including fraternal, charitable, educational, or religious associations or corporations may be excluded from the definition of employer in the statute. [AS 18.80.300.]

What are the federal laws regarding employment discrimination?

The following laws prohibit a variety of discriminatory practices:

- Federal laws, such as Title VII of the Civil Rights Act of 1964;
- the Age Discrimination in Employment Act (ADEA) of 1967;
- the Americans with Disabilities Act (ADA) of 1990;
- the Equal Pay Act (EPA) of 1963;
- the Rehabilitation Act of 1973;

- Title IX of the Education Amendments of 1972; and
- Title VI of the Civil Rights Act of 1964

What is Title VII of the Civil Rights Act of 1964?

This comprehensive Act prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment on the basis of race, color, religion, sex, or national origin by employers with 15 or more employees.

What is the Pregnancy Discrimination Act?

This is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII. Women who are pregnant must be treated in the same manner as other applicants or employees with similar abilities or limitations. An employer cannot refuse to hire a woman because of her pregnancy-related condition as long as she is able to perform the major functions of the job. An employer cannot refuse to hire her because of prejudices against pregnant workers, or the prejudices of co-workers, clients, or

customers. *See Chapter 11 for more information about pregnancy discrimination.*

What is the Age Discrimination in Employment Act (ADEA) of 1967?

This Act protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions, or privileges of employment.

What is the Americans with Disabilities Act of 1990?

Title I of the Americans with Disabilities Act (ADA) protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

What is the Equal Pay Act of 1963?

This Act prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

What is the Rehabilitation Act of 1973?

This Act prohibits employment discrimination on the basis of a handicap in any program or activity that receives federal financial assistance, such as the federal government, state agencies, or federal contractors.

What is Title IX of the Education Amendments of 1972?

This Act prohibits discrimination on the basis of sex in educational programs or activities that receive federal financial assistance.

What is Title VI of the Civil Rights Act of 1964?

This Act prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving federal financial assistance.

Retaliation against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by all of these federal laws.

What happens if the employment practice is found to be discriminatory?

If discrimination is found under either

federal or state law, the employee may be entitled to hiring, promotion, reinstatement, back wages and benefits, and future wages and benefits if she can show a reduction in her earning capacity. Compensatory damages for emotional distress or pain and suffering and punitive damages may also be granted.

There are caps under federal law on the amount of combined future, compensatory, and punitive damages. The caps range from \$50,000 to \$300,000 depending on the size of the employer. In 1997, the Alaska State legislature passed a “tort reform” bill that put caps on compensatory and punitive damages under state law. [AS 9.17.020.] Check with your attorney to find out the possible tax consequences for awards of lost income.

What type of conduct is prohibited under Title VII?

There has been a great deal of publicity regarding sexual harassment and hostile environment. One of the greatest misconceptions in this area concerns the protected classes. If the adverse employment action or harassment is not due to the employee being a member of one of the “protected classes,” the action is not discrimination. (The employer may still be subject to liability for some other illegal employment practice or for breach of its employment policies.) For

example, if a supervisor or employer is abusive to all employees without regard to the employee's race or sex, there may not be a cause of action for discrimination or "hostile environment."

There is developing case law finding liability in situations in which both men and women are working in an abusive environment but women find vulgarities directed at them as offensive sexually, while the men are more tolerant and join with the sexual bantering among men. In *EEOC v. NEA (National Education Association)* female employees sued their employer claiming that a supervisor's behavior (yelling at employees with little or no provocation, engaging in shouting rants, aggressive physical gestures, and barking commands) constituted a hostile work environment. The Ninth Circuit found that while Title VII does not protect against generally brutish or oppressive behavior while at work, the "because of sex" requirement was fulfilled because the evidence in the record showed that his behavior was worse toward women than men.

Who is responsible for enforcing anti-discrimination and other employment laws?

There are local, state, and federal agencies responsible for enforcing anti-discrimination laws and other

employment laws. Usually the state agencies will refer you to the appropriate federal agency when necessary. *See the Resource Directory at the end of this handbook for contact information.*

SEX DISCRIMINATION

What is a sex discrimination claim?

Both federal and state law prohibit discrimination on the basis of sex. For example, under state or federal law a sex discrimination claim could be based on the following: (1) a woman, as a female, is a member of a protected class; (2) she applied for a job [or a promotion]; (3) she was qualified for the job and was rejected; (4) after her rejection, the position remained open and the employer hired men with her qualifications. [*Alaska State Commission for Human Rights v. Yellow Cab*, 611 P.2d 487 (Alaska 1980).]

What is sexual harassment?

Sexual harassment is a form of sex discrimination and is prohibited under both state and federal laws. [*French v. Jadon, Inc.*, 911 P.2d 20 (Alaska 1996); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).] Sexual harassment violates Title VII of the Civil Rights Act of 1964 and AS 18.80.220. Unwelcome sexual advances, requests for sexual favors, and other verbal or

physical conduct of a sexual nature constitute sexual harassment when submission to, or rejection of, this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim and/or the harasser may be a woman or man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, a customer/client of the employer, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to, or discharge of, the victim.
- The harasser's conduct must be unwelcome.
- The harassment must be due to the victim's sex.

If it is safe, it is best for the victim to directly inform the harasser that the conduct is unwelcome and must stop. It

is important to promptly use any employer complaint mechanism or grievance system available if possible.

Gender harassment, whether sexual or not, is unlawful. Harassment based on age, disability, race, or any other protected ground is also unlawful.

The federal Equal Employment Opportunity Commission (EEOC) has issued guidelines to prevent and define sexual harassment as: "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature [that] has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." [29 C.F.R. 1604.11.]

Alaska law requires certain employers to post information on inquiries and complaints concerning sexual harassment. [AS 23.10.440.] Employers with 15 or more employees are required to post a notice, prepared by the State Commission for Human Rights, that:

- states the federal definition of sexual harassment;
- advises employees of the name, address, and telephone number of the state and federal agencies to which inquiries and complaints concerning sexual harassment may

- be made; and
- sets out the deadlines for filing a complaint of sexual harassment with the agencies listed above.

What are the two types of sexual harassment?

“Quid pro quo” and “hostile environment” are the two types of sexual harassment. “Quid pro quo” sexual harassment is the easiest to identify. It occurs when a supervisor who controls an employee’s terms and conditions of employment attempts to exchange benefits at work for sexual favors from the employee. [*Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).] “Hostile environment” sexual harassment is unwelcome behavior that happens because of your sex. The conduct must be especially severe or pervasive that it interferes with work performance or creates a hostile or unpleasant work place. Verbal conduct such as jokes, remarks, or bantering, in addition to touching, visuals, gestures, and other conduct that may be sexual in nature can create a hostile work environment.

In the past, the distinction between “quid pro quo” and “hostile environment” sexual harassment was important in determining employer liability for a supervisor’s acts. Two recent United States Supreme Court decisions have made it easier for employers to be held

liable for a supervisor’s discriminatory acts. The labels of “quid pro quo” and “hostile environment” are no longer controlling for employer-liability purposes. [*Faragher v. City of Boca Raton*, 97-282, and *Burlington Industries v. Ellerth*, 97-569.]

How can a woman show she has been sexually harassed?

To show sexual harassment, a woman must show that she is a member of a protected class and that she is being harassed because of her sex. Even if harassing behavior lacks sexually explicit content, if the conduct is directed at or motivated by hostility against women, there can be a hostile environment claim. [*Robinson v. Jacksonville Shipyards, Inc.*, 760 F.Supp. 1486 (M.D. Fla. 1991).] In a hostile environment claim, the harasser can be a supervisor, co-worker, subordinate, or even a customer or subcontractor of the employer. The victim is not required to have a wage loss because of the sexual harassment; that is, you are not required to be terminated or turned down for a promotion or raise in order to have a valid claim. In all hostile environment cases, the conduct complained of must be so severe or pervasive that it created a hostile workplace.

What makes an employer legally responsible for sexual harassment by co-workers and non-employee harassment?

If an employer has notice, or should have had notice, of sexual harassment, the employer must take action. It is this failure to take action that makes the employer legally responsible for sexual harassment. An employer will be deemed to have “constructive notice” if the workplace is permeated with sexual conduct.

What is an employer’s liability for supervisor sexual harassment?

In *Faragher v. City of Boca Raton* and *Burlington Industries v. Ellerth*, the Supreme Court held that employers are liable for sexual harassment by a supervisor, regardless of whether the employer knows about specific incidents of harassment, if it resulted in a tangible employment action such as firing, failure to promote, or loss of job benefits. The employer can assert an affirmative defense if the harassment did not cause a tangible employment action. The employer must show that they exercised care to prevent and correct promptly any sexually harassing behavior and that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

This is one of the reasons it is important to use an employer complaint mechanism or grievance system, if possible.

How can a woman show that the harassment is unwelcome?

The victim will be required to establish that the conduct of the harasser was unwelcome. An Alaska case, *French v. Jadon, Inc.*, 911 P.2d 20 (Alaska 1996), indicates that a woman must report that the conduct was unwelcome by reporting the harassment, keeping a diary, or telling someone.

What if a woman engages in sexual conduct for fear of losing her employment?

If an employee submits to unwelcome advances or participates in sexual banter out of fear of being ostracized from the work group or of losing her job, she may still have a valid claim for sexual harassment. For example, the EEOC guidelines clarify that even if a woman has participated in sexual banter with co-workers, unwelcome sexual touching by a supervisor may still constitute a valid sexual harassment claim.

Does the sexual harassment need to be directed at the victim?

The sexual harassment does not need to

be directed at the victim to be offensive, unwelcome and actionable. That is, if sexual harassment directed at others is so pervasive as to offend others in the workplace, those employees may have a claim.

Can you have a claim of sexual harassment against someone of the same sex?

Yes. Sex discrimination consisting of same-sex sexual harassment is actionable under Title VII and AS 18.80.220. [*Joseph Oncale v. Sundowner Offshore Services, Inc.*, 118 S. Ct. 998 (1998).]

Is it considered sexual harassment if you are denied benefits in favor of those who participate in exchanging sexual relations for job benefits?

Possibly. One case decided by the United States Court of Appeals involved a hostile work environment at the Securities and Exchange Commission. The court held that third parties can be injured by a sexual relationship between two other parties if they are denied job benefits. [*Broderick v. Ruder*, 685 F.2d 1269 (D.D.C. 1988).]

What should you do if you are a victim of sexual harassment in the workplace?

If you are faced with sexual harassment in the workplace, take steps to deal with the situation before quitting your job. Review your employer's policy on sexual harassment if there is one, and try to follow the procedures regarding reporting sexual harassment.

If you are being treated unfairly, make sure to document incidents to support a complaint. Brief written notes on what happened, when the incident happened, and who was there are useful in refreshing your memory at a later date and showing a pattern of unfair treatment.

You may also want to contact the Alaska State Commission for Human Rights, the Anchorage Equal Rights Commission, the United States Equal Employment Opportunity Commission, or the Alaska Bar Association Lawyers' Referral number. [*See the Resource Directory at the end of this handbook for contact information.*] There are important time limits on filing an employment discrimination complaint. It is important to contact one of the local, state, or federal agencies as soon as possible to determine your legal rights and options.

WAGE DISCRIMINATION

What are Alaska's laws regarding wage discrimination?

Alaska's comprehensive Human Rights Act makes it illegal to pay people differently because of race, religion, color, national origin, age, sex, marital status, changes in marital status, pregnancy or parenthood, or mental or physical disabilities (protected classes). This includes benefits and overtime. [AS 18.80.220 (a) (1) & (5).]

What are the federal laws regarding wage discrimination?

At the federal level, the Equal Pay Act of 1963 amended the Fair Labor Standards Act (FLSA) to prohibit pay discrimination because of sex. This requires employers to pay equal wages to men and women working under similar working conditions where they are performing equal work on jobs requiring equal skill, effort, and responsibility. Pay differences based on a seniority or merit system that measures earnings by quantity or quality of production are permitted. Employers may not reduce the wage rate of any employee in order to eliminate illegal wage differences. The law is interpreted as applying to "wages" in the sense of all employment-related payments, including overtime, uniforms, travel, and other

fringe benefits.

In what way do jobs have to be equal to qualify under the equal pay act?

A number of court cases have established that jobs need be only substantially equal, not identical, in order to be compared for purposes of the Act. Job descriptions or classifications are irrelevant in showing that work is unequal unless they accurately reflect job content and mental as well as physical effort must be considered.

Some typical defenses that are raised by the employer under equal pay act claims include a factor other than sex such as education or training differences.

PREGNANCY DISCRIMINATION

What is the federal law regarding pregnancy discrimination?

At the federal level, the Pregnancy Discrimination Act of 1978 amended Title VII to include under the definition of sex any discrimination based upon pregnancy, childbirth, or related medical conditions. This Act makes it unlawful for an employer to refuse to hire a woman because she is pregnant unless pregnancy interferes with the major tasks associated with the job. [42 U.S.C. § 2000e (k).]

What is Alaska's law regarding pregnancy discrimination?

State law also makes it illegal to discriminate on the basis of pregnancy or parenthood. [AS 18.80.220 (a) (1).] For the most part, Alaska State law provides the same coverage as the federal legislation, but is to be more liberally interpreted than federal law for the purpose of eradicating discrimination. [AS 18.80.220 (a) (1).]

What is the federal law regarding pregnancy and medical leave?

The federal Family and Medical Leave Act (FMLA) requires that an employer must keep a woman's job open in accordance with the same conditions afforded fellow employees on disability or sick leave if she is on leave for a pregnancy-related condition. [29 U.S.C. § 26.] An Alaska law applying to state employees has similar requirements for pregnant employees. [AS 23.10.500 *et seq.*] State and federal law also require employee benefit and leave programs to treat pregnancy like any other medical condition.

Must an employer provide the same benefits to married and unmarried employees?

In *University of Alaska v. Tumeo*, 933 P.2d 1147 (Alaska 1997), the Alaska

Supreme Court stated that the University's health care benefits plan, which provided benefits to employees and their dependents, discriminated on the basis of marital status by providing greater benefits to married employees than unmarried employees. Thus, this was a violation of AS 18.80.220. However, the Alaska legislature amended AS 18.80 in 1996 to overrule *Tumeo*, providing that "an employer may . . . provide greater health and retirement benefits to an employee with a spouse or dependent children than are provided to other employees." [AS 18.80.220 (c).] Another Alaska Supreme Court case clarified that marital discrimination does not cover a situation where an employee is treated adversely because of the particular individual to whom she is married. [*Muller v. BP Exploration, Inc.*, 923 P.2d 783 (Alaska 1996).]

What is the current federal law regarding employer's coverage of pre-existing conditions?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires group health insurers to cover workers with pre-existing conditions. This act makes it easier for workers to change jobs without fear of losing health insurance coverage.

AMERICANS WITH DISABILITIES ACT

What is the Americans with Disabilities Act?

Title I of the Americans with Disabilities Act of 1990 (ADA) prohibits an employer from discrimination on the basis of physical or mental disability. [42 U.S.C. § 12101 *et seq.*] The ADA also prohibits discrimination in public accommodations and transportation, which are beyond the scope of this section. You may contact the U.S. Department of Justice or the local Disability Law Center if you need assistance in this area. [See the *Resource Directory at the end of this handbook for contact information.*] The ADA prohibits discrimination against qualified individuals with disabilities who can perform the essential functions of the job with or without reasonable accommodations. The federal Rehabilitation Act of 1973 also prohibits discrimination on the basis of a physical or mental disability by the federal government and its agencies, federal contractors, state governments, and other programs that receive federal funds. [29 U.S.C. § 701 *et seq.*]

What is the Alaska law on disability discrimination?

Alaska state law prohibits discrimination

against an employee with a physical or mental disability if “the reasonable demands of the position do not require such a distinction.” [AS 18.80.20; (See also 6 AAC 30.910.)] The Alaska courts will use federal law as guidance in interpreting state laws on disability discrimination. [See *Moody-Herrera v. State Dept. of Natural Resources*, 967 P.2d 79 (Alaska 1988).]

What can I do if I believe I am being discriminated against on the basis of a disability?

If you feel that you have experienced discrimination in the workplace because of a disability, there are a number of agencies with which you may file a complaint, including the Equal Employment Opportunity Commission, the Alaska State Commission for Human Rights, and the Alaska Office of Equal Employment Opportunity (if you work for the state). If you are alleging a violation of Title I of the ADA, you *must* file a complaint with an appropriate agency before you can file a lawsuit. There are deadlines for filing agency complaints. If you miss the deadline, you may lose your right to file a lawsuit. This is a complicated area of the law, and you should consult with an attorney with experience in employment law as soon as possible. For more information, contact the Disability Law Center. See the *Resource Directory at the end of this*

handbook for contact information.

FEDERAL FAMILY AND MEDICAL LEAVE ACT

What is the federal Family and Medical Leave Act?

The federal Family and Medical Leave Act (FMLA) of 1993 requires certain employers with 50 or more employees to provide up to 12 weeks of leave per year for eligible employees for the birth or adoption of a child or due to a serious health condition of the employee or close family member. [29 U.S.C. § 2612 (a) (1).] An employee is eligible for FMLA leave if she has worked 12 months for the employer for at least 1250 hours. [29 U.S.C. § 2611 (2).] This law requires employers to return employees to the same or an equivalent position after the leave. [29 U.S.C. § 2614 (a).] However, an employer may deny restoration to the same or similar position if the employer would suffer “grievous economic injury” and notifies the employee of the harm. [29 U.S.C. § 2614 (b) (1).] Also, leave may be denied to a salaried employee among the highest paid ten percent of employees within 75 miles of the facility in which employee is employed. [29 U.S.C. § 2614 (b) (2).]

What are the requirements for employers and employees regarding FMLA leave?

An employee is required to provide the employer with notice prior to the leave and to make efforts to schedule treatment so as not to “unduly” disrupt the operations of the employer. [29 U.S.C. § 2612 (e).] The employer may require medical certification from the employee regarding the leave. During FMLA leave, an employer must maintain coverage for an eligible employee for the duration of her leave. [29 U.S.C. § 2614(c).] There is no comparable state law requiring employers to provide leave to private sector employees. However, state law does provide leave benefits to state employees under AS 23.10.500 *et. seq.* This law allows state employees up to 18 weeks of leave, contrasted with 12 under federal law.

What should I do if I have questions about these family leave acts?

Check your employer's policies and procedures regarding leave or contact the state or federal Departments of Labor, which are the agencies responsible for enforcement of these laws.

WRONGFUL TERMINATION/ BREACH OF EMPLOYMENT CONTRACT

When can an employer take action against an employee?

An employer is not prevented from disciplining or discharging people who are not performing up to the employer's expectations. Likewise, employers are not required to hire people who are not qualified for the job.

What should I do if I think my employer has breached my employment contract?

Alaska State law provides that the employment relationship constitutes a contract between the employee and the employer.

If you are a union member, usually you will have a collective bargaining agreement, which is a special type of employment contract. If you are a union member and have a dispute with your employer, you should check the collective bargaining agreement or contact your union representative immediately. The time frames for filing a union grievance are very short – sometimes just a few days. You should ask your union representative to grieve any adverse employment action. If your union refuses to do so, you should ask

for the reasons in writing. Even if your union will not file a grievance for you, you may be required to file it yourself. If you fail to file a grievance, you may be precluded from filing a claim in court. In most cases, if you or your union do file a grievance, you may be required to exhaust your union remedies before you file an action in court. Thus, you will be required to take such a claim to arbitration, if allowed. After the arbitration, you may be limited to an appeal of the arbitration only; you may not be able to file an original suit. It is very important that you are well prepared for the arbitration with your testimony and documentary exhibits. If you do not have a union assisting you, you may want to contact an attorney. The Lawyer Referral Service of the Alaska Bar can refer you to an attorney who handles these types of matters. *See the Resource Directory at the end of this handbook for contact information.*

What if I am not a union member?

If you are not a member of a union with collective bargaining agreement remedies, your employment contract is governed by the employer's personnel policies and procedures and possibly other promises your employer made to you. These promises may include those made prior to your accepting employment, or if you made a substantial change in your position to

take the employment, you may have an enforceable contract. The Alaska Supreme Court has said that an employer need not have employment policies and handbooks; if they do, however, the rules and policies constitute a contract and must be followed.

In what other situations can an employee bring a claim against an employer?

Employees in Alaska may also bring a claim against the employer for breach of the covenant of good faith and fair dealing. Among other things, the covenant requires an employer to follow any policies and procedures it has established, to treat like employees alike, and to not terminate employees for false reasons. An employer is not allowed to deprive the employee of benefits earned under the contract and is required to act in good faith and deal fairly with employees. Employees also cannot be terminated for reasons that are against public policy, *e.g.*, discharge for jury duty or filing a workers' compensation claim.

What should I do if I am not a member of a union and my employer takes action against me?

If your employment is covered by personnel policies and procedures and your employer takes action against you,

you should review those policies and procedures since your employer is required to follow them. If you are required to take steps under the policy to object to adverse action, you should do so within the time frames allowed. If you do not understand the policies and procedures, you may want to contact your human resources representative or an attorney.

What are the laws in Alaska regarding personnel files?

Alaska law allows employees to obtain copies of their personnel files and any other records that the employer maintains regarding the employee. If you want a copy of your personnel file, you should send or hand deliver a letter to the employer, addressed to the person in charge of personnel, and state in your letter: "Please consider this a formal request for a copy of my personnel file and any other records you maintain regarding me pursuant to AS 23.10.430. I am willing to pay reasonable copying costs. I would like to pick up a copy of the file by [fill in the date]."

WHISTLEBLOWER PROTECTION

Are there laws that will protect me if I report matters of public concern?

There are state and federal laws that protect employees from adverse

employment action based on the employee's reporting matters of public concern. Under federal law, employees are protected from adverse employment actions when they report environment violations. These claims must be filed through the federal Department of Labor, and the timelines for filing are short – usually 30 days. You should contact an attorney or the federal Department of Labor if you are an “environmental whistleblower.”

Under state law, state and other government employees are protected from adverse employment action if they report matters of public concern. [AS 39.90.100(a).] These claims could include reporting discrimination or abuses in the government office in which you work. There is currently a two year statute of limitations for filing a state whistleblower's claim. You may be required to inform your employer in writing concerning the matter. [AS 39.90.110(c).]

VICTIMS OF DOMESTIC VIOLENCE OR SEXUAL ASSAULT & THE WORKPLACE

(This section is adapted from *The Impact of Violence in the Lives of Working Women: Creating Solutions-Creating Change*. Copyright ©2000 by NOW Legal Defense and Education Fund, 395 Hudson, Street, New York, NY 10014, Tel. 212-925-6635.)

Domestic violence does not always stop

when a woman leaves home in the morning to go to work. For example, the victim and the batterer may work together, or the batterer may come to the victim's job and harass or assault her at work. Laws regarding discrimination, harassment, wrongful termination, and leave may all be particularly important for working women dealing with domestic or sexual violence.

Can sexual harassment laws cover workplace violence?

Sexual harassment may include verbal harassment, workplace rape, and sexual assault. It can involve domestic violence, such as when intimate relationships between co-workers become violent and physical or verbal abuse is brought into the workplace. For example, the U.S. Supreme Court's landmark 1986 decision outlawing sexual harassment, *Meritor Savings Bank v. Vinson*, concerned the bank's liability for a supervisor's repeated unwelcome sexual advances toward, and the sexual assaults of, a female employee (with whom he had had a prior social relationship). [477 U.S. 57, 73 (1986).]

Does workers' compensation cover injuries related to domestic or sexual violence?

Workers' compensation provides no-fault, generally exclusive coverage for work-related injuries as defined by state

laws. The amount of recovery is limited by state statute. Some women and their families have recovered workers' compensation awards for injuries resulting from sexual assaults, rapes, and murders that occurred at work, whether they were committed by a supervisor, a customer, or an intimate partner who tracked the victim on her job. [*See, e.g., Williams v. Munford, Inc.*, 683 F.2d 938, 940 (5th Cir. 1982).] Where injuries are found to be exclusively covered by workers' compensation, employees are not permitted to bring negligence claims against their employers in court and are limited to the damages available under the state workers' compensation statute.

Exceptions in workers' compensation laws in many states allow women to pursue tort claims against employers for damages resulting from violent incidents such as rape and sexual assault. In addition, a number of courts have refused to restrict a woman's recovery to the more limited amounts generally available under workers' compensation laws, holding instead that workers' compensation statutes only apply when the employee's status as an employee precipitated the attack or rape. Thus, if an assault or rape is found to be committed for "personal" reasons (e.g. the victim knew her attacker), workers' compensation may not apply.

Can an employer be liable for domestic or sexual violence against an employee?

Where workers' compensation does not limit recovery, women may pursue state tort claims for their employers' role in the violence. For example, employers may be liable for rapes and sexual assaults if the perpetrator used the authority his employer vested in him to commit the attack. A company also could be liable for its failure to take prompt and remedial action once it knew or should have known of the risk of the attack.

An employer may be liable for negligently hiring or retaining an employee who later injured someone in the course of the job. Some courts have held companies liable when they knew or should have known that the employee might commit a violent act or when they could foresee that the employee, through his employment, would create a risk of danger. [*See, e.g., Watson v. Bally Mfg. Corp.*, 844 F. Supp. 1533, 1537 (S.D. Fla. 1993), *aff'd*, 84 F.3d 438 (11th Cir. 1996).] For example, one court found that an employee's record (sexual harassment of female co-workers, threats to male co-workers, and sexual advances and threats to the female employee he ultimately killed) made it foreseeable that he could act violently and created a duty of care by the company to take steps to prevent further harm to the

victim. [*Yunker v. Honeywell, Inc.*, 496 N.W.2d 419, 424 (Minn. Ct. App. 1993).] In responding to complaints that their employees committed violent acts, however, company officials must take care not to violate other legal obligations nor to jeopardize the rights of the accused. For example, in many jurisdictions, companies may not discriminate against employees who have criminal records unless the employer's action was based on job-related factors.

Do occupational safety and health laws apply when there is violence in the workplace?

Federal and state occupational safety and health laws require employers to make sure their employees work in safe environments. The federal Occupational Safety and Health Act of 1970 ("OSHA") contains a "general duty clause" that requires every employer to provide a workplace free from recognized safety hazards. [29 U.S.C. § 654(a) (2000).] State laws impose similar requirements. OSHA's general duty clause may be interpreted to require employers to take reasonable steps to protect workers from violent attacks in the workplace.

Is an employee who has to leave work because of domestic or sexual violence eligible for unemployment compensation?

Women who have left their jobs as a result of domestic violence, workplace rapes, or other forms of sexual harassment may be eligible for unemployment benefits in some states if they can prove that they quit for "compelling" reasons that constituted "good cause." Each state has its own definition of what constitutes "good cause." In an increasing number of states, women who have left their jobs because of domestic violence are able to receive unemployment compensation, in most circumstances, under a "good cause" provision that explicitly covers domestic violence.

Can the Americans with Disabilities Act of 1990 apply when an employee is a victim of domestic or sexual violence?

An employee who has a disability due to domestic or sexual violence and is able to perform the essential functions of a job may not be terminated, demoted, harassed, or otherwise disadvantaged because of her disability and may be entitled to "reasonable accommodations" under the Americans with Disabilities Act (ADA), as discussed elsewhere in this chapter. Employees who are dealing with domestic violence may experience

many forms of abuse that cause mental and/or physical disabilities which would qualify them for protection under the ADA. Reasonable accommodations may include time away from the office for appointments with doctors, modified work schedule, additional training or supervision, a transfer, or medical leave.

Can the Family and Medical Leave Act apply when an employee is a victim of domestic or sexual violence?

An employee who needs time off from work for herself or a family member for a "serious health condition" resulting from domestic or sexual violence may be entitled to job protected leave under the federal Family and Medical Leave Act as discussed in this chapter.

RESOURCES

What do I do if I am the victim of discrimination?

If you think you have been the victim of discrimination, you can hire an attorney to advocate for you, and/or you can pursue a claim through one of the local, state, or federal agencies responsible for enforcing the laws that cover discrimination.

How do I make a complaint if I have been discriminated against?

Complaint procedures can vary considerably depending on the type of claim being made and how it is being pursued. It is important to file your complaint promptly. Check with an attorney or the agency you are working with early in the process to establish the deadlines for filing a claim in court. A written complaint is necessary under most discrimination laws. If you decide to pursue a claim of discrimination, you should be aware that the deadlines for certain actions are very short and strict. If you are unsure about how the law might apply to a specific situation, call the agency that handles those complaints. They either will know the law or refer you to the agency that does. With requests for grievances or investigations by your union or your employer, it is safest to file written complaints or requests.

Where can I file a charge of discrimination?

You may file a charge of discrimination with the United States Equal Employment Opportunity Commission (EEOC) or the Alaska State Commission for Human Rights (ASCHR) if you believe you have been discriminated against by an employer, labor union, or employment agency when applying for a

job or while on the job because of your race, color, sex, religion, national origin, age, disability, marital status, pregnancy, or parenthood. You also may file a charge of discrimination with EEOC or ASCHR if you believe that you have been discriminated against because of opposing a prohibited practice or participating in an equal employment opportunity matter. *See the Resource Directory at the end of this handbook for contact information.*

How do I file a charge with the Alaska State Commission for Human Rights?

An individual aggrieved by an alleged discriminatory practice prohibited by AS 18.80.100-145 may file a written complaint with the Commission. Complaints must be filed with the Alaska State Commission for Human Rights (ASCHR) within 180 days of the alleged discriminatory act. It may be filed in person or by mail at any Commission office. The Commission’s staff will assist you with drafting and filing the complaint. You can contact ASCHR at 1-800-478-4692 for more information.

How do I file a charge with the EEOC?

Charges may be filed in person, by mail, or by telephone by contacting the nearest EEOC office. *[See the Resource*

Directory at the end of this handbook for contact information.] To avoid delay, call or write beforehand if you need special assistance to file a charge.

What is a Notice of Right to Sue letter issued by EEOC?

The issuance of a Notice of Right to Sue letter ends EEOC’s process with respect to your charge. You may file a lawsuit against the respondent named in your charge within 90 days from the date you receive this notice. You should keep a record of this date because once this 90-day period is over, your right to sue is lost. If you intend to consult an attorney, you should do so as soon as possible.

Your lawsuit may be filed in state court or the United States District Court. Filing the notice is not sufficient. A court complaint must contain a short statement of the facts of your case that shows that you are entitled to relief. Generally, suits are brought in the state where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office.

You may contact EEOC if you have any questions about your rights, including advice on which court can hear your case, or if you need to inspect and copy

information contained in the case file. (Additionally, many EEOC offices can provide you with names of private attorneys who have agreed to consider referrals for private litigation.)

Do I need to file my complaint with both the Equal Employment Opportunities Commission and Alaska State Commission For Human Rights?

No. A complaint filed with one agency is considered filed with the other due to a work sharing agreement.

Is it important to file employment discrimination complaints promptly?

Yes. There are strict time frames in which employment discrimination claims must be filed. It is important to file complaints promptly to preserve the ability of the local, state, or federal agency to act on your behalf and to protect your right to file a private lawsuit if needed.

How can I find an attorney for my employment discrimination claim?

Employment law and employment discrimination law are specialized areas of practice. You may call the Alaska Bar Association Lawyer Referral Service at 1-800-770-9999 for the numbers of attorneys who practice in this area. You

may want to ask how much experience the attorney has with these types of cases. Try to find an attorney who is recommended for his or her work in this area.

What are the state agencies/commissions?

See the Resource Directory at the end of this handbook for contact information for these agencies.

- The Alaska State Commission for Human Rights (ASCHR) is the state agency that enforces the Alaska Human Rights Law. The Commission maintains an investigative unit in Anchorage. The Commission has statewide powers and accepts complaints from all regions of the state. At the present time, if an individual has a discrimination action in the Commission, the individual can only recover actual wage and benefit damages. There can be no recovery for emotional distress or punitive damages in the Commission. (However, emotional distress and punitive damages are available before the federal EEOC and in a state court civil suit under AS 18.80.220.) An Alaska Supreme Court ruling explains the requirements to get a hearing with the Commission. [*State Department of Fish and Game v. Meyer*, 906

P.2d 1365 (Alaska 1995).]

- The Office of Equal Employment Opportunity (OEEEO) is an administrative unit located in the Office of the Governor that is responsible for ensuring fair employment practices in state government. It monitors the state affirmative action plan for the employment retention and advancement of women, minorities, the handicapped, and other disadvantaged workers. OEEEO only monitors state government; it does not have authority outside of state employees. Even if you file a discrimination claim with the OEEEO, you may also want to file a complaint with the ASCHR or EEOC since you are still required to file timely with the Commissions.
- The Department of Labor enforces state law regarding certain fair labor practices. This division is responsible for assisting employees who have worked in the private sector and have not been paid wages due to the employees for overtime, minimum wage, or other wage complaints. The State Department of Labor Wage & Hour Administration also enforces the state law regarding family leave.

What are the local agencies?

See the Resource Directory at the end of this handbook for contact information

for these agencies.

- The Anchorage Equal Rights Commission (AERC) is the agency that handles complaints regarding discrimination that occurs within the municipal boundaries of Anchorage.
- The Disability Law Center of Alaska is the statewide protection and advocacy agency mandated under federal law to promote and protect the legal and human rights of individuals with disabilities. The Center provides education, systems advocacy, and direct representation in areas such as special education, social security and other entitlements, and enforcement of the Americans with Disabilities Act and other disability laws. The Center has authority to conduct investigations of incidents of abuse or neglect of individuals with disabilities.

What are the federal agencies?

See the Resource Directory at the end of this handbook for contact information for these agencies.

- The U.S. Equal Employment Opportunities Commission (EEOC) is the federal agency charged with enforcing federal laws outlawing employment discrimination. As a practical matter, EEOC, ASCHR, and AERC have a work sharing agreement. If you file with one

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agency, your complaint will be simultaneously filed with the other agencies, although only one agency will investigate.

- The U.S. Department of Labor is charged with enforcing federal wage and hour laws, such as overtime and minimum wage; it also enforces the federal Family and Medical Leave Act and federal whistleblower laws.
- The Office of Federal Contract Compliance Programs is a federal agency charged with monitoring federal contractors for equal employment opportunity and affirmative action practices. This agency has an office in Anchorage.

There are other federal agencies which may be able to assist you in pursuing a claim of discrimination.

Chapter Four

CREDIT, DEBT COLLECTION, & BANKRUPTCY

You may not be denied credit because of your sex or marital status. The standards used to determine whether someone is a good credit risk must be the same for everyone. You have the right to establish credit in your own name even if you are married. You have the right to know why you were denied credit.

FEDERAL CREDIT REPORTING RULES

In the past, people did not have the right to know why they were denied credit. Now, under the Fair Credit Reporting Act [15 U.S.C. §§ 1681], a creditor or lender must tell you the name of the credit reporting agency that investigated you. If unfavorable information comes from another source – such as the grapevine – the creditor must tell you the nature of the information. You have the right to challenge the information in the credit report and to request an investigation. You have a right to see the contents of the report. You can request a copy of your credit report even if you have not been denied credit.

Credit bureaus report on the types of your credit accounts, your timeliness in paying bills, and whether you were ever sued, have filed for bankruptcy, or have had your property foreclosed on.

You have the right to receive one free copy of your credit report from each of

the major credit reporting companies each year. If you detect an error or dispute the legitimacy of a report, you have the right to contact the credit reporting company and advise them of your dispute. While the dispute is being resolved, future reports issued must note that the liability is disputed.

Creditors must follow certain procedures when billing you and must advise you about how to contact them if there is an error on your statement. [15 U.S.C. §§ 1637.] The Federal Trade Commission enforces the Fair Credit Billing Act for almost all creditors except banks.

Given the widespread problems with identity theft, it is important to periodically review your credit report. If you have filed bankruptcy, it is important for you to review your report six months or so after you receive your discharge, as some creditors may still be reporting your discharged liability as a current liability or charged off. Such action is a violation of both the Fair Credit Reporting Act and the permanent

stay under the Bankruptcy Code. If a credit report discloses such a claim, you can contact the company in writing and demand that they correct the report. Include a copy of your discharge order and ask for the company to provide you with an updated credit report removing the liability as current and outstanding and reporting it as discharged in bankruptcy. If the credit reporting company fails to do so, you can contact an attorney who has experience in litigating consumer law issues. You may sue in federal court for both damages and the costs of such action.

What federal protections do I have against credit discrimination?

The federal Equal Credit Opportunity Act [15 U.S.C. §§ 1691] and Regulation B [12 CFR 202.001] prohibit discrimination in credit because of race, color, religion, national origin, sex, marital status, and age. The Act says that spouses have the right to apply for separate credit reporting. If your spouse has a bad credit rating or too many debts, you may want to maintain separate credit. There can be no discrimination because a credit applicant receives public assistance. The only age discrimination permitted is that no one has to give credit to a minor under age 18.

For joint accounts, creditors must find

out whether both spouses are entitled to use the account. If both spouses use the account, the creditor must report credit in each person's name. This means that married women can establish their own credit simply by having joint accounts with their spouses.

Questions about your age or marital status are not prohibited by the Equal Credit Opportunity Act. One reason is that agencies may take your race or age into account to give elderly or disadvantaged persons favorable treatment. Another reason is that it is reasonable for the agency to inquire about age or marital status to determine probable future income.

Many federal agencies, particularly the Federal Trade Commission, have the duty to enforce the Equal Credit Opportunity Act. If you are denied credit based on one of the prohibited categories, you have a right to action by the Federal Trade Commission, Office of the Comptroller of the Currency.

What state protections do I have against credit discrimination?

The Alaska Fair Credit law [AS 18.80.250] says that an institutional creditor cannot refuse credit or loans because of "sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood,

race, religion, color, or national origin.” The state law is similar to the federal laws. The state also forbids creditors from denying credit to a spouse or requiring both spouses to have a single account.

How can I get relief from credit discrimination?

If you are denied your rights under state or federal law, first ask the creditor for all of the information you need. Insist on correcting wrong information in your file. Complain to the agency regulating the creditor. You may then consider a suit in state or federal court. If you win in court, you can get your actual damages and attorney’s fees, and in some cases, punitive damages. You can also have the court order the creditor to extend credit.

If you believe the lender or creditor discriminated against you for improper reasons, you can also file charges with the Alaska State Commission for Human Rights. *See the Resource Directory at the end of this handbook for contact information.*

BANKRUPTCY AND DEBT COLLECTION

Federal laws provide a number of statutory protections to consumers from debt collectors. The Fair Debt Collection

Practices Act (15 U.S.C. §§ 1692) offers protection to individuals from certain types of debt collection practices. Among the practices that are prohibited is conduct by the collector that is likely to harass, oppress, or abuse a person in connection with the collection of the debt. A debt collector may not use any false, deceptive, or misleading representations or means in their effort to collect a debt. The Act also regulates communication between the collector, the debtor, and third parties such as employers and landlords. The Act provides for civil liability and statutory damages if it is violated. If you have questions about your rights under this federal legislation, you should contact an attorney who practices in this area of the law. The Alaska Bar Association may be able to refer you to an appropriate individual to assist you if you are unable to locate a knowledgeable attorney through your telephone directory.

If you do discuss your situation with your creditors, you may be able to resolve the situation by establishing a payment plan. Before making any payments, you should insist upon receiving a written agreement with the creditor setting forth the terms of your agreement. You may be able to negotiate a discount in the debt and interest rate if you can convince the creditor that you are in financial hardship. However, the information you provide may be used by

the collection agency to identify assets and any sources of income. You should insist that any agreement include a provision that the creditor will take no further collection action while you negotiate the debt before providing the creditor with information. You also may wish to consult with a consumer credit counselor before engaging in negotiations with your creditors or supplying them with information.

In the event you are unable to resolve your financial problems by negotiation with your creditors, you can consider bankruptcy. Federal law currently provides consumers protection against overwhelming indebtedness through two forms of bankruptcy relief. Known as Chapter 7 and Chapter 13, these two forms of bankruptcy relief are designed to give individuals a fresh start in life in terms of resolving their financial problems. Both of these forms of relief are subject to pending legislation that will alter their availability so it is critical that you discuss your circumstances with someone who is knowledgeable in bankruptcy.

What is Chapter 7 relief from debt?

Chapter 7 relief is the most commonly filed petition by consumers and is known as a liquidation proceeding. A Chapter 7 case typically involves a debtor who is mired in dischargeable debt and whose income is close to or less than the

debtor's reasonable and necessary living expenses, and whose exemptions adequately protect the assets that the debtor would like to retain after the bankruptcy. Dischargeable debt consists of all liabilities existing before the filing of the bankruptcy petition except that designated as non-dischargeable under 11 U.S.C § 523 (a). This statutory section prohibits discharging:

- unpaid taxes (with some exceptions);
- child support, alimony, and certain property settlement obligations;
- fines and penalties owing a government;
- debts incurred through fraudulent conduct;
- debts incurred after the filing of bankruptcy (post petition); and
- government guaranteed student loans.

Chapter 7 relief may be denied on certain grounds, including a prior discharge in bankruptcy in a case filed within six years prior to the current filing, commission of certain fraudulent or dishonest acts, and/or inability to explain disappearance of assets.

The substantial amendments to the Bankruptcy Code became effective on October 16, 2005. Many people think that these amendments made filing

bankruptcy impossible or much harder to accomplish. This is not true; however, the amendments did change the requirements for filing and placed certain burdens on individuals seeking bankruptcy that were not present under the original Bankruptcy Code.

First and foremost, individuals seeking relief from creditors in bankruptcy must now take credit counseling and debtor's education courses. These courses require the debtor to participate in an interactive program through approved credit counseling companies to determine if you could pay your debts short of a bankruptcy filing. They also teach you financial management to avoid financial problems in the future. The credit counseling course takes approximately one to two hours to complete and generally costs about \$40. Upon completion of the course, the debtor receives a certificate that must be filed with their bankruptcy pleadings to demonstrate that they have qualified to file. After the bankruptcy is filed, the debtor must complete a debtor's education course. This takes from two to three hours to complete and costs approximately \$45. Proof of completing this course must be filed with the court before a debtor can receive a discharge.

The other hurdle for individuals is the means test. For a debtor to qualify for a Chapter 7 proceeding she has to

establish her income. If her income exceeds the median income for where she lives, she then has to go through a complicated test to establish that she qualifies for a Chapter 7. If she does not qualify for a Chapter 7, then she must file a Chapter 13. The median income level for a two person household in Alaska as of October 1, 2006 was \$60,983, a three person household was \$68,041, and a four person household was \$76,560. These amounts get updated every few months. As you can see, most people needing Chapter 7 relief will not have to go through the means test. If you have any questions about qualifying for Chapter 7, you should contact an attorney who regularly practices in this area of the law.

What is Chapter 13 relief from debt?

Just as the amendments to the Bankruptcy Code changed parts of the law relevant to Chapter 7, the amendments also changed parts of the law relevant to Chapter 13. Chapter 13 is known as Debt Adjustment for Individuals with Regular Income. A Chapter 13 petition for relief is most often used in three situations:

1. The debtor cannot meet the means test in a Chapter 7 and needs protection from creditors.
2. The debtor has debts that are not dischargeable in a Chapter 7

- proceeding.
3. The debtor has assets that exceed her exemption rights in property she wishes to keep after the bankruptcy. The amendments to the Bankruptcy Code no longer allow the debtor to use her actual reasonable and necessary living expenses to determine her net disposable income that funds a plan. The allowable living expenses are now based on guidelines that are published for each state and major urban areas within those states by the Internal Revenue Service.

Every state and federal government recognizes that some types of property are essential for maintenance of an individual's health, safety, and welfare. Therefore, every state has statutory exemption rights in varying amounts in those types of property deemed to be essential. The equity that is exempt in each category of property varies from state to state and from state to federal government. For example, in Alaska, AS 09.38.010(a)(3) and 8 AAC 95.030 establish an exemption amount of \$67,500 in a debtor's home. The federal exemption is \$18,450 per debtor. Thus, if a debtor has substantial equity in her home, she may protect that equity up to \$67,500 in a Chapter 7 bankruptcy. Similarly, Alaska protects up to \$3,750 worth of equity in a debtor's automobile, while the federal statute protects only

\$2,950.

What is the effect of filing Chapter 7 or Chapter 13 relief from debt on the collection efforts of creditors?

A debtor is freed from the burden of the collection efforts of creditors under either Chapter 7 or Chapter 13 bankruptcy. Creditors have to stop their efforts to collect once the debtor has filed her bankruptcy petition. The goal in every bankruptcy is for the debtor to receive a discharge. After receiving the discharge, the debtor no longer has any personal liability for the pre-petition debt that is discharged. The debt is no longer legally enforceable. The concerns and pressures of having to deal with the pre-petition indebtedness is removed, and the debtor is free of the burden of a mountain of debt that she could never repay. However, there is a cost to relief from debt through bankruptcy. Typically, credit agencies will report your bankruptcy filing for a period from seven to ten years after the filing. You will also have to report your bankruptcy when filling out most loan applications; however, most individuals find that the benefits of the bankruptcy outweigh the costs.

Most public libraries contain materials about bankruptcy. There are individuals who successfully handle their own bankruptcies, but there are risks involved

in proceeding without the assistance of an attorney. In large part it depends upon an individual's own comfort level in learning a lot about a specialized area of the law and then acting upon that knowledge on their own. Generally, lawyers practicing in bankruptcy are well-known within their communities. The Alaska Bar Association provides a referral service to the public if you are uncertain as to whom you should contact regarding assistance in this area. *See the Resource Directory at the end of this handbook for contact information.*

Chapter Five

CRIMINAL LAW AND VICTIMS' RIGHTS

In a criminal case, a prosecuting attorney (working for the city, state, or federal government) decides if charges should be brought against the perpetrator. The decision to bring charges is not just based on whether the prosecutor believes the crime occurred, but whether the case can be proven to a jury. The prosecutor's burden requires proof beyond a reasonable doubt that the defendant committed the crime charged. If even one juror does not find evidence beyond a reasonable doubt, the offender is not convicted. This heavy burden sometimes results in cases not being prosecuted, even though the police and prosecutor believe the victim.

Victims of crimes have certain rights and protections under state and federal law. Alaska has an Office of Victims' Rights and a Violent Crimes Compensation Board to assist victims of crime.

What are the different types of crimes in Alaska?

Crimes are divided into felonies, misdemeanors, and violations. Felonies are serious offenses, such as murder, for which the sentence can include imprisonment for more than a year. Misdemeanors are less serious crimes, such as driving while intoxicated, that can lead to imprisonment for up to one year. Violations are minor infractions, such as traffic tickets, that cannot be punished by imprisonment and are generally punished by fines.

If criminal charges are filed, will I have to go to court?

If you are the victim of a crime or a

witness to one, you may be asked or subpoenaed to testify in a grand jury or trial proceeding. If you are served with a subpoena, you have been ordered to appear before a judge and/or a jury. If you do not appear, you may be charged with the crime of contempt. If you are subpoenaed in a criminal case, you can call the prosecutor's office for answers to any questions you have.

Your local domestic violence or sexual assault program can provide advocacy and information about the criminal process. *See the Resource Directory at the end of this handbook for contact information.*

What help can paralegals provide in the prosecutor's office?

Paralegals work to provide support and information to crime victims and to assist the prosecutor with case preparation throughout the criminal justice process. They are a valuable resource to contact if you need to find out the status of your case, your legal rights, and options as a victim of crime in the criminal process.

How is a criminal case different from a civil court case?

A criminal case differs from a civil case in several ways. Unlike criminal cases in which a government prosecutor files charges, civil cases are filed by people (or their attorneys). People in civil cases are asking for remedies or relief, such as money or protection, for themselves. In criminal cases, prosecutors are representing the "people" and trying to protect communities from criminal activity. Criminal cases always involve some type of crime. Civil cases cover a wide range of subjects including protective orders (discussed in Chapter 6), divorces and dissolutions (discussed in Chapter 14), child custody and support, property division, and paternity issues.

Domestic violence protective orders are unique because, although a protective

order is a civil remedy, it can result in criminal charges if violated.

VICTIMS' RIGHTS

A victim of crime has the following rights under 42 U.S.C. Section 10606(b):

- to be treated with fairness and with respect for the victim's dignity and privacy;
- to be reasonably protected from the accused perpetrator;
- to be notified of court proceedings;
- to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial;
- to confer with the attorney for the government in the case;
- to restitution; and
- to information about the conviction, sentencing, imprisonment, and release of the perpetrator.

COMPENSATION FOR VICTIMS OF VIOLENT CRIMES

Alaska has a Violent Crimes Compensation Board that can provide compensation to victims who have been physically or emotionally injured in a violent crime in Alaska, victims of drunk drivers or when a car is used as a

weapon, and survivors of a homicide victim. This program can provide up to \$40,000 per person per incident. In the case of a victim's death where there is more than one dependent, up to \$80,000 may be awarded. [AS 18.67.130.] *See the Resource Directory at the end of this handbook for contact information.*

What are the requirements to be eligible to apply for compensation?

- You must have reported the crime to local law enforcement within five days, unless there is an explanation why you could not report in that period.
- You must file an application with the program within two years from the date of the crime.
- You must cooperate with the reasonable requests of law enforcement officers in the investigation and prosecution of the crime.
- You must not have caused or contributed to your injury or death by violation of a state law or by your own behavior.

How long will it take?

It can take three to six months to determine if you can be helped by the program. Payments will be made when all required information is received and the claim is approved.

What is emergency compensation?

Emergency compensation is available in an amount up to \$1,500 and may be awarded immediately for living expenses when you are injured and cannot continue working,

Should I apply for compensation?

If you have been the victim of a violent crime, you should apply for compensation even if you are not sure whether you meet all the eligibility requirements. You will have an opportunity to explain your circumstances if necessary.

What costs may be paid?

Costs that may be paid include:

- medical care for your injuries;
- counseling for primary victim, family members, parents of sexual abuse victims, and child DV witnesses;
- lost wages due to crime-related injuries (even if reimbursed through leave time at work);
- loss of support for your dependents in the event of a homicide;
- funeral and burial costs up to \$7,000 if you are murdered;
- the actual/reasonable costs to relocate if you are in immediate

- danger;
- security measures such as a new post office box, cell phone, door locks, and/or monitored security system; and
- lost wages, transportation, food, and lodging costs incurred due to cooperation with prosecution and/or trial attendance.

The Violent Crimes Compensation Board will not pay for:

- lost or damaged property;
- pain and suffering; or
- costs compensated under Workers' Compensation or another State or federal program.

THE ALASKA OFFICE OF VICTIMS' RIGHTS:

What is the Alaska Office of Victims' Rights?

The Alaska legislature passed a law in 2001 that created a new agency called the Alaska Office of Victims' Rights (OVR). Its purpose is to help victims of crime to obtain the rights they have under the Alaska constitution and statutes with regard to their contacts with criminal justice agencies in this state. OVR was created in the nature of an Inspector General's office within the legislative, rather than the executive branch, as a way of avoiding conflicts

within state government. It was also to ensure that the director and his staff would have the necessary independence to investigate criminal justice agencies and make appropriate recommendations in their effort to help crime victims and their families. The law went into effect on July 1, 2002. [AS 24.65.010-.250.]

Contact information for the Alaska Office of Victims' Rights is in the Resource Directory at the end of this handbook.

JURISDICTION AND DUTIES OF OVR

Can OVR provide advocacy in court on behalf of victims?

To accomplish the goal of assisting you as a crime victim and of giving force to the above rights, OVR is authorized to protect your rights and advocate on your behalf in state court in all felony offenses, all class A misdemeanors involving domestic violence, and all misdemeanors involving crimes against the person. A felony offense is a crime where the possible sentence upon conviction is one or more years in jail and a substantial fine depending on the class of felony. Class A misdemeanors are those crimes punishable by up to one year in jail and up to a \$5,000 fine.

Additionally, OVR lawyers are

permitted to address the sentencing judge on the victims' behalf when requested to do so by the victim and when the victim chooses not to personally make their victim impact statement to the judge.

How does OVR investigate complaints by victims?

If you are a victim of crime, you have a right to file a written complaint with OVR that you have been denied any of the rights established by Article 1, Section 24 of Alaska's Constitution or the victim protection laws of this state. OVR is empowered to investigate your complaint and take appropriate action on your behalf regarding your contacts with criminal justice agencies. In conducting an investigation, OVR may:

- make inquiries and obtain information considered necessary from justice agencies;
- hold private hearings; and
- notwithstanding other provisions of law, have access at all times to records of justice agencies, including court records of criminal prosecutions and juvenile adjudications, necessary to ensure that the rights of crime victims are not being denied; with regard to court and prosecution records, the victims' advocate is entitled to obtain access to every record that

any criminal defendant is entitled to access or receive. [AS 24.65.120.]

Some examples of information and records available to OVR are police reports, witness statements, lab reports, photos, taped statements, grand jury proceedings and exhibits, officers notes, scene diagrams, dispatch records, autopsy reports, presentence reports, access to all physical evidence, and more. All information and/or records obtained during any investigation, including information and records subpoenaed by OVR are deemed confidential. *See the Resource Directory at the end of this handbook for contact information.*

Can OVR assist criminal defendants?

It is the policy of OVR not to accept complaints from criminal defendants for investigation regarding events that are connected with any prosecution with which they were involved, or which occurred during a time they were a criminal defendant. As used in this policy, the term "criminal defendant" means any person who is charged with any crime or who has been convicted of any crime and a period of less than three years has elapsed between the date of the person's unconditional discharge by the court on the prior offense and the date of the alleged violation of the criminal defendant's victim's right.

Are matters that come before OVR confidential?

OVR is required by law to keep confidential all matters and information, as well as the identities of all complainants or witnesses coming before OVR, except insofar as disclosures of such information may be necessary to enable OVR to carry out its duties and to support its recommendations. However, OVR may not disclose a confidential record obtained from a court or justice agency.

CRIME VICTIM RIGHTS

You have both constitutional and statutory rights as a crime victim. Your constitutional rights are those contained in Alaska's Constitution. Statutory rights are those created by the Alaska legislature.

There is a person in the District Attorney's Office called a Victim-Witness Paralegal/Coordinator who can answer your questions and provide assistance to you as a crime victim.

If you are a victim of a crime, you have these rights:

- The right to be treated with dignity, respect, and fairness throughout the criminal justice process.
- The right to see a doctor if you are in

need of immediate medical attention.

- The right to protection from the defendant by the judge setting bail and/or conditions of release.
- The right to protection from harassment or threats because of your involvement in this case. If someone bothers you or threatens you, call the police or the District Attorney's Office. They may be able to help in these ways:
 - o by contacting the person, or the person's attorney, to tell the person to stop bothering you;
 - o by investigating and, if necessary, arresting and prosecuting the person;
 - o by asking a judge to put the person back in jail, if the person has been released; and
 - o by providing information about shelter programs that may be available in your area.
- The right to timely disposition of the case following the arrest of the defendant.
- The right not to be fired from your job because you have to miss time from work to go to court at the request of the prosecuting attorney.
- The right to obtain information about and to attend all court hearings that the defendant has a right to attend.
- The right not to have your address released to the public.

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- The right to be heard at bail hearings if you make a request.
- The right to be told when the defendant will go to court for trial and for sentencing and to be told if those court dates change.
- The right to talk with someone from the District Attorney's office.
- The right to be told, after the defendant is convicted, about the defendant's other criminal convictions.
- The right to choose if you want to talk to the defense. The person who is charged with the crime will usually have an attorney to help with the case. The attorney, or a person working for the attorney, may want to talk to you. There is nothing wrong with this, but the person must tell you when that person contacts you:
 - o his or her name and how he or she is associated with the defendant;
 - o that you do not have to speak to him or her unless you want to do so; and
 - o that you may have a District Attorney or other person present during the interview.
- If you choose to be interviewed and the person wishes to record you, that person must:
 - o get your permission to record your statement;
 - o if you agree to be recorded, the person must tell you that you have a right to a copy of the recording of your statement; and
 - o if you make a request, the person must provide you with a copy of the tape or a transcript of the interview.

In felony cases, you have the right to be told the address and phone number of the office that will prepare a presentence report for the judge and the right to be interviewed by the person writing the presentence report. If the defendant is convicted of a felony crime, the judge may order a "presentence report." The purpose of the report is to provide information to the judge about the defendant, the crime, and how the crime affected you. For that reason, the person writing the report should contact you to get a victim impact statement.

The presentence report is confidential. Only the District Attorney, the judge, the defense attorney, and the defendant are allowed to read the entire report. You can read parts of the report before the sentencing if you ask your contact person in the District Attorney's Office. Those parts are:

- the summary of the offense;
- the defendant's version of the offense;
- the summary of your statements; and

- the sentence recommendation made by the writer of the report.

You have the right to be heard at sentencing if you make a request. You may be heard at sentencing by:

- writing a letter to the judge;
- appearing in person to speak at the sentencing; and/or
- making a victim impact statement in the presentence report if a presentence report is ordered.

You may write or talk about any relevant information including:

- how the crime hurt you or your family (emotionally, physically, and financially) and affected your life;
- what you think should happen to the person who did the crime (jail, counseling, having to stay away from you and your family, paying you for your out-of-pocket expenses not covered by insurance, etc.); and
- other information you would like the judge to know about the defendant or this case.

If you wish to speak at the sentencing, please inform your contact person in the District Attorney's Office so time can be set aside for you to do so.

You also have the following rights as a crime victim:

- The right to Violent Crimes Compensation Board information and how to apply. The Violent Crimes Compensation Board (VCCB) is a program to reimburse victims of violent crime for crime-related expenses such as medical bills, lost wages, and counseling costs.
- The right to restitution if the defendant is convicted. Restitution is when the judge orders the defendant to pay for your expenses/losses caused by the crime that are not covered by other sources (such as insurance). To request restitution, you must fill out a "Restitution Request Form" and return it to the District Attorney's Office. If expenses are ongoing (so you do not yet have a final amount), provide the current total and explain which amount you will provide in the future giving an approximate date. Be sure to follow up. Contact your local District Attorney's Office for assistance.

If the judge orders restitution for you, a special office that oversees the collection of restitution should contact you soon. That office is the Attorney General's Office, Collections Unit, 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501. If you have questions, you may contact the office by calling 1-800-580-5205.

- The right to a written description of what happened provided within 30 days of the end of the case, if you make a request.
- The right to be told when the defendant will be released and/or if the defendant escapes from jail, if you make a request. Make your request by registering with the VINE system (an automated notification system) by calling 1-800-247-9763 and following prompts. In addition, if you make a written request, a recent photo of the defendant will be sent to you with the notice of release or escape. To make a request for a recent photo, write to:

Department of Corrections
4500 Diplomacy Dr., Suite 219
Anchorage, AK 99508

- The right to be told when the defendant will be released from a mental institution if the defendant was found not guilty by reason of insanity, if you make a request.
- To make a request for notification of release or escape from a mental institution, write to:

Alaska Psychiatric Institute
2900 Providence Dr.
Anchorage, AK 99508

A note of thanks to the Department of
Law – Criminal Division Victim-

Witness Assistance Program for providing this information on the rights of crime victims. Some materials in this chapter are from *Crime Victim Rights*, a brochure developed by Jody Lown, former Victim-Witness Program Coordinator with the Department of Law.

Chapter Six

VIOLENCE AGAINST WOMEN — DOMESTIC VIOLENCE, SEXUAL ASSAULT, STALKING, & HUMAN TRAFFICKING

If you or someone you know is the victim of domestic violence, sexual assault, stalking, or human trafficking, there are nineteen ANDVSA member domestic violence and sexual assault programs throughout the State of Alaska that can provide information and support. Staff are available 24 hours a day to provide safe shelter, advocacy, accompaniment to the hospital or police station, assistance through court proceedings, and many other services. In cases of human trafficking, you can contact the Alaska Immigration Justice Project.

Use of gender specific language in this chapter

Domestic violence, sexual assault, and stalking are gender specific crimes. While women are less likely than men to be victims of violent crimes overall, women are five to eight times more likely than men to be victimized by an intimate partner. Statistics show that 78 percent of stalking victims are women. Women are significantly more likely than men (60 percent and 30 percent, respectively) to be stalked by intimate partners. Other studies have shown that 95 percent of domestic violence is committed by men against women. Women are more likely to be victims of sexual violence than men: 78 percent of the victims of rape and sexual assault are women and 22 percent are men. Most perpetrators of sexual violence are men. Among acts of sexual violence

committed against women since the age of 18, 100 percent of rapes, 92 percent of physical assaults, and 97 percent of stalking acts were perpetrated by men. (Tjaden P, Thoennes N., Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey. Washington: National Institute of Justice; 2000. Report NCJ 183781.)

The gender specific language used in this chapter reflects that domestic violence, sexual assault, and stalking primarily occur by men against women; however, men can be victims.

What is the frequency of violence against women?

A woman is battered every nine seconds in this country. Although serious violent

crime levels have declined since 1993, domestic violence still remains one of the greatest single causes of injury to women in the United States. By conservative estimates, 1.5 million women are raped and/or physically assaulted by an intimate partner annually in the United States, according to the National Violence Against Women Survey. By other estimates, four million American women experience a serious assault by a partner during an average 12 month period. In Alaska, the effects of domestic violence and sexual assault are pervasive. Alaskan women are murdered by their intimate partners at a rate 1.5 times greater than the national average. In 2004, Alaska ranked first for rates of forcible rape, with 84.1 rapes committed per 100,000 inhabitants. That is 2.8 times greater than the national average. (Crime in the United States, FBI, 2005)

THE VIOLENCE AGAINST WOMEN ACT AND THE GUN CONTROL ACT

In 2005, Congress reauthorized the Violence Against Women Act (VAWA), which recognizes domestic violence as a national crime. VAWA was originally passed in 1994 and since its passage, significant gains have been made towards ensuring victim safety and access to critical resources while holding perpetrators accountable for their violence. In 1994 and 1996, Congress

also passed changes to the Gun Control Act making it a federal crime in certain situations for batterers to possess guns. The majority of domestic violence, sexual assault, and stalking cases will continue to be handled by your state and local authorities. In some cases, however, the federal laws may be the most appropriate course of action.

What are the federal crimes and penalties?

All the federal domestic violence crimes are felonies. It is a federal crime under VAWA:

- to cross state lines or enter or leave Indian country and physically injure an "intimate partner" [18 U.S.C. § 2261.];
- to cross state lines to stalk or harass or to stalk or harass within the maritime or territorial lands of the United States [18 U.S.C. § 2261A.]; and
- to cross state lines or enter or leave Indian country and violate a qualifying protective order. [18 U.S.C § 2262.]

It is a federal crime under the Gun Control Act:

- to possess a firearm and/or ammunition while subject to a qualifying protective order [18

- U.S.C. §922(g)(8)]; and
- to possess a firearm and/or ammunition after conviction of a qualifying misdemeanor crime of domestic violence. [18 U.S.C. § 922 (g)(9).]

A violation of the Gun Control Act, Sections 922(g)(8) and 922(g)(9), has a maximum prison term of ten years. A violation of VAWA, Sections 2261, 2261A and 2262, has a maximum prison term of five year to life, depending on the seriousness of the body injury caused by the defendant.

What does bodily injury mean?

The term “bodily injury” means any act, except one done in self-defense, which results in physical injury or sexual abuse. [18 U.S.C. § 2266.]

What does it mean to enter or leave Indian Country?

The term “enter or leave Indian country” includes leaving the jurisdiction of one tribal government and entering the jurisdiction of another tribal government or other jurisdiction. [18 U.S.C § 2266.]

What is a qualifying domestic violence misdemeanor?

Possession of a firearm and/or ammunition after conviction of a

“qualifying” domestic violence misdemeanor is a federal crime under Section 922(g)(9). Generally, the misdemeanor will “qualify” if the conviction was for a crime committed by an intimate partner, parent, or guardian of the victim that required the use or attempted use of physical force or the threatened use of a deadly weapon. In addition, Section 922(g)(9) imposes other legal requirements. The United States Attorney’s Office will examine your case and determine whether the prior domestic violence misdemeanor conviction qualifies under Section 922 (g)(9).

What is a qualifying protective order?

Possession of a firearm and/or ammunition while subject to a protective order and interstate violation of a protective order are federal crimes if the protective order “qualifies” under Sections 2262 and 922(g)(8). Generally, a protective order will qualify under federal law if reasonable notice and an opportunity to be heard was given to the person against whom the court’s order was entered and if the order prohibits future threats of violence. The United States Attorney’s Office can evaluate your order to see if it qualifies. Therefore, you should keep copies of all protective orders.

Who is an intimate partner?

Generally, the federal laws recognize an intimate partner as a spouse, a former spouse, a person who shares a child in common with the victim, or a person who cohabits with the victim.

Can my concerns be heard in federal court?

Yes. A victim in a VAWA case shall have the right to speak, if desired, to the judge at a bail hearing to inform the judge of any danger posed by the release of the defendant. Any victim of a crime of violence shall also have the right to speak, if desired, at the time of sentencing.

FEDERAL PROTECTIONS FOR HUMAN TRAFFICKING VICTIMS

The Victims of Trafficking and Violence Protection Act of 2000 defines severe forms of trafficking in persons as:

- sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18; and
- the recruitment, harboring, transportation, provision or obtaining of a person for labor or services through the use of peonage, debt bondage, or slavery.

According to the Department of Labor's Guide of Non-Governmental Organizations, this definition includes victims who were forced to work in the sex trade as domestic servants, as laborers in factories, or in migrant agriculture work. Whether or not an activity falls under the definition of trafficking depends not only on the type of work victims are made to do, but also on the use of force, fraud, or coercion to obtain or maintain that work. Trafficking covers the use of minors for commercial sexual activity even if there is no force, fraud, or coercion. Trafficking also covers people who are held against their will to pay off debt; this is known as debt peonage. A victim's initial agreement to travel or perform the labor does not allow an employer to later restrict that person's freedom or to use force or threats to obtain repayment.

Contact the Alaska Immigration Justice Project if you need more information or assistance. *See Chapter 16 for information on federal protections for battered immigrant victims of domestic violence, sexual assault, and trafficking.*

CONFIDENTIALITY FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND STALKING

If you are a victim of domestic violence, sexual assault, or stalking, it may be

important for you to keep your location confidential. Many victims of domestic violence, sexual assault, and stalking are threatened with further assault or even death if they reveal the abuse being perpetrated against them. Alaska has confidentiality laws protecting you if you decide to seek services from a domestic violence or sexual assault program. [AS 18.66.200-250.] Domestic violence/sexual assault programs maintain strict principles of confidentiality. Alaska's confidentiality laws protect all communications between victims of domestic violence and sexual assault and advocates, except in very limited circumstances.

Some women may need to keep their location confidential from their batterer when they file for a protective order, divorce, or child custody order. An advocate at a domestic violence/sexual assault program can explain the court procedure to request your location be kept confidential from the batterer in each of these proceedings. *See Chapter 14 for more information on confidentiality in divorce and child custody proceedings when there is domestic violence.*

Some women may need to change their name or social security number to protect their safety and the safety of their children. *See Chapter Eight for more information.*

DOMESTIC VIOLENCE

What is domestic violence?

Domestic violence involves a continuum of behaviors ranging from degrading remarks to cruel jokes, economic exploitation, punches and kicks, false imprisonment, sexual abuse, suffocating actions, maiming assaults, and homicide. Sexual abuse involves a continuum of behaviors that include:

- being denied privacy;
- unwanted looks at a person's genitals;
- insulting sexual jokes;
- sexual labels such as "whore" or "frigid";
- treating women as sex objects;
- forcing someone to watch a sex act;
- unwanted touching of another's genitals;
- forced or unwanted anal, oral, or vaginal penetration;
- mutilation; and
- homicide.

Domestic violence usually increases in frequency and severity over time. Many victims of domestic violence suffer all forms of abuse. Violence is used to reinforce power and control of one person over another. Episodes of violence may be frequent or infrequent,

prolonged or brief, severe or mild.

As the perpetrator's violence continues, he may begin to abuse your children and he may direct violence or threats of violence against your family, friends, or pets. Perpetrators often remind their victims that non-compliance with demands may lead to violent assaults.

Verbal and emotional abuse may be more subtle than physical abuse, but this does not mean it is less destructive.

Under Alaska law, domestic violence occurs when you are physically or sexually abused by another person who is related to you as:

- a spouse or former spouse;
- a person you have dated, or are presently dating;
- a person with whom you have had a sexual relationship;
- a person who lives, or has previously lived, with you in the same household;
- a person you are related to, or formerly related to, by marriage; or
- a parent, stepparent, grandparent, child or grandchild, aunt, uncle, cousin, second cousin, or children of any of these persons.

What is the legal definition of domestic violence?

Crimes are defined in the Alaska Criminal Code. The definitions vary according to the conduct by the perpetrator and the effect of that conduct on the victim. Every act that is a crime if committed by a stranger against you is also a crime if committed by your spouse or partner against you. The law defines domestic violence as including one or more of the following crimes committed by one household member against another:

Assaults: Causing physical pain or injury to you, or placing you in fear of imminent physical injury through words or other conduct. [AS 11.41.200-230.]

Stalking: Making you, a member of your family, or a person you have dated afraid of being injured or killed by repeatedly making nonconsensual contact with you, a member of your family, or a person you have dated. [AS 11.41.260-270.]

Harassment: Making repeated telephone calls to you at extremely inconvenient hours or making an anonymous or obscene telephone call or a telephone call to you that threatens physical injury. [AS 11.61.120.]

Terroristic Threatening: Making a false report that a circumstance exists that

places you in fear that someone has been injured. [AS 11.56.810.]

Interference with a Report of Domestic Violence: Attempting to, or preventing you or someone else from reporting domestic violence to the police. [AS 11.56.745.]

Arson or Criminal Mischief: Damaging or tampering with your property, even if it is jointly owned. [AS 11.46.400 & AS 11.46.480.]

Kidnapping: Taking or holding you against your will in order to physically injure or sexually assault you. [AS 11.41.300.]

Custodial Interference: If the perpetrator is related to your child, taking and keeping your child away from you for an extended period of time without your permission when you have legal custody. [AS 11.41.320-330.]

Sexual Offenses: Having sexual intercourse or sexual contact with you without your consent. [AS 11.41.410-425 & AS 11.41.434-460.]

Burglary and Criminal Trespass: Entering your residence, or another building or dwelling, unlawfully. [AS 11.46.300-310 & AS 11.46.320-330.]

Robbery, Extortion and Coercion: Taking your property by physical force or threats, or making you do an act by threats of force, or by threats to expose secrets that would cause

you to be ridiculed. [AS 11.41.500-530.]

Violating a Protective Order: Contacting you or going to your home, where you work, or other places named in your protective order as places from which to stay away, or violating other conditions set by the judge in the protective order. [AS 11.56.740.]

Murder: Killing you, your children, or other family members. [AS 11.41.100-110.]

What protections are available to victims of domestic violence?

The laws of Alaska provide protection to individuals who are victims of domestic violence. One of those laws is the Domestic Violence Prevention and Victim Protection Act of 1996. This law provides comprehensive protection to victims of domestic violence including civil protective orders and protections throughout the criminal process. *See the Protective Order section at the end of this chapter.*

DUTIES OF LAW ENFORCEMENT WHEN DOMESTIC VIOLENCE HAS OCCURRED

If I call the police to report a violation of my protective order or another act of domestic violence, will the police make an arrest?

Yes, if you report the domestic violence within 12 hours after it has occurred and probable cause exists. This "mandatory arrest" is required by law.

If you report after the first 12 hours, an arrest without a warrant can still be made if there is probable cause to believe that a crime occurred. The incident does not have to happen in the presence of an officer for the arrest to be made. A police officer who does not make an arrest after a domestic violence incident or who arrests more than one person from a single incident must put in writing the reasons for her/his actions.

How do officers determine if they have probable cause to make an arrest?

In determining probable cause, officers may talk to you, the perpetrator, and any witnesses, examine the place where the act is said to have taken place, and consider other relevant factors.

What is mandatory arrest and what happens if both parties claim to be the victim?

A peace officer is mandated (required) to make an arrest, with or without a warrant, when there is probable cause to believe within the last 12 hours a person committed domestic violence, knowingly committed or attempted to commit an act that violates provisions one through seven of a protective order, or violated a condition of release in connection with a domestic violence charge.

If a peace officer receives complaints of domestic violence from more than one person about the same incident, the officer is required to evaluate the conduct of each person to determine who was the principal physical aggressor. In determining whether a person is the principal physical aggressor, the officer shall consider prior complaints of domestic violence, the relative severity of injuries inflicted on each person, the likelihood of future injury from domestic violence to each person, and whether one of the persons acted in self-defense.

SEXUAL ASSAULT

Sexual assault, in all of its forms, is a crime. Victims of sexual assault can seek criminal and civil remedies as well as

monetary compensation for the crime committed. Sexual assault is a criminal offense and if a victim makes a police report against a perpetrator, the District Attorney may prosecute the case. A victim of sexual assault can also file a civil case against a perpetrator of sexual assault asking for monetary reparations and a victim can also file for a protective order against the perpetrator.

If you have been a victim of sexual assault, you can contact a domestic violence and sexual assault program in your region. *See the Resource Directory at the end of this handbook for contact information.*

What is sexual assault?

Sexual assault is when someone, without your consent, touches or penetrates you sexually. Touching, such as rubbing a breast, vagina, penis or anus, even if it is through clothing, is called “sexual contact.” Intercourse, oral sex, or insertion of an object or body part into the vagina or anus is called “sexual penetration.” Sexual contact or penetration occurs if the offender touches or penetrates your body or if you have to touch or penetrate the offender’s body. Another sexual assault crime occurs when a person has sexual contact or penetration with you while you are incapacitated because of drugs, medication, or alcohol and unable to

give your consent. It is also a crime to have sexual contact or penetration with someone who is mentally impaired and not able to understand what he or she is doing or the consequences of their conduct.

Sexual crimes in Alaska include:

- touching and penetration without consent;
- sexual touching, or penetration of a person who is under the age of consent;
- sexual touching or penetration of a person who is incapacitated or incapable of consenting;
- viewing, photographing, or exposing sexual parts of the body without consent;
- creating or distributing child pornography; and
- a wide range of other acts which affect a person’s right to choose whether to interact in a sexual way with another person.

It is also a crime to attempt to do any of these acts. Sexual offenses often include the use of physical force, threats, intimidation, coercion, and manipulation.

What is sexual harassment?

Sexual harassment includes:

- verbal assaults such as whistles, jokes, comments, and insults about gender, sexuality, or sexual activity;
- visual assaults such as exposing oneself or exposing someone to nude or pornographic images against someone's wishes, or gesturing or mimicking sexual acts; and
- physical assaults such as intimidating behaviors and postures or unwanted physical touching such as tickling or wrestling.

See Chapter Three for more information on workplace sexual harassment laws.

SUMMARY OF SEXUAL OFFENSES

There are four levels of sexual assault; three are felonies and one is a misdemeanor. The main factors that go into classifying sexual offenses include:

- whether there is penetration or contact;
- whether the offender and victim are in certain types of special relationships;
- whether the contact was without consent or whether the victim was too young or incapacitated to consent; and
- whether there was serious injury in an attempted sexual assault.

First degree sexual assault is a serious felony that can be committed in three ways:

- when a person sexually penetrates you without your consent;
- when a person attempts to sexually penetrate you without your consent and causes serious physical injury; or
- when a person sexually penetrates you and you are under that persons care and you are mentally incapable of understanding what is happening. [AS 11.41.410.]

Second degree sexual assault, also a felony but with lower penalties than first degree, can be committed:

- when someone sexually touches you without your consent;
- when someone has sexual contact with you and you are under their care and mentally disabled;
- when someone sexually penetrates you and you are mentally incapable, incapacitated, or unaware the sexual act is being committed; or
- when someone sexually penetrates you and knows you are unaware that a sexual act is being committed and the offender is a health care worker and the offense takes place during the course of professional treatment. [AS 11.41.420.]

Sexual assault in the third degree is also a felony and is committed when someone has sexual contact with someone who they know is mentally incapable, incapacitated, or unaware that a sexual act is being committed. [AS 11.41.425]

FACTS ABOUT SEXUAL ASSAULT

You are not alone. The U.S. Department of Justice estimates that 130,000 sexual assaults occur in the United States each year, or more than 350 per day. It doesn't matter how old you are, where you live, or your cultural background – you can be a victim of sexual assault. Sexual assault victims are both male and female, of all ages and from all walks of life. Don't be confused if the offender is "respected" or well liked in your community. If the person had sexual contact or penetration with you without your permission, it was a crime. Sexual offenders may be from any class, culture, profession, or educational level.

Nothing you did and nothing about the way you looked makes you responsible for what happened to you. The motive for sexual assault is the need to feel powerful and in control. It is a myth that sexual assault occurs because of uncontrollable sexual urges or a lack of sexual opportunities. Studies have shown that most offenders have a consenting sexual partner and are often

married. You can be sexually assaulted by a friend, a date, a spouse, or a stranger. Approximately 80 percent of sexual assaults are committed by someone the victim knows. Sexual assault is a crime regardless of whether the perpetrator is a spouse, boyfriend, or acquaintance. A spouse can be prosecuted for sexual assault in the first, second, and third degrees.

You may need advocacy, counseling, a medical evaluation and treatment, or other assistance. You can get help by calling a sexual assault or domestic violence program in Alaska. *[See the Resource Directory at the end of this handbook for contact information.]* Attempted illegal acts are also crimes, so you should report a sexual assault even when the act was incomplete.

Changes in the law have helped to minimize a victim of sexual assault from being re-victimized in the courtroom. In the past, attorneys often cross-examined the victim about her past conduct or clothing, particularly in cases where the defendant said the woman consented. Now there is a law specifically forbidding public, embarrassing cross-examination of a rape victim about her past sexual conduct. The victim's sexual conduct cannot be introduced into the trial unless the judge believes the information is important for the trial. This is discussed with the judge prior to

disclosure before the jury. [AS 12.45.045]

SEXUAL ABUSE OF A MINOR

Alaska has many laws that protect children. These laws look beyond accidental harm, injury, or exposure and address physical abuse, neglect, sexual abuse, and exploitation. Child abuse and neglect can occur when a person who is responsible for a minor creates circumstances that harm or threaten the child's health, safety, or well-being. For example, parents may be criminally responsible for causing or allowing harm or injury to their children. Individuals who are not legally responsible for a child can also be criminally charged if they knowingly inflict harm or injury to a child. If you have questions about child abuse or neglect, call the Office of Children's Services or your local domestic violence/sexual assault program. *See the Resource Directory at the end of this handbook for contact information.*

There are four levels of sexual abuse of a minor. They range from serious felonies to misdemeanors depending on whether there is penetration or not, the age of the victim, and the relationship of the victim to the offender. [AS 11.41.434-440.]

Other crimes include:

- Incest: when a person who is at least

18 years old sexually penetrates a whole or half blood relative including a sister, brother, aunt, uncle, niece, or nephew. This is a felony. [AS 11.41.450.]

- Unlawful exploitation of a minor: photographing or filming a minor child engaged in sexual activity. This is a felony. [AS 11.41.455.]
- Indecent exposure: when a person intentionally exposes their genitals to another person with reckless disregard of the effect it will have on such person. This is a misdemeanor or a felony, depending upon whether there was masturbation and if the victim was under 16 years of age. [AS 11.41.460.]
- Online enticement of a minor: using a computer to solicit or entice a minor to engage in sex with an adult. It is class C felony, unless the offender was already required to register as a sex offender, in which case it is a class B felony. [AS 11.41.452.]

Who are the victims of sexual assault?

Anyone can be a victim of sexual assault. Sexual assault is not about the uncontrollable sexual desires of the perpetrator. It is about power, control, and domination. According to the U.S. Department of Justice, an estimated 91 percent of sexual assault victims are female and 9 percent of victims are

male. However, 99 percent of sexual assaults are perpetrated by men.

What are my options if I have been sexually assaulted?

There is no right or wrong thing to do after you have been sexually assaulted. The most important thing to do is to ensure your own safety. You may want to call someone you trust such as a friend or family member. You could also call a sexual assault or domestic violence program in your town. All of these centers have a crisis line that you could call. *See the Resource Directory at the end of this handbook for contact information.*

You also have the option of going to the hospital. You will also have the option to be screened for STDs, receive emergency contraception, and have a SART exam to gather forensic evidence (see the next section for more information about SART). You can receive services from the hospital without law enforcement being involved. However, Alaska law requires that medical providers report certain injuries such as a stab or gunshot wound to law enforcement. Medical providers are also mandated to make reports of abuse involving children or vulnerable adults.

The laws of Alaska provide protection to individuals who are victims of domestic

violence and sexual assault. One of those laws is the Domestic Violence Prevention and Victim Protection Act of 1996. This law provides comprehensive protection to victims of domestic violence and sexual assault including civil protective orders and protections throughout the criminal process. Victims of sexual assault have the option of getting a protective order against their perpetrator. For information on how to get a protective order, please refer to the Protective Order section of this chapter.

SEXUAL ASSAULT RESPONSE TEAM (SART)

Many communities in Alaska have a Sexual Assault Response Team (SART). The SART team is made up of a police officer, a specially trained nurse examiner, and a victim's advocate. The three components of the team come together at the hospital at the same time with the victim of a sexual assault.

Before the medical exam, a law enforcement officer and the medical provider will jointly interview the victim to get information for the investigation and to meet her medical needs. The police officer then leaves during the SART exam, which is done by a specially trained nurse examiner (referred to as a Sexual Assault Nurse Examiner or SANE). The nurse examiner then gathers forensic evidence

from the victim. The nurse examiner also treats the victim for any medical needs that they have and can provide options to protect against sexually transmitted diseases and pregnancy. The victim's advocate will be there with you throughout the entire process. The advocate will inform you about the SART process and answer any of your questions as well as support you in the weeks and months after the assault.

If you plan to press charges or get a SART exam, it is best not to change your clothes, shower, douche, or brush your teeth because these activities could destroy evidence. If you have done these things, however, evidence can still be gathered. It is best to get a SART exam within 96 hours after the assault has taken place. But even if it is outside this time and forensic evidence may not be present, some injuries may not yet have healed and could still be documented.

SART is not available in all communities in Alaska. However, similar services are available to victims of sexual assault even if there is not SART. The state's forensic evidence collection kit may not be charged to the victim; however, there may be some testing for certain sexually transmitted infections or pregnancy that may not be covered even though they happen at the same time as the SART exam. Call your local domestic violence and sexual

assault program to find out if SART is available.

What are my rights if I am a victim of sexual assault?

A victim of sexual assault is entitled to:

- Notice and explanation of available protections from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts including protective orders, assistance in obtaining personal belongings, transportation to safe home or shelter, assistance in obtaining medical treatment, and other applicable services.
- Make in writing or in person their wishes to have no contact with the defendant or any person acting on behalf of the defendant or the defendant's counsel.
- Confidentiality with respect to the victim's address or phone number (s), including but not limited to criminal proceedings, divorce, dissolution, and child custody proceedings.
- Refuse to make statements and/or recordings requested by the defendant or any person acting on the defendant's behalf.
- Private counsel, the DA, or other accompaniment during statement or recordings.

- Information about violent crime compensation and procedure for applying for compensation. This includes the possibility of recovering attorney's fees.
- In felony domestic violence and sexual assault cases, the DA shall make a reasonable effort to confer with the victim about their testimony before the defendant's trial.
- Notice and to be present at any hearings at which the defendant is present.
- Request restitution for financial loss as a result of the crime to be included as part of the sentence and judgment and also may be a condition of probation. This is separate from what Violent Crimes Compensation may cover.

A victim can also contact the Alaska Office of Victims' Rights for assistance or more information.

The victim shall be notified:

- of the date of the trial;
- of the defendant's conviction and for what crimes;
- of date, time and location of sentencing hearings;
- that a sentencing or other events to which the victim is subpoenaed will not occur as scheduled; and
- of the address and telephone number

of the office doing the presentence report.

Notification of the right to make a statement for the inclusion in a presentence report that may contain any reasonable information including:

- an explanation of the nature and extent of the physical, psychological, or emotional harm suffered by the victim;
- an explanation of the extent of economic loss of property damage suffered;
- an opinion of the need for and the extent of restitution and whether the victim has applied for or received compensation for the loss or damage;
- recommendation of the victim for an appropriate sentence;
- notice of the right to submit to the sentencing court a written statement that the victim believes is relevant to the sentencing decision;
- to appear personally at the defendant's sentencing hearing to present an oral statement;
- after the conviction, information about the complete record of the defendant's conviction;
- selected portions of the presentence report before the sentencing hearing; and
- written notice of the final disposition

of the case within 30 days after the final disposition.

Can I get some form of compensation for a sexual assault crime?

Yes. Compensation may be available to victims of sexual assault and/or their families, even if charges are not filed. In Alaska, victims of sexual assault may apply for compensation through the Alaska Violent Crimes Compensation program. The Compensation Board meets several times a year to review applications from victims of violent crimes in Alaska.

You can get a Violent Crimes Compensation application from your local domestic violence and sexual assault program or from the program website at www.state.ak.us/admin/vccb.

SEX OFFENDER REGISTRY

All 50 states have passed some form of sex offender notification laws. Alaska maintains an internet listing of convicted sex offenders that includes their names, identifying information, home and work addresses, date of birth, driver's license numbers, and vehicles to which they have access. There is also often a photo accompanying this information. The internet site is maintained by the Alaska Department of Public Safety and can be accessed at

www.dps.state.ak.us/nSorcr/asp.

All sex offenders who are present in the state of Alaska must register with the state within 30 days of release from a correctional facility. Some sex offenders convicted of a single sex offense that is not an "aggravated sex offense" have to register for 15 years. The 15 years starts after they are off probation, but they must be registered while they are on probation. Offenders convicted of an aggravated sex offense or child kidnapping or more than one sex offense must register for life. Sex offenders are required to notify law enforcement of any change of address within one day of making the change.

SEXUAL ASSAULT AND HIV/STDS

A victim of sexual assault has the right to be tested for sexually transmitted diseases (STDs) that may have been transmitted during a sexual assault. If criminal charges have been filed in a sexual assault case, the victim has the right to ask the prosecutor to file a motion to have the perpetrator tested for STDs, including HIV.

DRUG FACILITATED SEXUAL ASSAULT

The use of date sexual assault drugs have increased over the years. Drugs such as Rohypnol (referred to as

“Roofties”) and GHB (Gamma Hydroxybutyrate) can be placed in someone’s drink and the effects of the drug are much like amnesia. A person who has taken one of these drugs will not be able to resist an assault and will be uncertain of the events of the night. These drugs are colorless and odorless. Being given one of these sexual assault drugs is illegal and a crime, regardless if the victim had been drinking or under the influence of another drug at the time of the attack. If a victim is incapacitated “as a result of an act of the defendant,” a resulting act of sexual penetration could still be sexual assault in the first degree and not second degree. This would include many prescription medications, common “recreational drugs” like cocaine, and alcohol. The victim has to either be forced to consume the substance or unaware that it was provided to her.

What are common reactions to sexual assault?

People react differently in times of crisis. You may find it helpful to review the following in case you are having, or develop, these symptoms at a later date.

Common Reactions to Sexual Assault (sometimes immediate - sometimes delayed)

Psychological:

- guilt, shame and embarrassment
- confusion
- anger
- helplessness
- depression
- fear and anxiety
- self-blame for the assault
- nightmares or flashbacks
- feeling you are no longer in control of your life
- not wanting to talk about the sexual assault
- denial - pretending it didn’t happen

Physical:

- changes in appetite
- sleeping difficulties
- stress-related illness
- alcohol/drug dependence

Social:

- isolation and withdrawal
- difficulty trusting
- interpersonal conflicts
- decline in academic or work performance

About Sexual Relationships: You may need time before resuming sexual relationships. When you do, you may find yourself:

- feeling general dissatisfaction
- fearing or disliking sex
- having flashbacks of the assault

These reactions can subside over time. Be patient with yourself.

How are sexual assault cases handled in the criminal justice system?

Some people find the criminal justice system confusing. This section explains what happens in sexual assault cases.

Report: You, or someone else, report the crime to the Village Public Safety Officer (VPSO), a city police department, or the Alaska State Troopers and an investigator is assigned to the case.

Investigation: The police interview you. Depending upon the type of sexual contact and the date it occurred, the officer may ask that you be examined by a medical person to determine if hairs, semen, or injuries are present. The officer may also take clothing, bedding, or other items for testing. The officer sends these items to the crime lab in Alaska for analysis. The police officer also gathers other information, including statements from witnesses and the offender and prepares a report.

District Attorney: The District Attorney reviews the report prepared by the police

to decide if there is enough evidence to charge the offender.

What if the District Attorney does not file charges?

If this happens, it is because the attorney does not have enough evidence to prove the case to a jury. The decision not to file is not made because the attorney does or does not believe you. Even if the case is not prosecuted, the report remains with the police department. This report may become very important in the future to convict this offender if more evidence is uncovered or if the offender sexually assaults someone else.

Can the victim drop charges?

No. The District Attorney files charges, and only the District Attorney can drop the charges. This is because sexual assault is a crime against society as well as against you. Being convicted of a crime teaches offenders that there is no place for violence in our communities. As part of the sentence, the District Attorney can ask the judge to order the offender to attend a sex offender treatment program to change violent behavior.

DEFINITIONS

Preliminary Hearing or Grand Jury: If the crime is a felony (most sexual assault

cases are), the District Attorney must show to a group of citizens (called a grand jury) or to a judge (at a preliminary hearing) that there is enough evidence to bring the case to trial. At a preliminary hearing (rarely done in sexual assault cases), there will be a judge, a District Attorney, a defense attorney, and the offender. It is open to the public. The defense attorney is allowed to ask questions.

At a grand jury proceeding (commonly done in sexual assault cases), there will be 12 to 18 grand jurors (they are citizens just like you) and a District Attorney. There is no judge, no defense attorney, no offender, and it is not open to the public. The vast majority of sexual assault cases are reviewed in the privacy of a grand jury where witnesses, one at a time, are asked questions. When it is your turn, the District Attorney will ask you questions and then the grand jurors may ask you questions. Your contact person in the District Attorney's Office will tell you the grand jury date. The District Attorney and, most likely your contact person, will meet with you before you testify to explain your role in court and to tell you the questions that will be asked.

Arrestment: At the arrestment the offender (now called a "defendant") appears before the judge. The judge explains the charges and asks the

defendant to enter a plea. If the plea is "guilty" or "no contest" (sometimes called "nolo contendere"), the judge sets a date for sentencing. If the plea is "not guilty" (this happens in nearly all cases), the judge will set a date for trial. You do not have to attend the arrestment. Your contact person will tell you the trial date or the sentencing date.

Change-of-Plea Hearing: If the defendant originally pleads "not guilty," the defendant can change his or her plea to guilty or "no contest" at any time. Most defendants do change their plea, which cancels the trial. You do not have to attend a change of plea hearing.

Trial: If the defendant does not plead "guilty" or "no contest," a jury trial (a jury consists of 12 people) will be held and you will testify. To make you as comfortable as possible and to refresh your memory, the District Attorney or your contact person will meet with you shortly before the trial.

Delays: A judge at the request of the District Attorney or the defense attorney may grant a "continuance" (changing a court proceeding to a later date). Continuances may also occur because of the judge's or attorneys' schedules, evidence analysis requests, and legal arguments about the evidence. Because delays are common, it is best if you can mentally prepare for them. Tell your

contact person about any dates you may be unavailable for court.

Presentence Report: If the defendant is found guilty or pleads guilty and if the crime is a felony, the judge will set a sentencing date and order a presentence report. The sentencing date is usually scheduled two to three months away to allow time for the presentence report to be prepared. Probation officers prepare presentence reports to help the judge at sentencing. The report contains information about the defendant's background, the crime, a sentencing recommendation, and usually a victim impact statement. The probation officer will ask to talk to you to get information for the victim impact statement. If you talk to the probation officer, he or she will most likely ask:

- how the crime hurt you and your family (emotionally, physically and financially) and affected your life;
- what you think should happen to the offender (jail, counseling, having to stay away from you and your family, paying you for your out-of-pocket expenses not covered by insurance, etc); and
- if you did lose money because of the crime, the probation officer will ask for the amount so he or she can request restitution for you (restitution is when the court orders the defendant to pay you for your

loss).

The probation officer sends copies of the completed presentence report to the judge, the District Attorney and to the defense attorney (who will read the report with the defendant). The report is confidential and it is not available to the public. Some sections of the report are available for you to read if you ask your contact person prior to sentencing. Those parts are:

- the summary of the offense as explained by the probation officer;
- the defendant's version of the offense;
- the summary of your statements in the report; and
- the sentence recommendation made by the probation officer.

You will receive a "Victim Right to Notification" form from the probation officer. If you want to know when the offender will be released from prison, fill out the form and return it to the probation officer. If you choose to request the notification, keep in mind that you will need to notify the Department of Corrections if you change your address or phone number.

Sentencing Hearing: The sentencing hearing is when the judge decides the defendant's punishment. In deciding the sentence, the judge considers the

presentence report and recommendations from the District Attorney, the defense attorney, the defendant, and you. You may express your views to the judge, either in writing or in person at the sentencing hearing (you may do this in addition to giving the victim impact statement to the probation officer). You are not required to attend the sentencing, but many victims and family members have said it was helpful to see and hear how the case ends. If you choose not to attend, your contact person can tell you what happened.

Appeals: The defendant may appeal the sentence and conviction. If the defendant appeals, you have no responsibility during the entire appeal process except to keep your contact person informed if you move so he or she can let you know the result. The appellate court may take one or two years to decide the case. The District Attorney wins the vast majority of appeals. For that reason, try to allow the burden of the appeal process to rest with the District Attorney while you spend the waiting period taking care of yourself in your recovery process.

SEXUAL ASSAULT PROTECTIVE ORDERS

If a person has sexually assaulted you, you can ask the court to order the person to stay away from you and not contact you. A request for a protective order is a

civil matter, not a criminal matter. If you want the perpetrator to be prosecuted criminally, you need to report the incident(s) to the police.

A victim of sexual assault who does not fall within the definition of household member for a domestic violence protective order can file for an emergency 72 hour, 20-day and/or six month sexual assault protective order. For example a sexual assault victim can file for a protective order if the perpetrator is a:

- former friend;
- neighbor;
- classmate;
- co-worker;
- client or former client;
- stranger; or
- another category that is not a household member under Alaska domestic violence laws

STALKING

Stalking is a crime that can threaten anyone, without regard to age, sex, race, sexual orientation, or socio-economic status. High-profile celebrity cases have raised the public's awareness about the crime, but the majority of stalking victims are ordinary people, almost always women, who are pursued and

terrorized by someone with whom they have had a prior relationship.

Statistics show that:

- Most stalking occurs in the context of domestic violence.
- Approximately 80 percent of stalking cases involve women stalked by former male partners.
- As many as 90 percent of women murdered by current or former male partners were stalked prior to their deaths.

Stalking can be any incident of threatening, following, surveillance and/or coercive behavior that occurs more than once. Some examples are:

- following you on foot or by car;
- watching you from outside your home or workplace; or
- sending letters, emails or making unwanted telephone calls to you.

Any of these acts, if committed more than once or continuously over a period of time, can constitute stalking. In Alaska, a person commits the crime of stalking when they knowingly engage in a course of conduct (repeated acts of nonconsensual contact) that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member. [AS

11.41.260-270.] Stalking can be either a felony or misdemeanor depending on the conduct of the stalker.

What is stalking?

To qualify as stalking, the acts must be repeated acts of contact without your consent involving you or a family member done knowingly and that make you fear death or physical injury of yourself or a family member. [AS 11.41.260-270.]

What is nonconsensual contact?

Some examples are:

- following or appearing within your sight;
- approaching or confronting you in a public place or on private property;
- appearing at your workplace or residence;
- entering onto or remaining on property that you own, lease, or occupy;
- contacting you by telephone;
- sending mail or electronic communications to you; and
- placing an object on, or delivering an object to, property that you own, lease, or occupy. [AS 11.41.270(b)(3).]

STALKING PROTECTIVE ORDERS

If a person has stalked you, you can ask the court to order the person to stay away from you and not contact you. A request for a protective order is a civil matter, not a criminal matter. If you want the perpetrator to be prosecuted criminally, you need to report the incident(s) to the police.

A victim of stalking who does not fall within the definition of household member for a domestic violence protective order can file for an emergency 72 hour, 20-day and/or six month stalking protective order. For example a victim of stalking can file for a protective order if the perpetrator is a:

- former friend;
- neighbor;
- classmate;
- co-worker;
- client or former client
- stranger; or
- another category that is not a household member under Alaska domestic violence laws

What is cyberstalking?

Although there is no universally accepted definition of cyberstalking, the term is generally used to refer to the use

of the internet, email, or other telecommunication technologies to harass or stalk another person. Essentially, cyberstalking is an extension of the physical form of stalking. There is a clear difference between the annoyance of unsolicited email and online harassment. However, cyberstalking is a course of conduct that takes place over a period of time and involves repeated deliberate attempts to cause distress to the victim. The 2000 Violence Against Women Act expanded the interstate stalking law to include cyberstalking.

How can technology be used to stalk people?

Some examples include:

- using the internet to identify and track their victims;
- sending unsolicited email, including hate, obscene, or threatening mail;
- live chat harassment abuses the victim directly or through electronic sabotage (for example, flooding the internet chat channel to disrupt the victim's conversation);
- create postings about the victim or start rumors which spread through the bulletin board system;
- setting up a website(s) on the victim with personal or fictitious information or solicitations to readers;

- assuming the victim's persona online, such as in chat rooms, for the purpose of sullyng the victim's reputation, posting details about the victim, or soliciting unwanted contacts from others;
- mail bombs (mass messages that virtually shutdown the victim's email system by clogging it);
- sending the victim computer viruses, or sending electronic junk mail (spamming);
- installing spyware software that monitors all activities on a computer and runs undetected;
- installing GPS devices on cars; and
- enabling the GPS in victim's cell phones and monitoring their location through online programs.

PROTECTIVE ORDERS

The state of Alaska offers protective orders to victims of domestic violence, sexual assault, and stalking. It is important to do safety planning before, during, and after the process of obtaining a protective order. A protective order is only one tool for you to use in creating a safety plan for yourself and other family members. *See the Personal Safety Plan section at the end of the handbook.*

Contact your local domestic violence/sexual program and/or court clerk's

office for help in filing a protective order. You do not need an attorney to file for a protective order.

DOMESTIC VIOLENCE PROTECTIVE ORDERS

Domestic violence protective orders are court orders from a judge that can prohibit the perpetrator from:

- harming you in any way;
- talking to you or sending messages to you;
- making threats to hurt or harass you;
- entering your home, work place, or a vehicle you drive; and/or
- possessing a deadly weapon, such as a knife or gun, if a weapon was used to assault you or the perpetrator was in actual possession of the weapon during the commission of domestic violence.

In addition, the judge may order:

- that you have temporary custody of your children;
- that the police go with you to your home to provide protection while you get personal possessions or help you get you vehicle; and
- other safety provisions – a complete list of protections that you can request through a domestic violence protective order in Alaska is listed

below. It is important to let the judge know if you need additional protections that are not listed on the standard protective order form.

There are three types of civil protective orders available to victims of domestic violence in Alaska. [AS 18.66.100-180.] Each type of order provides a different type of protection. The law requires different procedures to be followed in obtaining the three types of civil protective orders.

The three types of orders are:

- emergency 72 hour protective order
- ex-parte 20-day protective order
- regular year long protective order (the year long protective order has a provision prohibiting the perpetrator from threatening to commit or committing domestic violence, stalking, or harassment towards the victim indefinitely unless dissolved by further order of the court.)

As described above, domestic violence includes a wide range of abusive behaviors such as physical violence, pushing, shoving, hitting, slapping, biting, choking, or other behavior that causes harm or puts someone in fear of being hurt. It also includes coercion, threats, intimidation, and sexual abuse. To be considered domestic violence, these actions must occur by one

household member against another.

Any person who is a victim of domestic violence by a “household member” is eligible for a protective order. Household member is a broad definition including adults or minors who:

- are current or former spouses;
- live together or who have lived together;
- are dating or who have dated;
- are engaged in, or who have engaged in, a sexual relationship;
- are related to each other, such as child, parent, grandchild, brother, sister, grandparent, great-grandchild, nephew, niece, uncle, aunt, great-grandparent, great-great grandchild, grand nephew or niece, first cousin, great uncle or aunt, and great-great grandparent;
- are related or formerly related by marriage (including stepparents and stepchildren);
- have a child from the relationship whether or not they have been married or have lived together; and
- minor children of a person in a relationship described above.

A protective order cannot establish permanent child custody, dissolve your marriage, or address issues of property division. If you are concerned about custody and visitation and/or the

perpetrator selling or destroying your property, it is important to contact an attorney about filing for divorce or child custody, and for an interim protective order to stop the perpetrator from disposing of your property or other needed protections. *See Chapter 14 for more information on visitation protections that are available in a protective order and also in child custody/divorce actions in Alaska.*

STALKING AND SEXUAL ASSAULT PROTECTIVE ORDERS

There are three types of civil protective orders available to victims of stalking or sexual assault that do not fall within the definition of household member for a domestic violence protective order in Alaska. [AS 18.65.850-865.] The law requires different procedures to be followed in obtaining the three types of civil stalking protective orders.

The three types of orders are:

- emergency 72 hour stalking or sexual assault protective order
- ex-parte 20-day stalking or sexual assault protective order
- regular six month stalking or sexual assault protective order

A stalking or sexual assault protective order may:

- prohibit the respondent from threatening to commit or committing stalking or sexual assault;
- prohibit the respondent from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner or a designated household member of the petitioner specifically named by the court; and
- direct the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner; however, the court may order the respondent to stay away from the respondent's own residence, school, or place of employment only if the respondent has been provided actual notice of the opportunity to appear and be heard on the petition. [AS 18.65.850.]

A stalking or sexual assault victim could file for a protective order if the perpetrator is a:

- former friend;
- neighbor;
- classmate;
- co-worker;
- client or former client;
- stranger; or
- other category that does not fall within the definition of household member for a domestic violence

protective order.

What are the definitions of stalking and sexual assault to qualify for an order?

Stalking means any contact with you without your consent. Some examples are:

- following or appearing within your sight;
- approaching or confronting you in a public place or on private property;
- appearing at your workplace or residence;
- entering into or remaining on property that you own, lease, or occupy;
- contacting you by telephone;
- sending mail or electronic communications to you; and
- placing an object on, or delivering an object to property that you own, lease, or occupy. AS 11.41.270(b) (3)

Sexual assault means engaged in a sexual act without your consent, and it includes some sexual acts involving minors. Some general examples are:

- You did not consent to the sexual act.
- You were not capable of giving consent because you were

incapacitated.

- You were not capable of giving consent because you were unaware the sexual act was taking place, or due to mental disability.
- Respondent’s attempted sexual act resulted in your serious physical injury.
- Respondent was your legal guardian.
- Respondent was an adult and you were a minor.
- You and respondent were both minors. AS 11.41.410-450

A stalking or sexual assault victim would need to fill out a domestic violence petition instead of a stalking or sexual assault protective order petition if the perpetrator is one of the following:

- spouse, former spouse, parent, grandparent, child, grandchild, brother, sister, first cousin, aunt, uncle, nephew, or niece;
- a person with whom the victim is presently or previously had a dating or sexual relationship;
- someone the victim lives with or has lived with in the past; or
- a person related or formerly related to the victim by marriage.

These all fall within the definition of household member in the domestic violence protective order statute.

SAFETY WITH A PROTECTIVE ORDER

- Keep a copy of your protective order with you at all times.
- Check with local law enforcement to make sure your protective order is on record with them. If not, give them a copy of your protective order. It is also important to give copies of the protective order to police departments in the community where you usually visit family or friends.
- Inform your employer, domestic violence advocate, minister, clergy, family members, and/or closest friends that you have a protective order in effect.
- If your perpetrator violates the protective order, call the police and report the violation. You can also call your attorney, an advocate at a domestic violence/sexual assault program, and/or advise the court of the violation.

What is the penalty for violating a protective order?

Violating a protective order is a misdemeanor punishable by up to one year of jail and up to a \$5,000 fine. [AS 18.66.130(d)(1) & AS 11.56.740.] If a perpetrator is convicted of assault in the fourth degree committed in violation of a protective order, he will be sentenced to

at least 20 days in jail. [AS 12.55.135 (c).]

OUT-OF-STATE ENFORCEMENT OF PROTECTIVE ORDERS AND TRIBAL ORDERS

The laws in this area have changed rapidly. Always check with an advocate to make sure you have the most current information.

Can I get my protective order from Alaska enforced in another state?

Yes. The Violence Against Women Act makes it possible to get your domestic violence, sexual assault, or stalking protective order enforced in other states. The Violence Against Women Act is a law that was passed by Congress in 1994. It says that all state and tribal courts shall enforce protective orders no matter which court or which state issued the order. All protective orders are good anywhere in the United States as long as they meet the following conditions:

- the court order was given by a judge or magistrate after a person who was abused by a family or household member filed a petition with the court asking for protection;
- the court that issued the order had jurisdiction over the people and case;
- the abuser had notice of the order

and had a chance to go to court to tell his/her side of the story; and

- in the case of emergency orders, the abuser will have a chance to go to court to tell his/her side of the story at a scheduled hearing.

Each state must enforce out-of-state protective orders in the same way it enforces its own orders, and also apply the same penalties that it applies to its own orders. This is also referred to as “full faith and credit.”

How do I get my protective order enforced by another state?

Court orders from other states are often referred to as “foreign” orders. The federal law does not require you to take any special steps to get your protective order enforced in another state, but many states have laws or regulations (rules) about enforcement of out-of-state orders. These rules differ from state to state, so it is important to find out what the rules are before you try to get your protective order enforced in another state. For example, a state may require you to “register” or file your order so that the court and the police know about it.

Some states have rules that require them to notify the abuser if you register your order in that state. Although knowing the state rules can make enforcement easier, filing and/or registration is not required under the federal law for enforcement of

a valid unexpired domestic violence protective order. A domestic violence protective order is enforceable on its face regardless of whether it has been registered or filed in the new state. It is important to keep a copy of your protective order with you at all times. It is important to know the rules of states you will be living in or visiting so you can make a good decision about how to get your order enforced and whether or not you should register it in that state.

How can I find out what the rules are in another state?

- Before you move to or visit another state, you can call a domestic violence program in that state and ask what their laws are for enforcing out-of-state orders and what assistance they can provide you in helping you get your order enforced in that state.
- If you do not know how to contact a domestic violence/sexual assault program in your area or in the area that you are planning to travel to, call the National Domestic Violence Hotline at 1-800-799-7233. Phone numbers for Alaska domestic violence/sexual assault programs are listed at the end of this handbook.
- The court clerk, the local prosecutor, or the United States Attorney located in your area may also be able to help you.

Do I need to get someone to help me get my order enforced in another state?

It is not necessary to have anyone assist you in getting your order enforced in another state. However, since this is a new law, there are still many people who do not know about it. You may want to contact an attorney or an advocate from a domestic violence/sexual assault program. Advocates for victims of domestic violence and sexual assault know the laws and rules about getting orders enforced, and they know how the court system works. In Alaska, each domestic violence/sexual assault program has a designated legal advocate who is knowledgeable about laws that affect battered women. You may also want to hire an attorney, but in most instances, an advocate will be able to assist you. In some places, it may be difficult to get your out-of-state order enforced without an advocate.

What things will I need to get my protective order enforced in a new state?

In most places, you will need a certified copy of your protective order. A certified copy says it is a "true and correct" copy, is signed or initialed by the clerk of court that gave you the order, and usually has some kind of court stamp. If your copy is not a certified copy, call or go to the court that

gave you the order and ask for a certified copy. If you have already relocated to a different state and do not have a certified copy, you can request assistance from a court clerk, advocate, or attorney in the new state to get a certified copy from the court that gave you the order. If you are moving to a new state, it may be helpful to take phone numbers for the court clerk in the state that issued the order and the number of the nearest domestic violence program in the new state. Some states maintain computerized registries of protective orders in their state. If the state that gave you the protective order has a registry, try to get the phone number of the registry manager, or the number of the local or state law enforcement agency that has your order on file.

What if my order is a temporary ex-parte order and is only good for a short time?

Temporary ex-parte orders can be enforced by other states just as any regular protective order granted after notice and a hearing, as long as the abuser has been served and the abuser will have the opportunity to have a court hearing set before your temporary order expires.

The state where you are going cannot extend the date of a domestic violence protective order that was issued by another state. If you need to extend an

out-of-state order, you will have to contact the state that issued the order and arrange to be at the hearing telephonically or in person. In some states, you may be able to obtain another domestic violence protective order from the state where you have moved.

Could I have problems getting my protective order enforced in another state?

There are sometimes problems getting new laws enforced until everyone knows about the law and knows what they are supposed to do to enforce it. Some of the things that might come up include:

- **State Rules:** Some state rules can put women in danger, such as requiring that the abuser be notified when the protective order is registered.
- **Lack of Knowledge:** In some states judges, clerks, and law enforcement officers may not know about this law. Although all states are required to enforce the federal law, you may need an advocate or attorney to help you.
- **Confusion:** The law is not clear about whether other states can use the Violence Against Women Act to enforce parts of protective orders dealing with child custody. Other laws that govern child custody orders are the Uniform Child Custody Jurisdiction Act (UCCJA),

the new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and the Parental Kidnapping Prevention Act (PKPA). If your order gives you temporary custody of your children, it is very important for you to contact an advocate and/or an attorney to make sure that your order meets the requirements of these laws.

GETTING OUT-OF-STATE PROTECTIVE ORDERS AND TRIBAL ORDERS ENFORCED IN ALASKA

Can the state prosecute for a violation of an out-of-state or tribal order?

Under AS 11.56.740, only if a copy of your out-of-state or tribal order is filed with the court. However, even if the out-of-state order was not filed with the court, law enforcement may be able to enforce certain parts of the order such as obtaining your personal belongings from the abuser. Law enforcement can make an arrest if the abuser commits another offense (violation of Alaska law) such as assault or trespass. If you are concerned about an abuser tracking down your location from filing the protective order with the court closest to you, contact your local domestic violence/sexual assault program. They can assist in filing the order with another Alaska court and safety planning.

How do I file my out-of-state or tribal order with the court system?

Clerks of court (and magistrates in locations lacking a clerk) accept out-of-state and tribal orders for filing. When presented with an out-of-state or tribal order, the clerk reviews it to determine that it is a certified copy and that it appears on its face to be unexpired. As a matter of policy, the clerk will not contact the issuing jurisdiction for more information. The clerk will file stamp the order and assign it an Alaska Court System civil case number. The clerk next will distribute the order to the appropriate local law enforcement agency for entry into the central registry (the same distribution procedure used for Alaska protective orders). It is important to get a copy of your file stamped order and keep a copy on your person at all times in case there is any delay in the order getting entered into the Alaska Central Registry for Protective Orders.

Once I file my out-of-state or tribal order, how do I get it enforced by local law enforcement or state troopers in Alaska?

- Immediately call any local law enforcement agency or state trooper office if the abuser violated the order.
- When the police get there, you should show them a copy of your filed order. They will check your

order to see whether it has been filed with the Alaska Court System. The officer is required by law to enforce the order just as if it were issued in Alaska.

- If you do not have a copy of your filed order with you, a local law enforcement officer or state trooper can get the information they need to enforce your order from the Alaska Public Safety Information Network (APSIN). When you file your order with a court clerk's office in Alaska, the State of Alaska will enter the order into the Central Registry for Protective Orders which is contained in APSIN. However, it is still very important that you always have a copy of your filed order with you.
- If the abuser violates the order and you have not filed it with the Alaska Court System, you should still call a law enforcement agency immediately.

What if the court that issued my order contacts Alaska and says that my order has been changed or is not good?

If the court in Alaska gets notice from the state that gave you the protective order that your order has been changed in some way, the court in Alaska will notify you. If your order has been changed without your knowledge, you will have to go back to the state that gave you the order to do something

about it. You may need an attorney or an advocate to help you. If your order has been revoked, you cannot have it enforced by law enforcement in Alaska. The Alaska court clerk or an advocate can explain how to get a protective order in Alaska.

Special thanks to the Kentucky Domestic Violence Association for permission to adapt their brochure on Domestic Violence Protective Orders and Out-of-State Enforcement.

SAFETY PLANNING

What is a safety plan?

Women can do a number of things to increase their safety during violent incidents, when preparing to leave an abusive relationship, and when they are at home, work, and school. Many batterers obey protective orders, but some do not. It is important to build on the things you have already been doing to keep yourself safe.

Stalkers can be extremely dangerous, and any threats or contact by them should be documented and treated seriously. Victim advocates can help you maintain incident logs and develop safety plans. If you are a victim of stalking, a domestic violence/sexual assault program will be able to answer your questions and help you. *See the*

Resource Directory at the end of this handbook for contact information.

What can I do to enhance my personal safety?

- Change your daily schedule and the route you take to work, school, and stores.
- Accompany children to and from school or bus stops.
- Remove your residential address and phone number from checks.
- Get an unlisted and unpublished telephone number and an answering machine to screen calls.
- Choose carefully who gets personal information about you, such as your home address and phone number.
- Destroy discarded mail.
- Make sure your telephone number is unlisted and unpublished.
- Learn about Caller ID and “block” telephone number from appearing on Caller ID systems.
- Limit confidential conversations on cordless phones or baby monitors because the transmissions are easily intercepted.
- Use a private mail box (through a company such as Mail Boxes Etc.) for your official mailing address, which ensures more privacy than a post office box.

What can I do to protect my home?

- Change or improve locks on doors and windows and keep them locked.
- Use window bars, poles to wedge against doors, or an alarm system.
- Replace wooden doors with metal doors.
- Keep a light on all the time.
- Install an outside lighting system that lights up when a person is coming close to your home.
- Get a smoke detector and fire extinguisher.
- Tell neighbors you trust to call the police if they hear suspicious noises coming from your home.
- Identify visitors before opening doors.
- If you have a telephone, ask that a friend call you at least once a day.
- Keep your purse and vehicle key in a place where you can get them so you can leave quickly.
- Have someone stay with you if you live alone, or go stay with family, friends, or at a sexual assault program shelter.

How can I feel safer in my workplace?

- Have co-workers screen calls, visitors and incoming mail.
- Give co-workers (managers, security) a photo or description of

the stalker and any possible vehicles.

- Coordinate with co-workers when leaving the workplace; never leave the building alone, especially at night.

How can I feel safer in my vehicle?

- Park vehicle in well-lit, public areas.
- Keep car doors locked, even while vehicle is in use.
- Equip car with gas cap and hood locks.
- When traveling, plan ahead and be aware of locations where you can get help, such as police stations.
- Be alert for vehicles following you. If followed, drive to a police station, fire station, or a busy shopping center.
- If it seems like the stalker always knows where you are, go to a mechanic or law enforcement and have your car checked for GPS tracking devices.
- Be alert. If you feel threatened, drive to a police or fire station, or a busy shopping center.
- Try not to travel alone.
- Get a cell phone so you can make emergency calls at any time. Keep emergency phone numbers with you.

What can I do to feel safer online?

- If you are receiving harassing

messages and are under 18, tell a parent or adult you trust.

- Use a gender neutral and non-identifying screen name/username.
- Change your pin numbers and passwords frequently.
- Search for your name on the internet and find out what contact information is posted online.
- The stalker may have access to your computer and may be monitoring your activities. When you look for help or a new place to live, try to use a safer computer at a library, café, or friend's house.
- Create an additional email account if you suspect the stalker is accessing your email or sending harassing messages. Do not publicize this account and check this email account from a computer the stalker may have access to.
- Don't give out your primary email account to people you don't know and have a separate free email account for newsgroups and social networks.
- Save every harassing or threatening communication digitally.

What can I do if my perpetrator is in jail?

VINE stands for Victim Information and Notification Everyday. VINE is a free, anonymous, computer-based service that

offers prisoner custody status information:

- You may call from any touch-tone phone, any time, to find out if an offender is in jail.
- You may register so the system will call you if the offender's custody status changes by being released, transferred, or escaping.

The telephone number for VINE to check the offender's custody status or to register for notification is 1-800-247-9763.

Do not depend solely on the VINE service for your protection. If you feel you may be at risk, take precautions as if the offender has already been released.

Chapter Seven

INHERITANCE & ESTATE PLANNING

Estate planning is the process of determining how the assets you own at the time of your death – your estate – will be distributed after your death. The distribution of your estate, both real and personal property, at the time of death is governed in three ways: (1) certain property (for example, life insurance or retirement) will pass to the persons you have designated to receive the property; (2) if you do not have a Will or your Will is invalid, your own assets will be distributed according to state law; or (3) if you have a valid Will, your own assets will be distributed according to your Will.

For large estates, estate planning commonly involves planning the distribution of your property in an effort to reduce any state and federal estate tax liability. Estate planning also commonly involves the drafting of trusts that allow you to designate some or all of your property, real and personal, to be held by a trust and managed by someone (a trustee) for the benefit of another (a beneficiary). People also use estate planning and trusts when they have young children (children under 18) or disabled family members as a means to provide for their care in case of their death.

If you have young children, disabled family members, or substantial assets, you may want to discuss these issues with an attorney who specializes in estate planning.

WILLS

The primary purpose of a Will is to tell your survivors how you want your property distributed when you die. In general, you can do whatever you want with your property as long as it is not against the law. For example, a Will can give property to specific people or a Will can set up a trust for your minor children so that your assets are used for their care and education. If you are married and have substantial assets, you can also set up trusts in your Will to help reduce

state and federal estate tax liability. If you wish, you can choose to leave your estate to charity.

Along with spelling out how you want your property distributed, your Will must name a Personal Representative. This is the person who will administer your Will in the probate court. The probate process involves many tasks, such as identifying and gathering your property, notifying your heirs, devisees, and creditors of your death, paying your debts and taxes (including filing all

necessary tax returns), and distributing your property according to your Will or according to state law. This person does not need to live in the same community or even in Alaska, but it may be more convenient if she or he does. People usually choose a loved one or a close friend to serve. Regardless, the Personal Representative is entitled to receive a reasonable sum as compensation unless you indicate otherwise in your Will. Generally a Personal Representative has to obtain a bond to serve in that capacity. If you want your Personal Representative to serve without having to post a bond, you must specifically state that the Personal Representative may serve without bond in your Will. Keep in mind the cost of the bond will most likely come out of the assets of the estate.

A Will may also provide that a trust be set up at your death. A trust allows property to be held by one person for the benefit of another. For example, if you set up a trust in your Will for your minor children, you must name a trustee to manage the trust. The trustee is in charge of managing the trust assets for your children's benefit according to the rules you have set forth in your Will for the creation of the trust. A bank or other financial institution can also serve as trustee, but you should find out how much they charge before naming them. Keep in mind that a trust is its own legal

person with its own expenses and requirements (trusts must be registered and file income tax returns) so a trust is not inexpensive to set up or administer.

You can also set up a trust during your lifetime. People sometimes do this as one way to minimize future estate tax liability or as a way to avoid probate in Alaska and any other states where they own real property (land). These "living trusts" can take many forms and have particular requirements depending on the desired result. You should consult an estate planning attorney if you think you want or need this kind of trust.

A Will also should nominate a guardian or co-guardians for your minor children or for a disabled dependant. The court will strongly favor your nomination, but the court cannot force that person to serve as guardian and will not appoint a guardian who might not act in the child's or dependant's best interest. If your children have a surviving parent when you die, that person usually takes custody automatically. This occurs even if you are not married to the other parent at the time of your death, unless it is not in the child's best interest. If you do not want your ex-spouse to have custody, you can state that intent and your reasons in your Will and the court will consider those reasons in determining custody. The court also may consider the wishes of children over 14 when appointing a guardian. It is a good idea

to select different people as your Personal Representative and guardian as they have different duties and responsibilities.

A Will also can disinherit someone other than your spouse who might otherwise inherit from you if you did not have a Will. For example, you may have a child you want to disinherit. You should specifically mention this person's existence and your intent to disinherit him or her. You do not need a reason for disinheriting someone. If you have a child who has been adopted by his or her stepparent, that child still has a right to inherit from both natural parents and grandparents, unless specifically disinherited.

You must follow certain formal requirements to ensure that your Will is effective. The person signing the Will is referred to as the "testator." To make a Will, the testator must be at least 18 years old and of sound mind. In Alaska, a Will must be in writing and signed by the testator or at her direction and witnessed by at least two people. The witnesses should also sign an affidavit that they witnessed the testator sign the Will. This affidavit can be found in the Alaska statutes. [AS 13.12.504.] A handwritten Will is also valid in Alaska as long as it is handwritten by the testator and signed by the testator.

Your original Will is very important in

the event of your death, and it should be kept in a safe place. Most courts in Alaska offer a safekeeping service for Wills for a small fee (currently \$40). If you keep the Will yourself, it is recommended you keep the Will in a fire proof box and not in a safety deposit box. It is only your original Will that may be admitted to probate; a copy is invalid.

What happens without a Will?

If you do not have a valid Will when you die, state law determines who inherits your estate. These laws, called laws of intestate succession, give preference to your spouse, children, and parents. This means that if you own property with someone you are living with but are not married to, that person may not receive the property when you die. In order to provide for someone not included under state law, or to provide for someone in a different way than state law provides, you must have a Will.

If you are married and your husband dies without a Will, you are entitled to inherit all of his property if he has no surviving parents or children, or if both of you only have children from that marriage. If your husband is childless but has parents living, you are entitled to the first \$200,000 of his estate plus three-quarters of the remainder, and his parents receive the rest. If he has children with you and

you have children from prior relationships, you receive \$150,000 plus half of the remainder and your joint children get the rest. If he has any children from a prior marriage, you receive \$100,000 plus half of the remainder and his children get the rest.

If your husband has a Will that was signed before your marriage, you may receive the share you would have received had he not left a Will unless certain circumstances exist. If your husband has a Will that leaves you out, disinherits you, or provides an amount less than what you would be entitled to under state law, you can choose to take one-third of his augmented estate. This is known as the “elective share.” The augmented estate is a complex concept that is set forth in the statute. It is important to remember that if you wish to receive your share of your husband’s estate, you must make that decision within nine months of his death. The elective share must meet certain legal requirements and it is recommended you contact an attorney with expertise in probate and estate planning. In addition, a surviving spouse is entitled to a \$27,000 homestead allowance, a \$10,000 property allowance, and an additional family allowance for living expenses for the surviving spouse and children while the estate is being administered (not to exceed \$18,000). The spouse can take these allowances

even if she decides to take her one-third share of the augmented estate. Allowances are paid before creditors of the estate receive anything. The laws governing inheritance apply equally to men and women. Your husband will have the same right to claim one-third of your estate as you do with his estate. He also receives the same statutory spousal allowances.

For inheritance purposes, a “spouse” includes only someone to whom you are legally married. If you get divorced, your ex-spouse is treated like a spouse who has died. Therefore, if you are divorced and did not change your Will, your ex-spouse will not receive a share of your estate, even if he is still named in the Will. This is true for life insurance as well. Nonetheless, it is very important that you change your Will, the ownership of your bank accounts and your beneficiary designations on any life insurance policies and retirement accounts to avoid any confusion.

A spouse who is planning a divorce or is separated is treated the same as one who is happily married. A domestic partner or someone with whom you are living will not be treated as a spouse for inheritance purposes, even if you intend to marry or act as if you are married. Alaska does not recognize the concept of “common-law” marriages.

You can alter your rights as to these rules with a prenuptial or a postnuptial agreement (including a community property agreement). A prenuptial agreement is a contract between you and your spouse-to-be, executed before the marriage, that spells out what your intent is with regard to property each of you own. A postnuptial agreement is the same type of contract, but is executed after you are married. Either type of agreement requires you each to fully disclose the assets that you own. Each of you should have your own attorney when you do these types of agreements to make sure you are getting proper advice.

Special inheritance issues arise with regard to Native stock. If there is no beneficiary designation on or with the stock, it will pass by Will or intestate succession. Alaska statute provides that if there is no beneficiary designation or Will, a spouse receives all such stock if there are no surviving children. If the deceased spouse has children, the surviving spouse receives one-half of the stock and the children receive the other half. Native stock is not subject to the probate court and the native corporation is responsible for determining who receives the stock. It is recommended that that you check your beneficiary designations if you own native stock.

PROPERTY OWNERSHIP

Not all property will pass according to what your Will says. How you own your property also plays a part in determining who will get that property. For example, most married couples own real property as tenants by the entirety with a right to survivorship such that on the death of one spouse the property automatically passes to and is owned by the surviving spouse. Most joint bank accounts also are owned with a right to survivorship. When you are making a Will or trust, you should review your assets to see how they are owned. Then you can decide if your overall plan makes sense or if you need to move some assets around.

What is your probate estate?

The word "estate" has different meanings. In its broadest sense, your estate is all of the property you own at your death. This may include real property (your house), the face value of life insurance policies, retirement accounts, the value of your interest in jointly held assets, bank accounts, and personal property (your car, household furnishings and jewelry). The total value of these assets as of the date of your death is your gross estate. Your "taxable" estate – the amount that will be used to determine whether you will owe estate taxes at your death – is the

value of your gross estate less certain deductions. In 2006, the amount that an individual can pass free of estate taxes is \$2 million. That amount will increase to \$3.5 million in 2009. The estate tax is repealed in 2010. Therefore, an individual who dies in 2010 can pass an unlimited amount of assets estate tax free. If Congress does not make the repeal permanent, the amount that can pass free of estate taxes will decrease to \$1 million in 2011 .

Your Will only controls assets that pass through probate. There are many assets that might pass to others when you die without going through probate. Insurance policy proceeds and jointly held accounts are two common examples. For example, if you have a \$100,000 life insurance policy that names your children as beneficiaries, that money will pass to them directly at your death. If you name your husband as beneficiary and then get a divorce, Alaska law removes him as beneficiary unless the policy provides otherwise. If you designate "my estate" as the beneficiary of your policy, those same funds will belong to your probate estate and will be administered according to your Will if you have one or the laws of intestacy if you do not. However, be aware that this law may not change the beneficiary on certain retirement accounts when you get a divorce. Therefore, it is imperative that you

change your beneficiary designations to the persons you want to receive those assets.

In order to make sure your assets pass according to your wishes, you need to do two things. First, you need to have the right estate planning documents in place, such as a Will or trusts, if appropriate. Second, you need to make sure you have property titles and beneficiary designations in order, so that the property will pass the way you want. This may mean filling out new beneficiary designation forms or doing deeds to retitle property.

What is your taxable estate?

Federal laws do not state how a person can leave his or her property; that is left to state law. But the federal government does impose estate taxes in certain circumstances. An estate (including the face value of insurance policies, retirement accounts, one-half of the value of jointly held assets, and other property you own) of over \$1.5 million is taxable at a rate beginning at and increasing to 48 percent depending on the size of your estate. The top tax rates are scheduled to decrease in the next few years. If you have a sizable estate, you should consult an expert in estate planning. That person can advise you about your possible estate tax liability and ways of reducing it. Keep in mind

that more of your property is considered part of your "estate" for tax purposes than for purposes of distribution under a Will or by intestate succession.

You may have heard about Congress' "repeal" of the federal estate tax in 2010. This repeal, however, is only for the year 2010. As the law is currently written, in 2011 the estate tax laws will revert to the laws in effect in 2001 including an exclusion for only \$1 million. No one knows what will happen between now and 2011, but this is an issue to keep in mind for estates worth more than \$1 million.

OTHER ESTATE PLANNING TOOLS

What is durable power of attorney?

A durable power of attorney (DPOA) is a document you sign that gives another, your "attorney-in-fact," the power to make decisions for you when you sign the Power of Attorney or if you become disabled. The person you designate can be anyone you choose: a family member, a friend, or a co-worker. DPOA's can be limited for specific acts such as purchasing a house or can encompass all day to day activities. By choosing someone you trust and who knows you, a DPOA allows you to choose how you would want to act if you become disabled. If you become disabled and do not have a DPOA, the court will appoint

a guardian or conservator for you. The power of attorney form used to designate another person to act for you is set out in AS 13.26.332-335. You can also use a DPOA to nominate a guardian or conservator for you in the event you become disabled. You should carefully read, understand, and consult an attorney before signing a power of attorney.

You can sign an Advanced Health Care Directive authorizing another person to make your health care decisions. The health care power of attorney is different from the durable power of attorney discussed above. If you do not have a health care power of attorney, your spouse or other family members may make your health care decisions, including the decision to terminate life sustaining measures. You also can nominate a guardian to make the health care decisions for you if you are disabled.

What are Living Wills?

A competent person at least 18 years old may sign a declaration ("Living Will") that life-sustaining procedures be withheld or withdrawn in the event of a terminal illness that will result in death within a short time. The Living Will is a part of the Advanced Health Care Directive (AHCD). The Health Care Advance Directive can be signed in the presence of two witnesses or a notary.

Both witnesses must be personally known to you and at least one of them cannot be the agent appointed in the AHCD; related by blood, marriage or adoption; or be a person who will receive a portion of your estate under your Will. You should provide a copy of the Advanced Health Care Directive to your primary care physician.

attorney are all distinct legal acts that have special statutory and legal effects. It is recommended that you see an attorney to discuss any and all aspects of these legal documents.

PLANNING FOR DISABLED FAMILY MEMBERS

Estate planning for disabled children or adults involves special concerns. Trusts (or even the right to receive funds or property from a trust) can result in disqualification for Medicaid and other public assistance programs. A “Supplemental Needs Trust” is one way to provide for a disabled person without loss of benefits. The Supplemental Needs Trust restricts the trustee from distributing amounts that would disqualify the beneficiary for benefits such as Medicaid but that allows distribution to add to the benefits already being received. The property held by the trust may not be owned by the disabled beneficiary. You should consult with a professional about setting up this type of trust.

Do I need an attorney?

Drafting Wills, estate planning, creating trusts, or giving a durable power of

Chapter Eight

NAMES, NAME CHANGES, SOCIAL SECURITY NUMBER CHANGES, & BIRTH CERTIFICATES

If you wish to change your name, other than through marriage, you will be safest if you get court permission, either according to Civil Rule 84 or through a divorce action.

What is your name?

If you are single, you probably use your parents' last name. If you are married, you may or may not have taken your husband's last name. Some courts feel your name changes automatically upon marriage. Other courts feel you must use your husband's name to make it your own. The Alaska Supreme Court has never decided whether your name changes automatically upon marriage.

CHANGING YOUR NAME UPON MARRIAGE

Many women change their name upon marriage. If you choose to do so, notify all agencies with which you deal, such as the Social Security Administration and the Department of Motor Vehicles.

The Social Security Administration recommends that whatever name you choose, you should use it all the time to make sure you get credit for all benefits. If you do change your name, you can fill out a Social Security form for a change

of name. You have to show documents proving identity under both your old and new name. The IRS uses your name from Social Security records. Be certain your names for these two agencies match so you get prompt tax refunds.

KEEPING YOUR MAIDEN NAME

If you choose to continue to use your parents' name, you will not have to take any steps to notify agencies after marriage. If you have difficulty getting documents as a married person using your own name, you should deal with the agencies involved first. A lawsuit over your name can be expensive.

The IRS and the Alaska Department of Revenue should issue a refund check in the name under which you file, whether you file jointly or separately. However, be sure your tax name matches your name on Social Security records.

What are the name change procedures in Alaska?

Alaska Civil Rule 84 sets out a formal procedure for any person to change her name. It is not clear if this rule cancels out the common law rule that a person could change their name at will so long as there was no intent to defraud others. If you follow the procedures set out in Rule 84, you can choose any name. Every Alaska court has forms for you to use to apply for a name change. You do not have to go through this procedure if you are getting a divorce. The judge can change your name as part of the divorce decree without a separate proceeding. [AS 25.23.260.]

If you want to change your child's name other than as part of an adoption proceeding, you need to have the consent of both the child's legal parents or legal guardians. If you do not have all the required consents, you must prove to the court that you properly served a copy of the name change petition and date and time of hearing on the legal parents/guardians at least 30 days prior to the hearing. These procedures can be complicated; therefore, it is wise to consult an attorney if you cannot obtain the required consents.

NAMING A CHILD

There is no requirement in Alaska that a

child have any particular name. There is a requirement that a birth certificate be filed within seven days after birth. The birth certificate states the mother's name. If the mother was married at the time of the baby's birth, the birth certificate will also list her husband's name as the name of the baby's father unless a court (in a paternity suit) has decided that a different person was the father. [AS 18.50.160.]

If the mother was not married at the time of the baby's birth, the father's name can be left blank on the birth certificate. If the mother and father, though unmarried, both request the father to be listed, the registrar must do this. A woman can leave the father slot blank. If a later paternity action establishes the father, the registrar can add or change the name. [AS 18.50.160.]

NAME CHANGE WITHOUT PUBLICATION/DOMESTIC VIOLENCE SITUATIONS

A victim of domestic violence can request a name change from the court without publication. An attorney can prepare legal documents and provide information to the court on why you need a name change and how publication of the name change would put your safety at risk.

CHANGING YOUR SOCIAL SECURITY NUMBER/DOMESTIC VIOLENCE SITUATIONS

A victim of domestic violence can request a new social security number by providing information to the Social Security Administration of social security number misuse by the perpetrator and/or the severe nature of harassment/abuse or life endangerment. Your local social security office can provide forms and assistance in applying for a new social security number. *[See the Resource Directory at the end of this handbook for contact information.]* The social security office will request information documenting the nature of harassment/abuse or life endangerment including police reports, medical records, other court documents or letters from any agencies assisting you as a result of the domestic violence. If you are planning to change your name, you may want to do **so** before changing your social security number to ensure that there is no record of the old name on the new social security number.

Chapter Nine

INVOLUNTARY COMMITMENT

A person may be involuntarily committed to an approved health facility for treatment of a mental health or substance abuse problem by court order if he or she meets certain criteria.

What are Mental Health Commitments?

If a court determines that a person is mentally ill and as a result of that condition is gravely disabled or likely to cause serious harm to self or to others, that person can be committed against his or her will to a facility for mental health treatment. “Gravely disabled” means that the person is, as a result of mental illness, in danger of physical harm because she or he is not taking care of basic needs like clothing, food, or shelter. [AS 47.30.915(7).] A person must be given every reasonable opportunity to accept voluntary treatment before involvement with the judicial system. If the patient is on involuntary status and elects to leave the treatment facility and the facility feels the patient is gravely disabled or likely to cause harm to self or others, the facility may initiate involuntary commitment procedures. The patient can be involuntarily detained for 48 hours pending the initiation of involuntary commitment hearing.

There are two ways that a person can be involuntarily committed. First, an adult (the petitioner) can file a petition with the superior court to seek the involuntary commitment of another individual (the respondent). The petition must allege that the respondent is believed to present a likelihood of serious harm to self or others or is gravely disabled as a result of mental illness and must specify the factual information on which the belief is based. After the petition is filed, the judge conducts a screening investigation of the respondent or directs a mental health professional to conduct the screening investigation. This must happen within 48 hours. Often a mental health professional will call the judge and the judge will issue an oral ex-parte order for a 72 hour mental health hold because the person has already been evaluated.

If the judge finds that the individual meets commitment standards, the judge can order that the person be taken into custody and brought to a treatment facility for emergency examination treatment. [AS 47.30.700.]

The second way that a person is involuntarily committed for mental health treatment involves an emergency situation where safety considerations do not allow for the procedures set forth above. In this situation, often referred to as a "POA," a peace officer or mental health professional may cause the person to be taken into custody and delivered to the nearest evaluation facility. The peace officer or health professional then must complete an application for examination of the individual. [AS 47.30.705.]

A person who is taken in for emergency examination and treatment must be examined within 24 hours after arrival at the facility. Unless the person is released or agrees to voluntary admission, a hearing must be held within 72 hours (not counting weekend and holidays) to determine whether detention should continue for up to 30 days. For example, if a person is committed on Friday and Monday is a holiday, a hearing must be held on Thursday. The person has the right to be present at the hearing, represented by an attorney at no cost, to present evidence, and to cross-examine witnesses at this hearing. [AS 47.30.710-725.]

The court can order commitment for up to 30 days or order a less restrictive form of treatment. At subsequent hearings, a person could be committed for 90 to 180 day periods. [AS 47.30.740-770.] A

person has a right to a jury trial and an examination by a physician of choice for 90 or 180 day commitments. The person must also be informed of the right to appeal any order of involuntary commitment. [AS 47.30.745-770.]

Individuals subject to civil commitment should be aware that their conversations with mental health professionals during the commitment process may not be confidential because although the mental health professional cannot breach confidentiality in general, the person conducting a screening interview will have to provide information to the judge at the hearing (which is a closed proceeding) unless otherwise requested by respondent.

What are involuntary outpatient commitments?

A person involuntarily committed to inpatient care may be transferred to outpatient care if the person is no longer likely to harm herself or others and will recover more rapidly as an out-patient. Hospitals and other mental health providers refer to this process as "early discharge." Requirements may include taking medication on a daily basis, keeping appointments at the community mental health center, and other conditions. If the patient shows signs there is a likelihood of harm to self or others or grave disability, the out-patient

provider must notify the patient verbally and in writing to return to in-patient care within 24 hours. If the patient does not arrive at the facility within the specified time, the police may bring the patient to the facility. [AS 47.30.795.]

What are forced medication orders?

If an evaluation or treatment facility believes a patient is incapable of giving informed consent to take psychotropic medication, a physician can petition the court for an order to administer medication without the patient’s consent. [AS 47.30.839.] A hearing on the issue has to be held and a court visitor is appointed to assist the court in determining whether the patient has the capacity to give or withhold informed consent.

PATIENT RIGHTS

People who are receiving treatment in mental health facilities keep certain specific rights under Alaska law. These include the right to participate in setting up treatment plans, the right to know any medications being given and possible side effects, and the right to refuse certain kinds of treatment. The person has a right to privacy, to retain personal possessions, and to have documents and notices given in a language she can understand. People do not lose civil rights such as the right to vote or

exercise religion just because of treatment for mental illness. [AS 47.30.825-860.]

ALCOHOLISM AND DRUG ADDICTION COMMITMENTS

Under the Uniform Alcoholism and Intoxication Treatment Act, people suffering from alcohol and drug problems have the right to treatment. As long as the person commits no crime, drunkenness alone is not a crime [AS 47.37.010 et seq., *Peter v. State*, 531 P.2d 1263 (Alaska 1975).]

A person may voluntarily apply for treatment of alcohol or drug problems at an alcohol or drug treatment center. [AS 47.37.160.] A person who is intoxicated in a public place and in need of help or a person who is incapacitated by alcohol or drugs in a public place may be involuntarily taken into protective custody by a peace officer and taken home, to a treatment facility, or to jail if no emergency medical service is available. [AS 47.37.170; *Busby v. Municipality of Anchorage*, 741 P.2d 230 (Alaska 1987).] The person may not be kept at a jail for more than 12 hours after admission or at any other treatment facility for more than 48 hours unless the person is involuntarily committed to the facility. A person who asks to remain at a treatment facility may do so with the consent of the physician in charge. [AS

47.37.170.]

An intoxicated person may be involuntarily committed by a relative, spouse or other interested person in an emergency situation if the person is incapacitated by alcohol or drugs or has threatened or attempted to physically harm someone or is likely to inflict physical harm on another unless committed. [AS 47.37.180(a).] A doctor who has examined the person within the prior two days must include a certificate supporting the need for emergency commitment. An emergency commitment may not extend beyond a maximum time period of ten days and the patient must be released within 48 hours unless a judge has approved the commitment. [AS 47.37.180.] You may insist upon the appointment of a court visitor to advise the judge.

A spouse, relative, guardian, physician, or public treatment facility administrator may petition the court for long-term commitment of an intoxicated person. A petition for such commitment is filed with the Superior Court and must demonstrate that the person is an alcoholic or drug abuser and has threatened or attempted physical harm to another or is incapacitated by alcohol. As with emergency commitment, the petition must be supported by a doctor's statement unless the person has refused to submit to a medical examination. A

hearing must be held on the petition within ten days. If the court finds grounds have been clearly established for involuntary commitment, the person may be committed for up to 30 days. At the conclusion of 30 days, the person must be released unless the director of the alcohol treatment facility files a motion for recommitment. If the court grants the motion for recommitment, the person can be committed for up to 180 additional days. [AS 47.37.190-205.]

The patient has the right to contest any petition for commitment or recommitment, be represented by counsel at all proceedings and have a jury trial on any request for recommitment. The state may seek repayment for the cost of treatment of alcohol/drug abusers from the patient or those required by law to support the person, taking into account income, savings, and other property of the person liable for the costs. [AS 47.37.240.]

PRIVILEGES CONCERNING TREATMENT

A patient has a privilege to refuse to disclose and prevent other people from disclosing personal confidential communications by the patient with a licensed doctor, psychotherapist, psychologist, marital or family therapist (or person the patient reasonably believed was such a doctor or therapist)

where the communication was for purposes of diagnosis and treatment, including alcohol and drug addiction treatment. The privilege can be claimed by the patient, her guardian or personal representative, and her doctor or therapist (on the patient's behalf).

disclosure. [ARE 504.]

The privilege, however, may be waived or given up:

- when the communication is information the doctor or therapist is required by law to report to the authorities, including suspected or known child abuse;
- when the communication is relevant to the physical, emotional, or mental condition of the patient in a proceeding in which the condition of the patient is an element of the patient's claim or defense;
- when the communications are relevant in proceedings for hospitalization/commitment of the patient;
- when the patient sues the doctor and the communications are relevant to the issues presented; and
- when the services of the doctor or therapist were secured to commit fraud or a crime.

Communications made during a court-ordered medical or psychological examination may not generally be disclosed unless the judge orders

Chapter Ten

ADOPTION

Adoption is a legal procedure by which a permanent parent/child relationship is created. When you adopt a child, you have to support the child as you would a natural child. If your husband adopts your natural child, he has the right to seek custody of the child if you get divorced. He must also pay child support if you receive custody in a divorce action.

PLACING A CHILD FOR ADOPTION

If you are considering adoption, you can begin working with an adoption agency during your pregnancy. Adoption counselors can inform you of your options. It is important to choose adoption counselors who will not pressure you and will respect your choices.

The adoption process will create a new parent-child relationship where one did not previously exist. The procedure will also end the biological parents' legal parental rights and responsibilities, bestowing them upon the adoptive parents. [AS 25-23-130.]

Can I choose the family my child?

You have the right to choose the family with whom you want your child to live. An agency should present you with options and the chance to interview the family. Even if you are a minor, you have the right to decide if your child is

adopted and by whom.

Whose permission is needed to adopt a child?

For an adoption procedure to go forward, consent must be given in writing by the biological mother. The father's consent may also be needed if he is on the birth certificate or otherwise legitimized under the law. Consent must be given by any person entitled to custody of the child and by the minor child if aged 10 or older. [AS 25.23.040.]

Can I change my mind after consenting to an adoption plan for my child?

Consent may be withdrawn within ten days after the consent but before the court decree by written notice to the person collecting the decree. You may also withdraw consent after the ten day period if the court finds that the withdrawal is in the best interest of the person being adopted.

What if I can't afford medical expenses for my pregnancy?

It is legal for your adopted family or adoption agency to help with medical expenses, and they may be willing to do so. Women, Infants, and Children (WIC) is a federally funded program that can help with medical expenses. *See the Resource Directory at the end of this handbook for contact information.*

Can I see my child after she or he is adopted?

Visitation between an adopted person and their natural parents are not prohibited after the adoption, except through another court order. [AS 25.23.130.] However, the adoption may be an "open" adoption that expressly permits visitation with the natural parents.

Can my identity be kept confidential?

If you would like your identity unknown to the public, it will be kept confidential. There are some exceptions, and adopted children have the right to discover the identity of their birth parents once they are eighteen. [AS 18.50.500.] Adoption proceedings are held in a closed court, and court records are only available for inspection if all interested parties consent or if there is a court order for good cause. An example of good cause

would be that the birth mother's identity is needed for assisting the adopted person in a medical emergency. If you are working through an adoption agency, they may not disclose the child's birth name.

ADOPTING CHILDREN

If you want to adopt someone, you should contact an attorney or the Clerk of the Superior Court nearest you. If there is a problem getting to the court, you may be able to proceed by telephone. [*See* Adoption of I.J.W., 565 P.2d 842 (Alaska 1977).]

An adoption proceeding is initiated by filing a petition for adoption in state court. The petition must include:

- the date and place of birth of the person to be adopted, if known;
- the name to be used for the person to be adopted;
- the date of placement of the minor and the name of the person placing the minor;
- the full name, age, place, and duration of residence of the person adopting the minor;
- the marital status of the person adopting the minor, including the date and place of the marriage, if married;
- that the person adopting the minor

has facilities and resources, including those available under a hard-to-place child subsidy agreement, suitable to provide the nurture and care of the minor to be adopted, and that it is the desire of the person adopting the minor to establish the relationship of parent and child with the person to be adopted;

- a description and estimate of value of any property of the person to be adopted; and
- the name of any person whose consent is required. [AS 25.23.080.]

Except in the case of stepparent adoptions, the Department of Health and Social Services will investigate whether the adoptive parents will be good for the child. Anyone who can establish good cause to adopt may adopt. This includes a single person, unmarried adults, the unmarried father or mother of the child, domestic partners, same-sex partners, or a husband and wife. [AS 25.23.020.]

An adoption also may be an "open" adoption that expressly permits visitation with natural parents, extended family, or tribe. If you want an open adoption, the provisions for visitation should be expressly set forth for the court and parties so there is no later misunderstanding.

An adopted person who is at least 18

years old is allowed to see a copy of her original birth certificate and any changes that have been made to it. [AS 18.50.500.]

FINAL COURT DECREE AND REQUIRED CONSENT

Natural parents can challenge an adoption up until the date of the final court decree. [*In re: Rita T. v. State*, 623 P.2d 344 (Alaska 1981).] Generally, an adoption may not be challenged one year after the final decree is issued unless consent(s) were obtained illegally or the person who adopted has never taken custody of the child. [AS 25.23.140(b).] If parental rights have been terminated, the parent(s) whose rights have been terminated may not generally object to the adoption under any circumstance if it has been one year since the decree was issued.

If you adopt a child under age 18 in Alaska, you must obtain the consent of the mother or legal guardian. Any consent must state whether the child or parent is a member of an Indian or Native tribe and must adhere to strict procedural requirements. [AS 25.23.060.] You also may be required to obtain the consent of the father, even if there was no marriage. [AS 25.23.240.] If the child is more than ten years old or has a spouse, the child or spouse also must consent. [AS 25.23.040.] Consent

by the Department of Health and Social Services will likely also be required unless the adoption is a stepparent adoption. Consent means that the person/agency freely agrees in writing and in conformance with strict court rules to the adoption. A person can take back their consent to adoption within ten days after giving consent but generally must withdraw any consent before the final decree of adoption.

There are exceptions to the consent rules. If a person has unreasonably failed to support or communicate meaningfully with the child for at least one year, consent may not be necessary. [AS 25.23.050.] But even in such cases where consent is not required, the parent must be notified of the adoption. If a parent cannot be found, you must sign an affidavit telling the court that it was impossible to locate the parent and the efforts made to locate the parent. [AS 25.23.100.]

ADOPTION OF NATIVE CHILDREN

The Indian Child Welfare Act (ICWA) is a federal statute that governs the adoption of Native American children. [25 U.S.C. § 1901-1963.] The purpose of the Act is to prevent the breakup of Native families, culture, and to place those Native children who must be removed from their families with

another family or extended family member in the child's tribe [village] when possible.

Under ICWA, a Native child's tribe has the right to intervene and participate as a party in the proceedings. In any adoptive placement of an Indian [Native] child, under State law a preference shall be given, unless there is good cause to the contrary, to placement with:

- a member of the child's extended family;
- other members of the Indian child's tribe;
- other Indian [Native] families. [25 U.S.C. § 1915(a).]

ICWA also requires that any consent to adoption of a Native child be recorded before a judge and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained to the parent(s) or Native custodian and were understood by the parent(s) or custodian. If the parent or custodian does not understand English, the terms and consequences of the parent's actions must be explained in a language the parent understands.

The Indian Child Welfare Act contains very important requirements before adoption of a Native child can occur. Anyone wishing to adopt a Native child should consult an attorney who is

Chapter Eleven

REPRODUCTIVE RIGHTS

Courts have held that most reproductive choices are private matters. A woman's right to make reproductive choices freely is part of a larger constitutional right of privacy or liberty. Decisions relating to contraception and procreation are among the many decisions that an individual may make without unjustified governmental interference because they are basic to individual dignity and autonomy. They may be regulated only if constitutional guarantees of privacy and self-determination are protected.

However, the government may indirectly influence a woman's access to birth control, available medical procedures, and health care services by conditioning or eliminating funding for programs.

What is the right to reproductive freedom?

The fundamental right of every individual is to decide freely and responsibly when and whether to have a child. It includes the principles of individual liberty and right to privacy. Reproductive freedom includes the right to:

- privacy, especially in human relationships;
- education and information that empower individuals to make informed decisions about sexuality and reproduction; and
- nondiscriminatory access to confidential, comprehensive reproductive health care services.

Reproductive rights include access to information and services related to

sexuality, reproduction, methods of contraception, fertility control, and parenthood.

How can a woman obtain information and access to family planning centers in Alaska?

Public health clinics provide family planning and health services targeted to low-income women and teens. Nine clinics have Family Planning Programs: Bethel, Fairbanks, Craig, Juneau, Kenai Peninsula, Ketchikan, Prince of Wales Island, Kodiak, and Palmer/Wasilla. Reproductive health services available at public health clinics include:

- family planning;
- pregnancy testing;
- prenatal monitoring;
- postpartum home visits;

- STD testing and counseling;
- HIV testing and counseling;
- emergency contraception;
- birth control and contraceptive methods; and
- non-scalpel vasectomies are provided in Anchorage, Kenai, Fairbanks, Homer, and Soldotna.

See the Resource Directory at the end of this handbook for contact information for the clinic nearest you.

PLANNED PARENTHOOD OF ALASKA

Planned Parenthood of Alaska is a non-profit organization that provides confidential services to minors and adults, both men and women. Planned Parenthood of Alaska is committed to preserving access to all forms of safe reproductive health care – including abortion. Medical services available from Planned Parenthood of Alaska include:

- gynecological exams & pap smears;
- birth control and other contraceptive methods including Birth Control Now – a program that allows many healthy women to receive hormonal birth control without first having a pelvic exam;
- emergency contraception;
- pills by mail;

- pregnancy testing and options counseling;
- STD testing and treatment including confidential HIV/AIDS testing and counseling;
- abortion (medical and surgical abortions available at Anchorage and Fairbanks clinics), adoption & prenatal referrals;
- screenings for breast and cervical cancers;
- colposcopy and cryotherapy; and
- menopausal services.

See the Resource Directory at the end of this handbook for information on the reproductive services available in Alaska.

What if I do not have money to pay for services?

Many women are eligible for free and/or low cost contraceptive services, pregnancy testing, diagnosis/treatment of sexually transmitted diseases, HIV testing, and other services. Public health clinics offer free or sliding scale services to low income Alaskans. Planned Parenthood offers services on a sliding scale basis according to income and family size. Medicaid also covers contraceptives, prenatal care, and testing for STDs. Private Insurance companies may cover contraceptives. Check with your health care provider.

SEXUALLY TRANSMITTED DISEASES

There are two types of sexual transmitted diseases (STDs) – bacterial infections and viral infections. Bacterial infections can be treated and cured whereas viral infections can often be treated, but there is no permanent cure. Common bacterial STDs are syphilis, chlamydia, and gonorrhea. Common viral infections include the human immunodeficiency virus (HIV), hepatitis B & C, herpes simplex I & II, and the human papilloma virus (HPV).

It is important to get tested for STDs, and you have the right to ask your partner to be tested as well. Many STDs are easily treatable. However, STDs that are left untreated may have negative effects on your health and cause cancer or sterility. Other STDs, such as HIV/AIDS, may shorten your life. Many STDs do not have symptoms or at least do not have symptoms right away. Therefore, you may not be aware that you have contracted a STD and unknowingly pass it to your partner or vice versa. While your annual gynecological exam and pap smear may detect some STDs, many STDs will not show up on your annual exam. The only way to be certain if you have an STD or not is to be tested for specific STDs.

You can be tested for STDs at your local

physician's office, public health clinic, or at Planned Parenthood.

BIRTH CONTROL AND CONTRACEPTIVES

In Alaska, licensed physicians and nurse practitioners can prescribe birth control methods believed medically advisable, including birth control pills, diaphragms, cervical caps, IUDs, or implants. Any pharmacist can sell non-prescription birth control materials, such as condoms, vaginal pouch (female condom), spermicides, contraceptive foams, creams, jelly, films, or suppositories. In consultation with a physician, community health aides can provide prescription birth control materials. (community health aides are primary health care providers working in rural areas under agreements with Indian Health Service physicians.) In larger communities, Planned Parenthood and most public health clinics provide birth control methods.

The Alaska Department of Health and Social Services is responsible for preparing information about family planning, fetal alcohol syndrome, and the effects of drug use and battering during pregnancy. [AS 18.05.035-.037]. These materials are free and available at hospitals, public health clinics, and women's health clinics throughout the state.

What contraceptive choices are available?

There are various forms of birth control. It is best to check with your local family planning clinic on the effectiveness, possible side-effects, and cost of the following choices. Birth control is available at Planned Parenthood without a physical exam (although an exam is encouraged within the first three months of using birth control) and is available on a sliding-scale basis of payment. Please remember that condoms (male and female condoms) are the only form of birth control that also protect against sexually transmitted diseases (STDs).

There are behavioral methods of birth control such as continuous abstinence, predicting fertility (rhythm method), and withdrawal methods. It is important to have a professional teach you about predicting fertility. Even with the withdrawal method, some pre-ejaculate can cause pregnancy. Because these methods depend on your personal behavior, their effectiveness varies greatly.

You can also use barrier methods such as the male condom and the female condom. Both available at pharmacies and markets. The male condom is 85 to 98 percent effective and the female condom is 79 to 95 percent effective. Both are available without a

prescription. Vaginal spermicides such as foams, jellies, creams, films, and suppositories can be applied inside the vagina in combination with any barrier method of birth control for more effective birth control. There are also prescription barrier methods such as diaphragms, caps, and shields. Diaphragms and cervical caps are put in the vagina before sexual intercourse and are 84 to 94 percent effective. Cervical caps are less effective for women who have given birth.

The most common form of hormonal birth control is the birth control pill. It is 92 to 99 percent effective when taken properly. There is also a patch, called Ortho-Evra, which looks like a band-aid and slowly releases hormones through the skin. It is placed somewhere on the body for three weeks and removed for one week. Used properly, the patch is 99 percent effective. Depo-Provera is an injection that lasts three months and is 97 to 99 percent effective. There is also a NuvaRing which is a vaginal ring that stays in the vagina for three weeks and removed for one week and is 99 percent effective.

The intrauterine device (IUD) is another option. It is inserted in the uterus by a physician and prevents fertilization. It is 98 to 99 percent effective. There are two forms of IUDs, one is made of copper and can be left in place for 12 years and

one contains a hormone and can be left in place for five years.

Planned Parenthood has an excellent free brochure describing each contraceptive method's effectiveness, advantages, possible side-effects, and cost. Another resource is the *Alaska Book of Choices*, published by the Juneau Pro Choice Coalition and available online at <http://juneauchoice.com>.

EMERGENCY CONTRACEPTION

If you have had unprotected sex or your regular birth control method failed and you fear that you may be pregnant, you can obtain emergency contraception pills (ECP). ECP is often referred to as the morning after pill, and it is the equivalent of the high dose of hormones found in birth control. ECP can reduce the risk of pregnancy for up to 120 hours after sexual intercourse. The pills are most effective within 72 hours of sexual intercourse. If taken within 72 hours, they can reduce the risk of pregnancy from 75 to 89 percent. Another form of emergency contraception is the insertion of a copper intrauterine device (IUD) within five to seven days of unprotected sex.

Emergency contraception may be available through your local pharmacist over the counter for women ages 18 and over. Girls 17 and under need a

prescription for emergency contraception. Planned Parenthood can provide emergency contraception prescriptions by phone for patients who are unable to get to a clinic within 72 hours. Public health clinics also can provide emergency contraception. *See the Resource Directory at the end of this handbook for more information.*

ECP is also available without a prescription at some pharmacies in Anchorage, Fairbanks, Juneau, Kenai, Kodiak, North Pole, Seward, Sitka, and Soldotna. The FDA recently made emergency contraception legally available without a prescription for women and men over 18 years of age throughout the United States, which means that other stores will be able to sell it over-the-counter if there is demand to stock it.

Do I need consent from my parents to obtain birth control in Alaska if I am a minor?

No. You can confidentially access information on your options through one of the Alaska Planned Parenthood clinics listed in this chapter or your local public health center or community health clinic.

Does a woman need her partner/husband's consent to obtain or use birth control?

No. A woman can confidentially seek information and access birth control/contraceptive methods, whatever her age or marital status.

What choices are available if I am pregnant?

There are several options available. You may choose to:

- have a baby and raise the child;
- have a baby and place the child for adoption; or
- end the pregnancy.

There is no right or wrong choice for everyone. Only you can decide which choice is right for you. You can talk about your feelings with your partner, someone in your family, or a trusted friend. All Planned Parenthood clinics have specially trained counselors who can talk with you about your options. Your counselor will not pressure you into any decision against your will. You may bring your partner, your parents, or someone else if you wish. Look for a clinic that will give you complete information about your options. If you need help, call your local Planned Parenthood. *See the Resource Directory at the end of this handbook for more*

information.

What types of financial assistance are available to pregnant women in Alaska?

A woman in financial need can seek aid when she learns she is pregnant. One source of help is a federally funded program called Women, Infants, and Children (WIC). WIC provides nutritional assistance to women, infants, and children. Information about the WIC program in your area is available through any public clinic or hospital. Public health clinics also provide free or sliding scale pre-natal care. *See the Resource Directory at the end of this handbook for more information.*

ABORTION

Abortion is legal in Alaska. However, Alaska law states that it must be performed by a licensed physician in an approved hospital or clinic. There are two forms of abortion available depending on how far along the pregnancy is. Medical abortion is a non-surgical method used to induce an abortion up to eight weeks after the start of your last menstrual period. Medication is given either orally (Mifeprex, also called RU 486) or by injection (Methotrexate) followed by a second medication (Cytotec). The combination of the two medications

induces abortion. Surgical or suction abortion is used in both the first trimester (between six and thirteen weeks) and second trimester (up to nineteen weeks).

Does a minor have a right to obtain an abortion without notice to, or the consent of, one or both parents?

Yes. Alaska's parental consent law has been ruled unconstitutional by the Alaska Superior Court and cannot be enforced. The court held that minors have a fundamental right to privacy under the Alaska Constitution that is equal with adults when making reproductive decisions. The judge decided the case on equal protection grounds. [*Planned Parenthood of Alaska, et al. v. State of Alaska*, Supreme Court No. S-08580.]

Must a woman obtain her husband's consent or notify him before getting an abortion?

No. Alaska has no laws requiring a spouse's consent or notification before a woman obtains an abortion. In addition, the United States Supreme Court has ruled that states may not force a woman to obtain her spouse's consent for an abortion. However, some states have passed laws requiring a spouse's notification or consent regarding the abortion.

Can low-income women obtain government funding for an abortion or other loans and grants?

Yes. Although federal funding is prohibited, funding from the State of Alaska is available for abortion services for low income women. In 1998, the Alaska State Legislature eliminated state coverage for abortions. However, in March of 1999, a Superior Court Judge declared denial of funding for medically necessary abortions unconstitutional, noting that "Alaska's privacy guarantee is broader in scope than the implicit right of privacy guaranteed by the federal constitution." [*Planned Parenthood of Alaska, et al. v. Karen Perdue, Commissioner, Dept. of Health & Social Services, & the Dept. of Health & Social Services, State of Alaska* (No. S-09109).]

Though the state was ordered to start paying for medically necessary abortions in April 1999, it failed to do so for more than a year. It began paying claims in Fall 2000, only when ordered to by the court following contempt proceedings. Like Alaska, the vast majority of states considering this question under their own state constitutions have concluded that once a state chooses to provide pregnancy benefits, it must fund all services equally. Today, the State of Alaska is required to pay Medicaid claims for therapeutic abortion services.

There are several loans and grants available to Alaskan women seeking abortions. The Alaska Pro-Choice Alliance administers Pauline's Loan Fund, which is a fund established to assist low-income women who either chose to have an abortion or need one for medical reasons, but who are unable to access funds for a legal and safe abortion. There are also funds available for travel support for Alaska women to travel to Seattle to obtain an abortion. The Washington chapter of the National Abortion and Reproductive Rights Action League (NARAL) provides housing, transportation, and logistical support to Alaskan women to travel to Seattle for an abortion. *See the Resource Directory at the end of this handbook for more information.*

Can a hospital receiving public money prohibit abortions?

No, not in Alaska. In a recent case, the Alaska Supreme Court ruled that the Valley Hospital must allow doctors to perform abortions in the facility because it is a quasi-public institution that receives public money and because the right to privacy in the state's constitution protects a woman's right to an abortion. In this significant case, the court said that reproductive rights are fundamental rights under the Alaska Constitution's express protection of the right to privacy, found in Article I, section 22.

[*Valley Hosp. Ass'n, Inc. v. Mat-Su Coalition for Choice*, 948 P.2d 963 (Alaska 1997).]

Can a woman obtain a third trimester abortion in Alaska?

No. There are no medical providers in Alaska available to perform late trimester abortions. Alaska also has a statute banning late term abortions. [AS 18.16.050.] However, this law cannot be enforced. An injunction issued in 1997 prevented the Alaska ban from taking effect. In early 1998, the Anchorage Superior Court struck down the ban, ruling that it violated a woman's fundamental right to make her own reproductive decisions and her right to privacy under the Alaska Constitution. The Superior Court found that Alaska's law was so vague that it could apply to virtually all of the safest, most common abortion procedures used prior to fetal viability and that this vagueness was a deliberate attempt by the legislature to scare doctors from performing legal abortions for fear of prosecution. [*Planned Parenthood of Alaska, et al. v. State of Alaska*, Case No. 3AN-97-06019.]

In June of 2000, the state withdrew its pending appeal in the Alaska Supreme Court and let stand the Superior Court ruling that Alaska's statute banning so-called "partial birth" abortions is

unconstitutional.

Where can a woman obtain abortion services or counseling?

Contact your local Planned Parenthood listed in this chapter. For a listing of current abortion providers in Alaska and the Northwest United States, read the Alaska Book of Choices at www.juneauchoice.com.

ADOPTION

See Chapter Ten for more information about adoption.

STERILIZATION

Any woman may seek sterilization through a hysterectomy, tubal ligation, or other procedure from her physician or clinic. There is no state law regulating these procedures. However, some doctors or hospitals may be reluctant to sterilize a young woman or one who has no children. There is also a 30 day waiting period required by federal law for sterilization programs funded with federal monies. Sterilization is more than 99 percent effective but in rare cases (about one in 100 per year) a woman can still become pregnant after sterilization. Sterilization should be considered non-reversible and is a permanent decision.

Can a woman be sterilized without her informed consent?

No. The United States Supreme Court has held that people may not be sterilized against their will except in extremely limited situations. [*Skinner v. Oklahoma*, 316 U.S. 535 (1960).] The Alaska Supreme Court has stated that Alaska courts will consider requests from a guardian to sterilize a legally incompetent person. The guardian must clearly prove that sterilization is in the best interest of the incompetent. It must also be determined the incompetent is not capable of making her own decision as to sterilization and that sterilization is the only practicable means of birth control. Medical evidence must be presented at the hearing and an attorney (guardian ad litem) must be appointed to represent the incompetent. [*In re C.D.M.*, 627 P.2d 607 (Alaska 1981).]

ARTIFICIAL INSEMINATION, *IN VITRO* FERTILIZATION, EMBRYO TRANSFERS, AND SURROGATE MOTHERHOOD

Modern medical techniques and people willing to assist others in having a baby allow couples to bear children in a variety of ways. As artificial insemination, fertilization, and embryo transplant are part of a relatively new field, laws governing the legal relationships that result from use of such

techniques are still developing. Anyone considering having a child through artificial insemination, *in vitro* fertilization, embryo transfer, or a surrogate mother should consult an attorney about the obligations, duties, and rights of the persons (including the child, natural parent, donor or surrogate parent) involved.

The only law currently in Alaska addressing any of the above procedures is that concerning artificial insemination. In Alaska, a child born to a married woman by means of artificial insemination performed by a doctor and consented to in writing by both husband and wife is considered for all purposes the natural and legitimate child of both spouses. [AS 25.20.045.] Although not specifically addressed by statute, where the husband does not consent to artificial insemination, he may not have any legal obligation to acknowledge or support the child. [See *K.E. v. J.W.*, 899 P.2d 133 (Alaska 1995).] Alaska law does not address legal consequences of *in vitro* fertilization or surrogate motherhood.

PREGNANCY AND MATERNITY LEAVE

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, an employer may use any procedure used to screen

other employees' ability to work. For example, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements.

If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her exactly the same as any other temporarily disabled employee. For example, they must be provided modified tasks, alternative assignments, disability, or leave without pay.

Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth. An employer may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth.

Employers must hold open a job for a pregnancy-related absence the same length of time as jobs held open for employees on sick or disability leave. *See Chapter Three for more information about employment discrimination.*

CHILD CARE

Leave for child care purposes is not covered by the Pregnancy Discrimination Act, but it is covered by the Family Medical Leave Act (enforced by the U.S. Department of Labor). However, Title VII requires that leave for child care purposes be granted on the same basis as leave granted to employees for other non-medical reasons, such as non-job related travel or education.

HEALTH INSURANCE

Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as costs for other medical conditions. Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered or medical complications arise from the abortion.

Pregnancy-related expenses should be reimbursed exactly as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable and customary charge basis.

The amounts payable by the insurance provider can be limited only to the same extent as costs for other conditions. No additional, increased, or larger deductible can be imposed.

FRINGE BENEFITS

Pregnancy-related benefits cannot be limited only to married employees. In an all-female workforce or job classification, benefits must be provided for pregnancy-related conditions if benefits are provided for other medical conditions.

If an employer provides any benefits to workers on leave, the employer must provide the same benefits for those on leave for pregnancy-related conditions.

Employees with pregnancy-related disabilities must be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases, and temporary disability benefits.

The U.S. Equal Employment Opportunity Commission has issued guidelines, including questions and answers, interpreting the Pregnancy Discrimination Act. [29 CFR 1610.]

Thanks to Planned Parenthood Federation of America, Inc. and Planned Parenthood of Alaska in assisting with materials to this chapter. Some materials in this chapter were adapted and reprinted with permission from *The Rights of Women, The Basic ACLU Guide to Women's Rights*, Third Edition, 1993.

Chapter Twelve

PARENT AND CHILD

Every person under the age of 18 is considered a minor in the State of Alaska. Upon your 18th birthday, you reach the age of majority. [AS 25.20.010.]

AGE OF MAJORITY

The age of 18 is important for civil and criminal liability. Persons under 18 are normally treated as juvenile offenders (rather than as criminals), although there are many exceptions to this rule. For example, the law prohibits people under 21 from drinking or possessing alcohol and people under 19 from using tobacco products. Minors of any age are generally treated as adults and subject to adult penalties when they commit traffic or fish and game offenses. In addition, minors over 16 may be treated as adult criminals when they commit serious crimes involving violence. Generally, if a minor is subject to adult penalties, they are not put in jail with adult criminals but are usually put in a locked facility designated for juveniles until they are 18 years old.

Persons under 18 are also not generally legally responsible for debts. In general, the law presumes that minors under 18 who have not been emancipated do not have the capacity to contract. However, a minor under 18 who is legally married is deemed to have reached the age of

majority (to be emancipated) upon marriage. [AS 25.20.020.] *See Chapter 13 for more information.*

EMANCIPATION

A minor who is at least 16 years old may petition the Superior Court for the right to be recognized as an adult. If the court agrees with the minor's petition and issues an order saying so, the minor is said to be "emancipated." [AS 09.55.590.] A guide to emancipation and sample petition for use in seeking emancipation is available at courthouses throughout Alaska. Once emancipated, the minor will be treated as an adult in all situations except where federal and state law requires her to be a certain age – for example, voting, and drinking.

BUYING AND RENTING PROPERTY WITH CHILDREN

Parents of small children often learn that children are not welcome in certain apartments. The Fair Housing Act makes it illegal for landlords to discriminate on the basis of family status. [42 U.S.C. 3601.] This law applies to most

landlords. Family status includes households that have minor children or pregnant women. The Fair Housing Act prohibits discrimination in selling as well as renting.

CHILD CUSTODY

If there is a court order placing your children in the custody of another person, you cannot take the children away without violating a criminal law. However, if your parental rights have never been subject to a court order, you have the right to custody of your children subject to reasonable custody and visitation rights of the other parent.

If your husband is an alcoholic or a batterer and you want to leave him, you can take your own children with you. This is not kidnapping. However, you cannot take children away from the other parent without acting reasonably or you could be subject to criminal penalties. You should seek the advice of an attorney if you have questions about your parental rights.

CHILD SUPPORT

Parents have an obligation to provide room, board, and medical assistance for their children. In addition, if there is a court order directing a parent to pay a particular amount of support for a minor child, the parent can be held in contempt

of court (and sometimes jailed) for not paying support.

The child support enforcement program is a federal, state, and local effort to collect child support from parents who are legally obligated to pay. *See Chapter 14 for more information about child support.*

PARENTAL RESPONSIBILITY AND OTHER PEOPLE

If your child purposefully destroys real or personal property of another, you as the parent or legal guardian of the child may be responsible for paying for up to \$10,000 of the damages, plus court costs. [AS 34.50.020.] You could have to pay for all the damages your child causes to another person, even if it was not intentional, if you negligently failed to supervise your child and that was the reason the damage was caused. Your homeowners or apartment dwellers insurance may provide some insurance coverage for claims like these. If someone makes a claim or sues you, immediately notify your insurance company.

DISCIPLINE

You can physically punish your child but not so severely that the child suffers physical harm. Alaska law provides that a parent, guardian, or other person

entrusted with the care of a minor child may only use that force (or punishment) that is reasonably necessary and appropriate to promote the welfare of the child. The reasonableness of the punishment is measured by an objective standard – what a reasonable person would do under the circumstances.

If a child is subjected to unreasonable punishment or placed in danger, the parent or custodian may be charged with a crime and the state, through social workers and attorneys, could seek custody of the child by alleging the child is in need of aid. [AS 47.10.010 et seq.] However, just because the state intervenes does not mean you lose all rights to the child.

If the state seeks to limit your parental rights, a court must hear the case and the state must prove its case that your child is in need of aid by putting on evidence and testimony to support its petition. During the proceedings, you have the right to a court appointed attorney if you cannot pay for an attorney yourself. The child has a right to a court-appointed guardian known as a guardian ad litem. The guardian ad litem is appointed to advocate for and represent your child, not to represent your interests. [AS 47.10.050.] All hearings are confidential unless the child and her guardian ad litem want certain people to be present at the hearing. [AS 47.10.070.]

MEDICAL CARE

You must provide medical care for your children until they are 18. However, if you belong to a recognized church that treats sickness through prayer rather than by medicine, the court may order the state not to intervene. [AS 47.10.085.]

EDUCATION

Every child between the ages of 7 and 16 must attend school. Parents have a right to send children to a religious school or to keep them at home to study, as long as the program is approved by the state. [AS 14.30.010.]

STATE INTERVENTION CHILDREN IN NEED OF AID

If state officials go to court and the court decides the child is “in need of aid,” the state can take legal and physical custody of the child for up to two years and can ask for extensions past the two years. [AS 47.10.080.] If a child is taken away from her parents but the parents’ rights have not been terminated, the parents still have the right to reasonable visitation and the right to agree to or refuse to consent to the child’s marriage, adoption, military enlistment, and major medical care, including medication to treat a mental health disorder. [AS 47.10.084(c).]

The court's intervention is a temporary limitation of parental rights. When the situation improves, the court can review the situation and return the child to the parents. [AS 47.10.080(c).]

What is termination of parental rights?

In rare cases where there is continuous harm to a child, the state may try to terminate or end a parent's rights in court. [AS 47.10.080(c)(3).] Termination of parental rights is usually final. The parents cannot, after termination, exercise any control over the child. There may be no visitation rights or in some cases some visitation rights can be retained. The state cannot seek termination until it tries other ways to solve the problems. [AS 47.17.030(d).] The child protection law that went into effect on September 16, 1998 provides for time-limited services for families that are not Alaska Natives. If the state cannot reunify the family after 15 months of reasonable effort, the state can pursue terminating parental rights. When Alaska Native families are involved, the state must engage in active efforts to reunify the family.

It has been held that a mother whose parental rights were terminated because of physical abuse could still challenge her child's adoption after termination but before the final court decree of adoption.

[*Rita T. v. State*, 623 P.2d 344 (Alaska 1981).]

REPORTING CHILD ABUSE

If you see a child being harmed, do not hesitate to report it. The Office of Children's Services (OCS) in the Department of Health and Human Services is responsible for investigating child abuse. You can contact them by calling 1-800-478-4444. If you are unable to reach OCS, you should contact the police. These reports are confidential. [AS 47.17.040(b).]

The Department of Health and Social Services can obtain emergency custody of a child if the child has been abandoned, denied necessary food, care, clothing, shelter, medical attention, or has been physically or sexually abused. [AS 47.17.070 and AS 47.10.142.] If emergency custody is assumed, the Department must notify the parents that they have taken emergency custody of the child and file a petition with the court advising that the child is in need of aid within 24 hours. The court must hold a hearing on the child's custody within 48 hours of their notification by the Department of Health and Social Services. [AS 47.10.142.]

Most people whose job puts them in contact with children are required by law to report suspected child abuse. This

includes mental health providers, substance abuse counselors, social workers, parole and police officers, crisis intervention workers, teachers, child care providers, and school administrators. [AS 47.17.020.] People cannot be sued for making these reports in good faith, even if they turn out to be wrong. [AS 47.10.050.]

INDIAN CHILD WELFARE ACT

The Indian Child Welfare Act (ICWA) is a federal law which addresses the state's role in cases involving Indian children, including Alaska Natives and American Indians. You should consult with an attorney who specializes in this field or your tribal corporation if you have questions about this area of the law. *See Chapter Ten for more information about ICWA.*

PATERNITY ISSUES

There is no presumption that a biological father is the father of a child unless the parties are married at the time of the birth. Written admissions are a useful technique for people who do not wish to get married but who want children together. If a father makes a formal admission, the child will have fewer problems with inheritance of the father's property and other benefits.

Any court judgment or written

admission concerning the child's paternity should be deposited with the State Bureau of Vital Statistics. Upon request, the registrar must make a new birth certificate. [AS 25.20.050(c).]

Even if paternity is not formally established but the child is clearly the child of a particular man, the child may be entitled to some of his benefits. For example, the Alaska Supreme Court has said that a child born after the father's death and out of wedlock is entitled to the father's workers' compensation benefits. [*S.L.W. v. Alaska Workmen's Compensation Board*, 490 P.2d 42 (Alaska 1971).]

If you have children and do not want to marry the father, one protection is a Will by the father in favor of the child. This Will, if properly signed, will be good even if the father does not otherwise admit he is the father of the children.

A father also may list children as beneficiaries on any life insurance policies or other forms of compensation from his employer such as SBS, retirement, or deferred compensation. It otherwise may be difficult to receive benefits from the father if paternity was not established and the children were not living with him or being supported by him at the time of his death.

RUNAWAY CHILDREN

When a report is made to any state law enforcement agency that a minor has run away from her parents or guardian, the police department must immediately file a missing person's report and transmit it to state and federal authorities. The police must make reasonable efforts to locate the child. Once the child is located, she may be taken into protective custody. Once in protective custody, the child will usually be returned home or placed at another location agreed to by the minor and her parent or guardian. [AS 47.10.141.]

A runaway child can also be placed at a state-licensed runaway facility or shelter and will be placed in such a facility if there is cause to believe the child has experienced physical or sexual abuse in the parental home. The parents or legal guardian must be immediately notified when a child has been taken into protective custody. A court hearing will occur any time a runaway is placed in protective custody and not returned home.

If the child is habitually absent from home or refuses care, the state can file a petition with the court asking that the child be declared a Child in Need of Aid. Both the parent and the child have the right to be present at the hearing and to be represented by a court-appointed

attorney if they cannot afford an attorney. If the court finds the child is a Child in Need of Aid, the court can order that the minor and/or her parents participate in treatment or that other actions be taken to protect the child. [AS 47.10.141.]

Chapter Thirteen

MARRIAGE AND DOMESTIC PARTNERSHIPS

Marriage is a legal state. To enter into it, you must observe certain formal legal requirements. Once married, you have rights and duties defined by law.

TRADITIONAL MARRIAGE

There is no common law marriage in Alaska. However, Alaska does give full faith and credit to marriages from other states. For example, if you had a common law marriage in a state that recognizes such marriages before you moved to Alaska, your marriage would be legal here as well.

What are the age and other legal requirements for marriage in Alaska?

Anyone 18 or older may generally get married. If a person is at least 16 years old, she may marry with the written consent of her parents or guardians. If she is more than 14 years old, she may marry by obtaining a court order stating that marriage is in her best interest. [AS 25.05.171.] There is no difference in the age requirement for women and men.

Marriage to more than one person is illegal. It is also illegal to marry a close relative. [AS 25.05.011 and 25.02.021.]

What are the marriage formalities required by Alaska law?

In order to get married in Alaska, you must apply for a marriage license and have the marriage solemnized by a religious official, marriage commissioner, or judge. [AS 25.05.261 & AS 25.05.091.]

You can apply for a marriage license at most courthouses. It usually takes three days from the time you apply until you get the license. In some remote areas you may have to apply for the license through a notary public or the post office.

You may have any kind of ceremony you want as long as you “declare in the presence of each other and the person solemnizing the marriage and in the presence of at least two competent witnesses that you take each other to be husband and wife.” [AS 25.05.301.]

Does your name automatically change upon marriage in Alaska?

When you get married, your name does not automatically change to your

husband's, but you may change your name to your husband's name or to a hyphenated name by taking your marriage certificate to the Department of Motor Vehicles and getting a new license. You should also provide the marriage certificate to the Social Security Administration. Most other agencies (credit cards, banks, voter registration) will accept the new license to change your name on their records.

Some women keep their maiden names for business and professional reasons, but use their husbands' name socially. This is fine, but your driver's license, social security, voter registration, charge accounts, and bank accounts should be in your legal name and your employer should be reporting your wages in your legal name.

What is an annulment?

A marriage may be voided or annulled if either of the persons who are married were not able to give consent because of age or lack of understanding. The marriage may also be voided or annulled if it was obtained by force or fraud or if the marriage was not consummated. [AS 25.05.031.]

PRE-MARITAL CONTRACTS

Some people draw up pre-marital contracts regarding their property rights after marriage or in the event of divorce. These contracts are legal provided they

are prepared properly. [*Brooks v. Brooks*, 733 P.2d 1044 (Alaska 1987).] In order to be valid, a contract should be fair, clear, involve property issues, include promises from both parties, and include a full disclosure of each person's property. It is usually advisable for each party to the pre-marital contract to be represented by their own attorney.

If you wish to cancel or revise the contract during your marriage, you should do so in writing. You will also need to check your Will, if you have one, to see if any changes need to be made to it in order to be consistent with the pre-marital contract.

Courts will usually not enforce a contract solely concerning personal duties. Courts will enforce financial agreements, including agreements to waive claims to the spouse's estate or to convey property.

Most pre-marital agreements concerning large amounts of property require legal help and knowledge of tax laws.

MARITAL PROPERTY

What are the property rights of marital partners?

The Alaska statutes regarding property rights of married people make each spouse liable only for her or his own property. [AS 25.15.010.] For example,

if your husband owns a boat in which you have no interest and the boat runs into a dock and destroys the dock, you will not have to pay for repairs to the dock just because the boat belongs to your husband. On the other hand, if you have property of your own, you are required to maintain the property yourself. You can sell or transfer property to your spouse. [AS 25.15.030.] You are not liable for the pre-marital or separate debts of your spouse. For example, if your husband is making payments on a college loan, you do not become obligated on these loans just because you are his wife. [AS 25.15.050.] Similarly, just because you are married, you do not become liable to pay your husband's debts or bills if you have not agreed with the creditor to do so. However, if you and your husband are both signors on a credit card, both of you are responsible for any debts either of you may incur. If you separate, you should terminate the joint account and get credit in your own name. Of course, both you and your spouse remain responsible for any debt from the account after it is closed.

If you maintain your own property, such as a checking account, your husband has no automatic control over it. [AS 25.15.060.] You have every right to separate your property from your husband's and prevent him from having access to it. For example, you could

open a savings account in your name and your husband would have no control over it unless you give him legal access to it.

Can I sue my husband?

In Alaska, you can sue your husband for negligent or intentional wrongs or torts that he has committed. [*Armstrong v. Armstrong*, 441 P.2d 699 (Alaska 1968).] If your husband is injured by another, you can sue the wrongdoer for loss of your husband's consortium or services. [*Schreiner v. Fruit*, 519 P.2d 462 (Alaska 1974).]

What are types of jointly held property?

A wife and husband who buy property together always own it as *tenants by the entirety*. Only married people may own property as tenants by the entirety. The unique feature about tenancy by the entirety is the right of survivorship. When one owner dies, all of the property automatically goes to the surviving spouse.

Tenancy in common is ownership with no right of survivorship. Each owner has her own individual interest in the property that can be sold freely during life or passed by will. Each tenant, or owner, is entitled to possession or use of the whole estate, but no co-tenant has the

right to sole possession of any part. A tenant in common has a right to have a court separate the property.

MARRIAGE-TYPE PARTNERSHIPS AND NON-TRADITIONAL MARRIAGES

What are non-traditional marriages?

Alaska law is somewhat unsettled in the area of non-traditional marriages and marriage-type partnerships. Alaska law does not recognize common law marriage (unless the common law marriage occurred in a different state where such marriages are recognized and the parties then moved to Alaska). In 1999, the Alaska Constitution was changed to prevent same-sex couples from entering into the legal institution of marriage in Alaska. Alaska law currently defines marriage as "a civil contract entered into by one man and one woman." Cohabitation alone creates no property interests. An unmarried domestic partner of either sex may not have the same opportunity to a fair property settlement as a married person.

To protect your legal interests in property of any non-traditional union, you and your partner should put your agreements on these matters in writing. You should also carefully read any insurance policies covering health, life, and property to determine coverage.

Property Rights of Domestic Partners

Property rights of domestic partners are determined by looking at the express or implied intent of the parties with regard to each piece of property at issue. To prove express intent, it is clearly best to have written agreements regarding each partner's interests in the property. If there is no written agreement, then the court will look at the implied intent by analyzing, among other factors, whether the parties have:

- made joint financial arrangements such as joint savings or checking accounts, or jointly held titled property;
- filed joint tax returns;
- held themselves out as husband and wife;
- contributed to the payment of household expenses;
- contributed to the improvement and maintenance of the disputed property; and
- participated in a joint business venture. (*Bishop v. Clark*, 54 P.3d 804 (Alaska 2002)).

OTHER CONSIDERATIONS FOR DOMESTIC PARTNERS

Unmarried domestic partners should carefully consider their respective legal rights and liabilities arising from the

relationship. If you want to own property together so that you and your partner will both have an interest in the property in case your partner dies or you separate, you should keep your property in *both* names, including joint checking accounts, ownership of real property as *tenants in common*, and a written agreement and last Will and testament that specifically sets forth your intentions and agreements. If you want to keep your property separate, you should also put that agreement in writing. You should be aware that you may be liable for the reasonable value of contributions (including money, labor or other services) to you or your property in the event of death or separation. If your partner dies or you separate and you and your partner have not put your agreement regarding property in writing, you should be aware that the law regarding your property interest in your partner's property and your partner's interest in your property is unsettled. If possible, obtain advice from an attorney to ensure a fair distribution. Do not assume that because the property was in the legal name of one person that the other person has no interest.

Be especially careful about insurance. In most cases, life and health insurance does not cover unmarried domestic partners although some insurance plans are broad enough to cover your partner. If you are purchasing an insurance

policy, you should ask your insurance company to arrange for coverage of your partner. State workers that are in domestic partnerships are eligible for benefits provided to their partners through the state. In 2005, the Alaska Supreme Court ruled that it was a denial of equal protection of law for the state to deny benefits to same sex partners, although the legislative and executive branch have been hostile toward implementation of these rights. [*ACLU v. State of Alaska, Municipality of Anchorage*, 122 P.3d 781 (Alaska 2005).]

Chapter Fourteen

DIVORCE, DISSOLUTION, CHILD CUSTODY, & CHILD SUPPORT

This section sets forth your rights under present law and offers suggestions on how your rights can be protected in either a divorce, child custody, or dissolution proceeding in Alaska. Be aware that subjects covered in this chapter can change quite rapidly.

The information contained in this chapter is not intended to be and should not be used as a substitute for legal advice regarding specific factual situations. If legal advice is required, the services of an attorney should be sought.

THE DIVORCE PROCESS AND FINDING AN ATTORNEY

For many women, the most difficult legal issue they ever face is getting a divorce or filing for child custody. A woman's husband or partner may threaten to harm her or take the children away and he or she may remove all the money from the joint savings account. A woman may feel isolated and scared, yet she must deal with the stress of finding an attorney and protecting herself.

In addition, divorce often causes a severe decline in the standard of living for women because of the impact it may have on her income and housing situation.

MEETING WITH YOUR ATTORNEY

See Chapter Two for more information about finding an attorney.

Usually, you will have a first interview with an attorney before he or she will take your case. There is sometimes no fee for this interview, but you should confirm when you make an appointment.

The attorney will ask for facts about the case. If you have been a victim of domestic violence, the attorney will ask about dates of past abuse and whether you can document this. Police and medical reports will be of help. If you have witnesses to any abuse, be prepared to give their names. You will also need information about property, debts, and family income. All information provided

to your attorney is confidential. Your attorney is never allowed to tell this information without your permission, except in very special circumstances, such as if you sue your attorney. Generally, you cannot be required to tell someone else what you have discussed with your attorney.

What is divorce versus dissolution?

Alaska has two proceedings for ending a marriage – divorce and dissolution. The divorce procedure is for cases in which the parties cannot agree on all issues. Since divorce requires that strict procedural rules be followed, it is best to be represented by an attorney. [AS 25.24.050.] A dissolution proceeding requires that both parties agree on all issues in the termination of the marriage. A dissolution is easier for a person not represented by an attorney to do on their own, although an attorney is recommended if there are significant property or child custody issues.

In a divorce, one party files a “complaint” for divorce in court and the other party has 20 days to answer. If the other side fails to answer, then the person who filed the complaint may obtain a default divorce. This greatly simplifies the divorce process and generally only takes two to three months. If the other side does answer, then the parties will litigate the case

toward a trial. This process generally takes six months to one year. However, even if the other side answers, it is likely that the parties will “settle” the case, or reach an agreement on all the issues, before trial. Alaska Legal Services and the Alaska Network on Domestic Violence and Sexual Assault’s Pro Bono Program offers clinics to help people who might be able to get a default divorce. Contact your nearest office to find out if they offer this service. *See the Resource Directory at the end of this handbook for more information.*

In a dissolution, the court must review the agreement to see that it is fair. The court will use heightened scrutiny if:

- one person is represented by an attorney and the other is not;
- a domestic violence criminal complaint has been filed;
- there is a minor child;
- there is evidence that one party committed a crime involving domestic violence during the marriage;
- a protective order has been filed in this or another state; or
- the property division seems inequitable on its face.

Once the forms are completed and signed by both parties, a hearing will be set (usually within 60 days). Either party

can change their mind and stop the proceedings before the final hearing. If the dissolution does not require heightened scrutiny, one party may sign a waiver of appearance and not attend the hearing. In a dissolution requiring heightened scrutiny, both parties must be present at the hearing unless the court finds the presence would constitute a significant hardship and that a just agreement has been reached. One party may file separately if the whereabouts of the other spouse is unknown and there are no issues of child custody or support.

You can obtain instruction packets and all necessary forms for dissolution at your local courthouse. Many women seek advice from an attorney (on issues such as child support, custody and valuation of property) and then use the dissolution process. The Family Law Self-Help Center can also help with information on representing yourself through this process. *See Chapter Two for more information on the Alaska Family Law Self-Help Center.*

What is a child custody action?

If a woman was not married to the father of her children, she can file a child custody action to determine custody, visitation, and child support. [AS 25.20.060]. She can also file a motion to determine property division of joint assets and payment of joint debts. *See*

Chapter 13 for more information.

Is it necessary to hire an attorney for divorce or child custody proceedings?

If there are no children and property, marital couples may be able to handle their own divorce without attorneys. This is called appearing pro se (“for oneself”). Although this alternative is much less costly than hiring an attorney, it can be confusing and time consuming. Anyone who has children, property, or other complex issues should seek the advice of an attorney.

If you cannot afford an attorney, you may qualify for no-cost assistance through the Alaska Legal Services Corporation or through the Alaska Network on Domestic Violence and Sexual Assault's Pro Bono Program. If you cannot find an attorney, then you should contact the Alaska Court System's Family Law Self-Help Center. The Family Law Self-Help Center provides educational information and sample pleadings to people who are representing themselves in family law proceedings.

If your spouse has an attorney, do you need your own attorney for divorce/child custody proceedings even when you and your spouse have made a friendly agreement to negotiate the details?

Yes. No matter how amicable the relationship with your spouse, you have interests separate from his in a divorce and should be represented separately. This is vital. Even if you eventually decide not to retain an attorney to represent you, you should consult with an attorney at least once to get impartial advice on your situation.

What are the grounds for divorce in Alaska?

There has been widespread adoption of “no-fault” grounds for divorce through the United States. “No fault divorce” means that the parties do not have to prove why they want to terminate the marriage. One person’s assertion that they want out of the marriage because of “incompatibility of temperament” is sufficient, even without the other party’s agreement. In Alaska, you can also obtain a divorce on traditional fault grounds, but this is not necessary. [AS 25.24.050.]

What is a common law marriage?

A common law marriage is created by an

agreement to marry followed by cohabitation (holding themselves out to others as being married-living together, sharing bank accounts, etc.) A common law marriage does not involve the traditional marriage license and ceremony required by the majority states. Alaska does not recognize common law marriage. However, Alaska would recognize a valid common law marriage from another state.

If a woman has a common law marriage from another state, does she have to get a divorce to end it?

Yes, and it is important to do so. There is no such thing as a common-law divorce, and if she does not get a regular court divorce, any later marriage, including a ceremonial one, will be invalid.

Does a woman have to be an Alaska resident to file for divorce or dissolution?

Alaska no longer has a residency requirement in order to file for divorce. The only requirement is that one spouse be living in Alaska with the intent to remain here when the complaint or petition is filed. However, the court is unable to decide property issues against a person who is not a resident of the state unless that person has lived in Alaska for at least six months within the

six years before filing the divorce. [AS 09.05.015.]

For the court to decide child custody, it must determine that it has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). [See later in this chapter.] The court can set child support against another person if:

- the other parent can be served in the state;
- the other parent resided with the child in this state;
- the other parent resided in the state and supported the child at one time;
- the child resides in this state because of acts or directives of the other parent;
- the other parent engaged in sexual intercourse in this state through which the child may have been conceived; or
- the other parent acknowledges parentage in a writing deposited with the Bureau of Vital Statistics in Alaska.

Even if the court does not have authority to decide support, a parent should ask for it since the court can always defer the issue to the Child Support Services Division (CSSD) who can bring an interstate action. See *CSSD later in this chapter*.

What kinds of protections are available while the divorce and/or child custody action is pending?

When a divorce is filed with the court, a standing order issued by the presiding judge takes effect. Standing orders vary depending on the court location, but they all include three important protections. They prohibit either party from:

- disposing of assets except for reasonable and necessary expenses;
- threatening or harassing the other party; and
- removing any minor child involved from the State of Alaska.

What other protections are available?

While the divorce is pending the court may order:

- that one spouse pay an amount of money to allow the other to pay for an attorney or other costs to carry on the divorce;
- that one spouse pay reasonable spousal maintenance, including medical expenses;
- that one spouse pay reasonable support for minor children in the care of the spouse;
- that one spouse is entitled to necessary protective orders, including orders:

- o providing for the freedom of each spouse from the control of the other;
- o for a civil protective order under AS 18.66.100-18.66.180; [*See Chapter Five for more information on civil protective orders*]
- o for an order directing one spouse to vacate the marital residence or home of the other spouse;
- o restraining a spouse from communicating directly or indirectly with the other spouse;
- o restraining a spouse from entering a propelled vehicle in the possession of or occupied by the other spouse; and
- o prohibiting a spouse from disposing of the property of either spouse or marital property without the permission of the other spouse or a court order.
- interim custody and visitation order that will continue until there is a settlement or trial in the case;
- in certain circumstances, if both parties agree and after a hearing, that the parties engage in mediation or family counseling. [Important Note: The court may not order or refer parties to mediation in a proceeding concerning custody or visitation of a child if a domestic violence protective order issued or filed under AS 18.66.100-180 is in effect. See

“What is mediation?” on the next page for more information on available protections when one party objects to mediation on the grounds that domestic violence has occurred.] [AS 25.20.080(f).]

Why would a woman want to obtain protections during the pendency of her divorce action?

Women can be at increased risk of violence from their spouse when they attempt to leave an abusive relationship or obtain a divorce. Data from the National Violence Against Women Survey, the first-ever national study on stalking, sponsored jointly by the National Institute of Justice and Centers for Disease Control and Prevention, confirms previous reports that violence against women is predominantly intimate partner violence. It also demonstrates the high risk of separation violence when a victim attempts to leave an abusive partner. Among victims of violence committed by an intimate partner, the victimization rate of women separated from their husbands was about three times higher than that of divorced women and about 25 times higher than that of married women. The study found that 503,485 women are stalked by an intimate partner annually in the United States. Other studies have shown that although divorced and separated women compose 7 percent of the population in

the U.S., they account for 75 percent of all battered women and report being battered 14 times as often as women still living with their partners.

What is mediation?

Divorce mediation is a relatively new concept. It is a voluntary process in which a neutral third party, a mediator, helps the couple reach a mutually acceptable agreement about their respective rights and responsibilities after divorce. It is less formal than court proceedings, and even if the people are represented by attorneys, the attorneys usually do not actively participate in the mediation process itself. The goal of mediation is to help reach an agreement, and the mediator does not have authority to impose a decision on the parties, although some mediators do pressure parties to agree to a settlement.

Mediation (using a third party to help you communicate and reach an agreement) can be used to settle any or all aspects of a divorce. Either party can petition the court to order mediation or the parties can engage in mediation without a court order. [ARCP 100; & AS 25.20.080.] However, the court cannot order a victim of domestic violence to engage in mediation unless she wants to use mediation and mediation is provided by a mediator who is trained in domestic violence in a manner that protects the

safety of the victim and any household member, taking into account the results of an assessment of the potential danger posed by the perpetrator and the risk of harm to the victim. The court cannot order or refer a victim of domestic violence to mediation if a protective order is in effect. [AS 25.20.080 & AS 25.24.140.] Where there has been domestic violence in the past, the victim is permitted to have a person of the victim's choice, including an attorney, in attendance. Mediation is held in private and is confidential. The mediator may not testify about the mediation proceedings. [ARCP 100(g).] The cost of mediation may be paid by one party, by both parties, or by the state if the parties are indigent. If mediation or negotiation fails, the matter will proceed through court.

Is mediation mandatory in Alaska?

At any time within 30 days after a petition for child custody is filed under AS 25.20.060 or during the pendency of a divorce proceeding (Civil Rule 100) the court may order the parties to submit to mediation. [However, as discussed above, there are limits and prohibitions on mediation if there is domestic violence involved.] Each party has the right to challenge peremptorily one mediator appointed. Mediation shall be conducted informally as a conference or by telephone. The parties to the action

and a court-appointed representative of the minor children shall attend. [AS 25.20.080.] If the mediator determines that mediation efforts are unsuccessful, the mediator shall terminate mediation and notify the court that mediation efforts have failed. The custody proceeding shall proceed in the usual manner.

What are the advantages and disadvantages of mediation in the divorce process?

Many women's advocates believe that the disadvantages of mediation outweigh the advantages. Others disagree. Mediation is sometimes less costly and less time consuming than the litigation process. However, it can be more costly if each party retains an attorney in addition to paying the mediator (which is definitely advisable). And it is usually more time consuming if the mediation is not successful, since then the parties have to begin or re-enter the court process. It is more informal than a judge-decided divorce, but informality may work to the woman's disadvantage.

The chief disadvantage of mediation is that because it does not operate under any specific legal standards, it only works between parties of equal bargaining power, and there is still pervasive inequality between men and women in our society. Also, in Alaska

and most other states, neither the mediators nor the mediation process is regulated. Moreover, mediation privatizes family disputes at a time when women's advocates have made great progress in improving laws to give women more rights in divorce.

Finally, in assessing mediation, it should be remembered that most divorces are only attorney-assisted negotiations because the couples usually resolve the issues without a full scale trial. Against that backdrop, mediation may not be cheaper or faster than the regular divorce process and may result in a less favorable result for women.

Are there any situations where mediation should definitely not be used?

Yes. Victims of domestic violence including physical, sexual, or emotional abuse should not use mediation. This is because the mediation process relies on good-faith bargaining between parties who possess equal bargaining power, which does not exist in an abuser/victim situation. For example, despite a woman's needs and expectations of the process, she may be too fearful of retaliation to speak up for her own interests.

PROPERTY DIVISION

In some states, any property either spouse owns or acquires during the marriage automatically becomes "community property" of both spouses such that both have an equal interest in the property. Alaska is not a "community property" state. However, a law was passed in 1998 that allows married people to agree in writing that their property shall be considered "community property."

Alaska instead is an "equitable division" state. Alaska law requires that courts go through a four step process in dividing marital property. First, the court must determine what is marital property. Generally, everything acquired during the marriage, with the exception of inheritances and gifts, is marital property subject to division. Property acquired prior to the marriage usually is not marital property. However, property acquired prior to the marriage may be considered marital property if one party can prove that it was the intent of the owner to make it marital property and there are acts to prove it.

In the second step, the court will value the marital property. The third step requires the court to divide the property with the assumption that a fifty/fifty division is equitable. However, the court will consider the following factors in

deciding whether a fifty/fifty split is equitable:

- age of parties;
- earning abilities;
- duration of marriage;
- conduct of the parties during the marriage;
- circumstances and needs;
- health and physical condition; and
- financial circumstances (including the time and manner of acquisition of property, its value and its income-producing potential). [*Wanberg v. Wanberg*, 664 P.2d 568 (Alaska 1983).]

Therefore, there is no guarantee that all the property will be divided in half, although in practice that is often done. Alaska statutes specifically provide that earning capacity includes length of absence from the job market and custodial responsibilities for children during the marriage and states that the court must consider the desirability of awarding the family home or right to live in it to the party with primary physical custody of the children. [AS 25.24.160(a)(4).]

Finally, in the fourth step, the court will, if necessary, invade the premarital property of either spouse if an equitable division is not possible based on the parties' marital property.

Alaska statute says that the court is not to look to the fault of either of the parties in deciding how the property is to be divided, but must rather look to overall fairness. [AS 25.24.160(a)(4).] Private retirement pension benefits, military retirement pay, and civil service benefits are available for distribution in a divorce. Even if they are not yet vested, the court can keep control of the case to divide them when and if they vest. [*Lang v. Lang*, 741 P.2d 1193 (Alaska 1987) (military); *Monsma v. Monsma*, 618 P.2d 559 (Alaska 1980) (civil service); *Morlan v. Morlan*, 720 P.2d 497 (Alaska 1986) (private retirement).] If you or your spouse have rights in a pension or retirement plan, vested or not, try to learn the value of that benefit and check with an attorney or accountant about how this should be considered in making a division of the property.

The order which the court must enter to award one spouse a share of the other's retirement is called a Qualified Domestic Relations Order (QDRO). There are many technical requirements for these documents so you may want to contact the plan's administrator to obtain the correct form.

Other employment benefits such as unused leave or vacation pay, supplemental benefits, and stock option plans are also subject to division. In

addition, courts will consider fishing permits, stock in a Native Corporation, the cash value of insurance, stock in a closely held corporation, or an interest in a professional or other business.

DEBTS

Debts are considered "marital property" and are divided in the same four step process as marital assets. However, unlike assets, who owns the debt is important. While the divorce court can divide the debt or give it to one party to pay as part of the divorce decree, it is the named person on the debt who remains liable to the creditor. Therefore, it is important when you separate to stop incurring mutual debt. Additionally, you will want to take responsibility for those debts in your name, assuming this can be accomplished within an equitable division of property.

TAX CONSEQUENCES-PROPERTY DIVISION

If each spouse just receives his or her own separate property or if the jointly-owned property is divided equally, there is no tax consequence. That means you do not pay income tax even if the property you get has increased in value unless you sell it.

If there is an unequal division of joint property or one spouse transfers separate

property to another, there may be a tax gain or loss. Contact an accountant, attorney, or the IRS about the tax consequences if you are considering this type of division. [IRS Publication 504.]

MODIFYING DIVORCE DECREES

Other than for issues involving children – custody, visitation, and support – the court's ability to modify issues in the divorce once the decree is final is limited. There are a few narrow grounds including fraud, newly discovered evidence, and inadvertence that would allow the court to reconsider issues within one year. After one year has elapsed, it is extremely difficult to relitigate any property or debt issues.

CHANGE OF NAME

The court may order either party's name changed in a divorce or dissolution, but if it is to a name other than a prior name, the ordinary requirements for name change must be followed. [AS 25.24.165.] *See Chapter Eight for more information about names.*

Can I receive alimony from my ex-spouse?

In the area of alimony, or financial support for one spouse from the other, Alaska law provides that either spouse may be ordered to provide support for

the other. However, there is strong preference to provide support through division of property. [*Malone v. Malone*, 587 P.2d 1167 (Alaska 1978); AS 25.24.160.] The courts seldom provide long-term alimony for wives unless there is evidence of health problems, the woman is past middle age, the woman is unemployable, or the marriage was long-term and there are not enough assets to provide for her support.

There are two types of alimony in Alaska – reorientation and rehabilitative. Reorientation alimony is support for a short period of time that allows one spouse to adjust financially to the effects of the divorce. Rehabilitative alimony is support to allow one spouse to do certain things to improve her financial situation, such as education or job training. This type of alimony is usually awarded in long-term marriages where the wife has left her career or training to raise children or followed her husband in his career. The court requires that any amount that is awarded as rehabilitative be closely linked to the costs of the education or job training sought. An award of alimony is to be based on the division of the marital assets, the length of the marriage and station in life, the age and health of the parties, their earning capacity and financial condition (including cost and availability of health insurance), and the parties' conduct during the marriage, including any

unreasonable depletion of marital assets. [AS 25.23.160.]

What are the tax consequences of alimony?

The person paying alimony may deduct it on their federal taxes and the person receiving it must declare it as income. [IRS Publication 504.]

Who pays for attorneys fees in a divorce?

The earning powers of the parties are considered in deciding whether or not to make one party pay the other's attorney fees. Attorney fees can be made payable in advance or at the end of the proceedings. Women who are having trouble paying for legal representation may want to petition the court for attorney's fees in advance. Alaska Legal Services Corporation has packets that can assist pro se individuals file for attorney fees at the beginning of a case.

CHILD SUPPORT

In Alaska, both parents, even if they do not have custody of their children, have a duty to support them. [*Matthews v. Matthews*, 739 P.2d 1298 (Alaska 1987) and AS 25.20.030.]

In divorce, dissolution, or child custody cases, child support is awarded

according to court set guidelines contained in Alaska Rules of Civil Procedure 90.3. If one parent has sole or primary physical custody of the child, the other parent pays a percentage of their adjusted annual income as child support.

Adjusted annual income is a parent's total income from all sources minus any mandatory deductions, such as federal income tax, social security tax, mandatory retirement deductions and union dues, other court-ordered child support, and work-related child care expenses for the children. The parent without custody pays a percentage of their adjusted income per month for child support. This equals 20 percent of adjusted income for one child, 27 percent for two children, 33 percent for three children, and an extra three percent for each additional child.

If the parent has an adjusted annual income of over \$100,000, the court cannot award more than the parent would pay based on a \$100,000 adjusted annual income unless it is just and proper, taking into account the needs of the children and their standards of living. Alaska Civil Rule 90.3 specifies that the minimal child support which should be paid is \$50 per month (except in cases of shared, divided, or hybrid cases).

The parent paying child support also gets

credit for health insurance and medical costs that are required by the court and actually paid. There are some narrow exceptions to setting child support according to Civil Rule 90.3 guidelines including a large family, significant income of a child, divided custody, and/or extraordinary high or low expenses. However, in working out a dissolution agreement, the parents cannot just agree to reduce the child support amount below the guideline unless the court finds that unusual circumstances justify varying the child support obligation in the manner provided by the agreement.

The court can allow the non-custodial parent to reduce child support payments for any period the parent has an extended visitation (defined as over 27 consecutive days), but the order needs to specify the amount of the reduction which cannot be greater than 75 percent of the total monthly award. Also, a parent is considered to have shared physical custody, for purposes of child support rules, if the children are with that parent for at least 30 percent of the year, regardless of who has legal custody. If the parents have shared physical custody, then each parent calculates under the guidelines what they would pay to the other, and then they multiply that amount by the percentage of time the parent will have physical custody of the children. The parent with the larger figure then pays the other

parent the difference between the two multiplied by 1.5.

You can obtain a copy of a booklet entitled *How to Calculate Child Support Under Civil Rule 90.3* from your local courthouse so that you can calculate child support requirements.

CHANGES TO CHILD SUPPORT

Either party or the state has the right to request a review of a child support order. There are several reasons why an order could be modified. Some of the situations that could result in a modification follow:

- child support guidelines were adopted or significantly amended after the existing support order;
- the income of the obligor changes so that the support order is 15 percent higher or lower than the present support order; or
- there is no medical support order in effect.

If either party requests a review, both parties will be required to provide Child Support Services Division (CSSD) with financial information. Private agreements between parties are not valid unless they are approved by a judge or entered in a court order of a case in which the child support order is being enforced by CSSD. It is important to

note that child support payments cannot be changed retroactively. Therefore, if you are paying too much or receiving too little, you should act immediately to modify the support calculation.

Pro se packets are now available to modify child support. You can request the court to modify child support without using CSSD or an attorney

The Alaska Court System recently finished a project that produced “forms” for pro se parties to move the Court to modify child support without CSSD or attorneys. The forms are available in the Clerk’s Office, and they are fill-in-the-blank type forms. They require that the other party and CSSD be legally served with the motion and supporting documents.

CHILD SUPPORT SERVICES DIVISION (CSSD)

Every state has a child support enforcement program to collect child support from parents who are legally obligated to pay it. In Alaska, the Child Support Services Division (CSSD) provides these services. State enforcement programs locate absent parents, establish paternity, establish and enforce support orders, and collect child support payments. While programs vary from state to state, their services are available to all parents who need them.

[Note: Custodian is the person who has the care, control and maintenance of a child(ren) as determined by a court or agreed upon by both parents. This person will receive the support as specified in a child support order. The Office of Children’s Services is the custodian for children in their custody. The obligor/non-custodial parent is the person who must pay support because they do not have daily care or maintenance responsibilities.]

What services are available in Alaska from CSSD?

The Child Support Services Division can:

- provide child support services when either parent or a third-party custodian applies;
- establish paternity if it has not already been established;
- establish a child support order;
- enforce a child support order, even if the paying parent is not in Alaska;
- obtain an order to modify an existing child support order;
- send orders to withhold funds for child support to employers, banks, the Permanent Fund Dividend Division, and other places the paying parent may have income or assets;
- collect and mail out payments; and

- revoke the driver's licenses and occupational licenses of obligors who do not pay child support.

If you or the other parent are receiving temporary assistance benefits, CSSD will automatically collect child support payments to repay the state debt. [Important Note: Public assistance recipients are normally required to cooperate with efforts by CSSD to establish paternity and to collect child support. However, a recipient may not be required to cooperate if there is good cause not to require such cooperation. Inform CSSD and your public assistance worker if recovering child support or establishing paternity would put you and/or your children's safety at risk due to domestic violence.] *See Chapter 15 "Good Cause Exception" under the Domestic Violence Policy section for additional protections for victims of domestic violence.*

PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE

Child Support Services may be required to provide information about you or your children to others included in your child support case. If it would put your safety at risk for the obligor to receive information about you and your children, you can request that your address and other information not be released to the obligor. [AS 25.27.275.] It is a good idea

to make this request in writing so that a copy of your request gets into your file.

Child Support Services will not release information to the general public. However, if your case is filed with the court, information in your court case is available to the public. If you and/or your children have been a victim of domestic violence, you may request that this information not be released. [AS 25.27.275.] Domestic violence includes:

- harassment;
- threats;
- emotional abuse;
- physical violence, including sexual assault or incest; and/or
- parental kidnapping. *See Chapter Five for a more detailed definition of domestic violence.*

How is a support order established by CSSD?

Child support orders may be established by a court or by CSSD through the use of an administrative process. If CSSD establishes a child support order administratively, they will set the support amount using Alaska's Child Support Guidelines. [Alaska Court Civil Rules of Procedure 90.3 (CR 90.3).] This rule requires that the child support obligation be a percentage of the adjusted annual income of the obligor parent. CSSD multiplies the obligor's

income by the appropriate percentage (depending on number of children in the support order). If the obligor does not provide income information, CSSD will use the best information available to determine the parent's total income from all sources.

CSSD uses an Administrative Support Order when they issue a child support or medical support order. Both parties receive a copy of this order and either party can appeal the findings. If you appeal, you must present evidence supporting your claim. After an administrative review, CSSD will decide whether they should change the findings. Either party may appeal CSSD's decision to a formal hearing officer appointed by the Commissioner of the Department of Revenue. The hearing officer's decision may be appealed to the Superior Court by either party.

How are support payments made to CSSD?

Money that CSSD collects will be paid to the custodian unless the custodian or child is receiving temporary assistance or Medicaid. If the custodian received temporary assistance, they are required to assign the child support payments to the State of Alaska. Custodial parents receive a \$50 pass through payment on each child support payment received.

How long does it take for the custodial parent to receive support payments made to CSSD?

In most cases, CSSD mails support checks to the custodial parent the next business day after CSSD receives the payment.

How can I find out about the payment status of my case?

CSSD has a computerized telephone system called the KIDS line. The KIDS line will give you answers to many commonly asked questions and allows access to payment information about your case. You can also leave messages for your caseworker and hear informational announcements about CSSD services. You can call the KIDS line 24 hours a day, seven days a week at 1-800-478-3300. You can also access the CSSD website.

What happens if support payments are not made?

If child support is owed and CSSD locates an employer or a financial institution of the obligor, CSSD is required to issue an Order to Withhold and Deliver wages or assets. Earnings are withheld directly from the payroll office or from an account in a financial institution.

Failure to make support payments may also result in other enforcement actions for collections. These actions include liens, judgments, Permanent Fund Dividend and IRS refund attachments, credit bureau reporting, taking possession of money in checking and bank accounts, and other actions allowed under civil and criminal law. Anyone owing more than four months of child support might also lose his or her occupational or driver's license. CSSD can file liens on real estate if arrears are at least equal to one month of unpaid support.

CSSD may take the obligor's federal income tax refunds to pay support debts. The IRS money will only be applied to debts that are in arrears (as of the date of certification to IRS); it will not apply to current support.

What if either parent moves out of state?

CSSD can continue to collect payments and can coordinate enforcement of the support order with the child support agency in the other state, if necessary.

What happens if there is a custody order in place and the non-custodial parent under the order takes over custody without changing the order?

If the parent who has legal custody

under the existing court order does not object or agrees to the other parent taking custody for nine months or more, then the Court can enter an order precluding that parent from collecting child support arrears that accumulated under the order. However, this is not automatic and you have to prove the requisite facts to the court before they will order it.

What happens if there is a custody order in place and the non-custodial parent under the order takes over custody without changing the order and starts to collect public assistance?

CSSD will apply to the court for an interim order requiring the person who formerly had custody to pay support during any month during that the other person had custody and collected public benefits. CSSD will not address the custody situation, but they will secure an interim order that reimbursement can be sought from the now non-custodial parent.

Can CSSD establish paternity?

Yes. If paternity has not been established and child support is pursued, CSSD can establish paternity. This generally occurs when a child is born out of wedlock. Both parties can sign an affidavit when they agree about paternity. If they do not agree, then CSSD will require genetic

tests to determine the father of the child. CSSD will not establish paternity for children who are born out of incest or forcible rape unless the mother is legally competent and requests the establishment of paternity.

Does CSSD charge for services?

No. CSSD does not charge a fee for services. However, an alleged father must pay CSSD for genetic testing if it is proved that he is the biological father.

How do I apply for CSSD services?

Either parent can apply for CSSD services at any time. To apply for services, you must fill out an application form. You can obtain an application at the court or at CSSD's offices. *[See the Resource Directory for locations.]* You can also request an application by mail/email or by leaving a message on the KIDS line.

What are your rights and responsibilities in working with CSSD?

During any CSSD proceeding, you are not required, but may hire and bring your own attorney. You can attend and participate in case proceedings and hearings that concern your child support order with or without an attorney. Participating in child support

proceedings can help you protect your interests.

If you are working with CSSD, you are required to notify them of the following:

- new addresses;
- custody changes of the children;
- visitation of the children when a court order for visitation exists;
- payments received directly from the non-custodial parent;
- new employment or changes to earnings;
- availability of medical insurance coverage for the children; and
- any action that you start on your own which may affect support such as seeking a new or modified court order, custody changes, or other collections.

SUPPORT TO CHILDREN PAST AGE 18

As a general rule, parents do not have a legal obligation to provide support for their children past the age of 18. However, there are important exceptions to this rule: (1) for unmarried 18-year-old children of the marriage who are actively pursuing a high school diploma or an equivalent level of technical or vocational training and living as dependents with the spouse or designee of the spouse; and (2) when an adult

child is incapable of self support due to physical or mental disability. [AS 25.24.140(a)(3); *Sanders v. Sanders*, 902 P.2d 310 (Alaska 1995).]

CRIMINAL SANCTIONS FOR NON-SUPPORT

It is a crime for any person not to support his or her children if they have the financial ability to pay support through available funds or could obtain funds through reasonable efforts. [AS 11.51.120.]

TAX CONSEQUENCES – CHILD SUPPORT

Child support is not deductible on federal income tax by the person paying it or taxable to the person receiving it. If you are unmarried and a child lives with you, you may be eligible for special tax treatment as head of household. If you have the children with you more than 50 percent of the time, you are entitled to claim the child as a dependent for tax purposes unless you waive that right. You can waive it each year, and you can condition your waiver on your spouse being current in child support throughout the year. [IRS Publication 504.]

Under Alaska law, a parent who is delinquent in child support up to four times the amount of their monthly obligation at the end of the tax year may

not claim the child as a dependent for tax purposes. [A.S. 25.24.152].

CHILD CUSTODY

There are two types of custody – legal and physical. Legal custody determines who has the ability to make decisions for the child, such as the type of medical care they receive and where they go to school. Physical custody is who actually has the children. Legal custody may be sole or joint. Physical custody may be primary in one parent or shared (if both parents have the child for more than 30 percent of the time).

Joint legal or physical custody requires that parents work together. Therefore, they need to be able to communicate well with each other. It is usually easier if the parents live close to one another. If one parent having joint custody decides to move from the community of the other, the court will have to decide where the child will live, unless both parents agree.

There is a preference in the law for parties to share legal custody. There is not a similar preference for shared physical custody. Instead, the court determines physical custody in accordance with the best interests of the child, considering all relevant factors, including:

- the physical, emotional, mental, religious, and social needs of the child;
- the capability and desire of each parent to meet these needs;
- the child's preference;
- the love and affection existing between the child and each parent;
- the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, except that the court may not consider this willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in domestic violence against the parent or a child, and that a continuing relationship with the other parent will endanger the health or safety of either the parent or the child;
- any evidence of domestic violence, child abuse or child neglect in the proposed custodial household or a history of domestic violence between the parents;
- evidence of drug abuse by either parent or any other member of the household that may affect the physical or emotional well-being of the child; and
- other factors that the court finds important such as the past history of the parents with respect to their compliance with child support orders, if the parent had knowledge of the order and through reasonable efforts had the ability to comply. [AS 25.24.150]

There is a rebuttable presumption that a parent who has "history of perpetrating domestic violence" against another parent should not be awarded sole or joint legal or primary or shared physical custody. A history of perpetrating domestic violence includes one incidence of violence that causes serious physical injury or more than one incident of domestic violence. If one parent can prove that the other parent has a "history of perpetrating domestic violence," then the other parent must show that they have successfully completed a batterer's intervention program, that they do not engage in substance abuse, and that the best interests of the child require their participation as a custodial parent because the other parent is absent, has a mental illness, or has a substance abuse problem that affects parenting abilities. If the abusive parent cannot prove this, they generally are permitted only supervised visitation. [A.S. 25.24.150(g) (h)].

If the court finds that both parents have a history of perpetrating domestic

violence, the court is supposed to either award sole legal and primary physical custody to the parent who is less likely to perpetrate violence and order that person into a batterer's intervention program or award custody to a third party if necessary to protect the child. [AS 25.24.150(i)].

If the court finds that a parent or child is a victim of domestic violence, the court may order that the address and telephone number of the parent or child be kept confidential in the proceedings. [AS 25.20.060.]

The courts have indicated that consideration should be given to the desirability of keeping children together so they can grow up as brothers and sisters, rather than separating them, unless their welfare clearly requires such a course. [*Rhodes v. Rhodes*, 370 P.2d 902 (Alaska 1962).]

The Alaska Supreme Court has also ruled that a parent's conduct, including sexual preference, cannot be considered in determining custody unless it can be shown that it has or reasonably will have an adverse impact on the child [*S.N.E. v. R.L.B.*, 699 P.2d 875 (Alaska 1985).]

The Alaska Supreme Court also has indicated that no single factor should be allowed to outweigh all others when analyzing the best interest of the child.

[*In re Matter of J.J.J.*, 718 P.2d 948 (1986).] While a parent's past is not determinative, it can be considered in evaluating current stability and parenting ability. Therefore, the fact that you have committed adultery or are or have been on welfare is not a factor to be considered by the court unless it can be shown that it either affects the well-being of the child or is evidence of a lack of stability on your part.

It is generally advisable for women to be concerned about the factors that may be brought up regarding stability and predictability of the child's environment including:

- use of alcohol and/or drugs;
- excessive changes in living, overuse of other caretakers, particularly for extended periods of time;
- negative comments to children about absent spouses; and
- denial of visitation.

If custody is in any way an issue, you should consider immediately hiring an attorney with experience in the area or, if you qualify, obtaining assistance from Alaska Legal Services or from the Alaska Network on Domestic Violence and Sexual Assault's Pro Bono Program (if your case involves issues of domestic violence or sexual assault). Once a custody determination has been made by divorce or dissolution, it is difficult to

modify.

RELOCATION ISSUES AND CUSTODY

Parents may have to move with their children because of safety issues or because they need the support of family or a community with more economic opportunities. Parents may be allowed to move if they can show that the move is in the child's best interests and there is a legitimate reason for the move. Parents who move without a court order or who deny the other parent access to the children may be charged with custodial interference. It is highly recommended to speak with an attorney if you are considering moving out of state with your children.

CHILD CUSTODY INVESTIGATORS AND GUARDIAN AD LITEMS

If custody is at issue in your case, then the court may refer the parties to child custody investigator (CCI) or a guardian ad litem (GAL) to investigate the custody issues. The parties can also make the request to the court for one of these professionals to make an investigation. CCIs are experts that are appointed by the court to give an expert opinion as to what custodial placement is in the children's best interests. A GAL is a person, attorney or non-attorney, who

is appointed by the court to represent the child's best interests.

Both the CCI and the GAL are required to have similar qualifications including an understanding of child development, the impact of divorce on children, issues related to child custody, the impact of domestic violence and substance abuse on children, Alaska rules and statutes relating to custody, and the ability to communicate effectively with children. The CCI or GAL will generally interview both parents and the children, speak with parent references, and obtain access to criminal, Office of Children's Services, and mental health records. They will then compile all this information into a report that will be given to the court with recommendations for custody. Parents who are indigent may qualify for a CCI or a GAL at no cost. [Alaska Rules of Civil Procedure 90.6. and 90.7]

CUSTODY MODIFICATION

The court may change or modify a custody determination at any time during the minority of the child; however, the courts favor stability and the parent wishing a modification must show a change of circumstances (usually in the custodial parent) that directly affects the best interests of the child. [AS 25.24.150; AS 25.20.110.] In a proceeding involving the modification of

an award for custody of a child or visitation with a child, a finding that a crime involving domestic violence has occurred since the last custody or visitation determination is a finding of change of circumstances. [AS 25.20.110 (c).]

In making a decision in a custody modification, the court should take into consideration the past history of child support payments. In post-divorce motions to modify custody or visitation, the court may award fees based on ability to pay and the good faith of the parties' actions.

VISITATION

If one person has primary physical custody of a child, then the other party has what is called "visitation rights." A typical visitation schedule would be for the non-custodial parent to have the children every other weekend from Friday night until Sunday night, one weekend evening, alternate holidays, (i.e., Thanksgiving in even years and Christmas in odd years, Spring Break in even years, etc.), and half of summer vacation. Parents should take into consideration the age and emotional health of their children in deciding on a visitation schedule. The custody investigator's office has guidelines for visitation which may be helpful in setting a schedule. Any costs for

visitation are generally split by the parents with each parent paying the cost of transporting the child to that parent.

Grandparents may also petition the court for an award of visitation rights. [AS 25.20.065.] However, the court shall consider whether there is a history of domestic violence attributable to the grandparent's son or daughter when fashioning any order regarding visitation.

SANCTIONS FOR INTERFERENCE WITH CUSTODY OR DENIAL OF VISITATION

Every parent should know that interference with the custodial rights of another, even if the children are their natural children, may constitute a crime. Custodial interference in the first degree involves taking a child from the lawful parent/ guardian and leaving the state. Custodial interference in the second degree is taking a child from the custody of another for a long period of time. [AS 11.41.320-330]. There does not have to be a court order granting custody to one or another parent in place to commit custodial interference. Legally both biological parents have a right to custody of their child.

If a divorce or child custody complaint has been filed, there may be an automatic court order prohibiting either

party from taking the children out of the judicial district and a parent must get permission from the judge or the other parent to do so.

If no court orders have been entered regarding the children, a woman can take the children with her when leaving a relationship, as long as she doesn't have the intent to *permanently* deny the other custodial parent access to the children. This means that it is not a crime for a woman to take her children (natural or adopted) with her to a battered woman's shelter or to a friend's home when immediate safety is at issue. The court will look at many factors to determine a parent's intent to keep children away from another custodial parent. It is highly advisable to get the advice of an attorney if you are considering taking your children away from another custodial parent to ensure that you are not committing a crime.

If the custodian of a child fails without excuse to permit visitation as allowed by court order, the custodian may be punished by fine. A just excuse includes illness of a child which makes it dangerous to the health of the child for visitation to take place, but does not include the wish of the child not to have visitation with the person entitled to it. [AS 11.51.125.]

A person who interferes with another's

court ordered visitation with children may also be made to pay \$200 in damages for each time that visitation is denied without a good reason. [AS 25.24.140.]

VISITATION IN PROCEEDINGS INVOLVING DOMESTIC VIOLENCE

If visitation is awarded to a parent who has committed a crime involving domestic violence against the other parent or a child of the two parents within the five years preceding the award of visitation, the court may set conditions for the visitation, including:

- the transfer of the child for visitation must occur in a protected setting;
- visitation shall be supervised by another person or agency and under specified conditions as ordered by the court;
- the perpetrator shall attend and complete, to the satisfaction of the court, a program for the rehabilitation of perpetrators of domestic violence;
- the perpetrator shall abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours before visitation;
- the perpetrator shall pay costs of supervised visitation as set by the court;

- the prohibition of overnight visitation;
- the perpetrator shall post a bond to the court for the return and safety of the child; and
- any other condition necessary for the safety of the child, the other parent, or other household member. [AS 25.20.061.]

If one parent has shown that the other parent has a “history of perpetrating domestic violence” (as defined in the previous custody section), then the other parent is only supposed to get supervised visitation conditioned on the abusive parent participating in a batterer’s intervention program and a parenting class. Unsupervised visitation will only be allowed if the abusive parent has completed a substance abuse program, is not abusing substances, and does not pose a danger of mental or physical harm to the child. [AS 25.24.150(j)]

CONFIDENTIALITY PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE

If the court finds that a parent or child is a victim of domestic violence, the court may order that the address and telephone number of the parent or child be kept confidential in the divorce or child custody proceedings. [AS 25.20.060.]

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)

An Alaskan’s court authority to hear a child custody case is determined by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) that the legislature passed in 1998 to replace the older Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJEA is the law that Alaska courts must look at to decide whether they have authority to hear a child custody case in Alaska. If the case involves an inter-jurisdictional dispute, then the federal Parental Kidnapping Prevention Act (PKPA) and the other state’s custody jurisdiction law will be relevant to determining if Alaska has jurisdiction.

In general, Alaska has jurisdiction if Alaska is the child’s home state or former home state. “Home state” is defined as the place where the child has resided for six months preceding the date the action was filed. The UCCJEA also has an emergency temporary custody provision that allows Alaska to enter an emergency custody order if necessary to protect the child because the child or a parent or sibling of the child is threatened with mistreatment or abuse. Once a custody case is heard in this state, Alaska maintains exclusive continuing jurisdiction to modify its decree unless the child and a parent no

longer have significant connections with Alaska or if all the parties (the child and both parents) leave the state.

The UCCJEA also permits a court to determine that it is an inconvenient forum and that a court of another state is more appropriate. In making this determination, the court shall consider all relevant factors including whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child. The UCCJEA defines the information to be submitted to the court by the parties including whether the party knows of a proceeding relating to domestic violence and protective orders. The law also allows for the information to be sealed and prohibits disclosure to the other party if the court finds that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information.

If your case involves an inter-jurisdictional dispute, it is highly recommended that you seek the assistance of an attorney since these cases tend to be complex.

Chapter Fifteen

PUBLIC ASSISTANCE

State and federal governments have many public assistance programs available through various agencies. Applicants must meet eligibility requirements for each program and are accorded basic rights under all programs.

FEDERAL BENEFITS

The federal government provides many different types of assistance through various agencies such as the Social Security Administration, the Department of Veterans Affairs, and the Bureau of Indian Affairs. These benefits are too detailed to list here, but the federal government provides booklets on public assistance rights under federal law.

STATE WELFARE BENEFITS

The State of Alaska's Department of Health and Social Service, Division of Public Assistance (DPA) operates several state and federal assistance programs, including:

- Food Stamps;
- Alaska Temporary Assistance Program;
- Medicaid; and
- Adult Public Assistance (APA).

These programs are available to everyone who qualifies based on need

and other eligibility factors such as state residency, disability, and age.

The Division of Public Assistance has offices throughout the state. In rural areas, fee agents help people fill out application forms and verify necessary information. The fee agents then forward the forms to the Division of Public Assistance. Fee agents are not salaried employees, but are paid for each application they process.

More information on the programs available and eligibility factors can be found at the Division of Public Assistance website:
www.hss.state.ak.us/dpa.

RIGHTS OF WELFARE APPLICANTS AND RECIPIENTS

You have the same basic rights under all welfare programs, whether state or federal. They include the right to:

- Receive an application form when you ask for it.
- File an application form the same

day you receive it with only your name, address, and signature on it. (With some public assistance programs, e.g., temporary assistance and food stamps, it is important to file an application as early in the month as possible because you will only receive benefits from the date you file your application).

- Have a face-to-face interview.
- Receive a written notice telling you if you are eligible (time limits for how soon these notices must get to you vary by program).
- Have your benefits on the way within 30 days for most programs (emergency food stamps should be paid within seven calendar days).
- Receive fair and equal treatment regardless of age, sex, race, color, handicap, religion, national origin, or political belief.
- Be notified in writing in advance of any changes in your benefits; however, there may be instances when notice arrives after the benefit change.
- Request and have a fair hearing whenever the DPA takes an action on your case with which you do not agree, or if DPA fails to take action on your case within the required time frame. If you are already receiving benefits, you can request that benefits be continued pending a fair hearing decision if you request a

fair hearing in a timely manner.

- See the manual for the program about which you have a question.

FAIR HEARINGS

Fair hearings are informal proceedings you can request if you are dissatisfied with an action on your case that affects your benefit amount or eligibility. You have the opportunity to tell the hearing officer why your benefits should be granted, reinstated, or recalculated. You have the right to represent yourself or have someone else represent you at the fair hearing (a friend, neighbor, relative, or an attorney from Alaska Legal Services Corporation if you qualify). However, you do not need an attorney to represent you. If you have legal fees as a result of the fair hearing, DPA is not responsible for them. The hearing is tape-recorded and held before a Hearing Officer from the Commissioner's Office, who makes a decision about the case.

You should request a hearing as soon as possible if you are dissatisfied with an action in your case. Generally, you must ask for a hearing within 30 days of the date the notice of decision was mailed to you. If you want to keep receiving your benefits while your hearing is being decided, you must ask for a hearing within the time frames described in the notice. If you decide to continue receiving your benefits while the hearing

decision is being made, you may have to pay the benefits back if you lose the fair hearing.

INDIVIDUAL PROGRAMS

What are food stamps?

The Food Stamp Program provides low-income households benefits that can be used to purchase food, some kinds of subsistence hunting and fishing gear, and seeds and plants used to grow food. Food stamp benefits also may be used to purchase meals on wheels and group meals for the elderly.

In order to be eligible for food stamp benefits, a household must meet specific income and resource guidelines. In general, households must meet both a gross income (before deductions) and net income (after deductions) test. The rules are more liberal for the elderly and disabled. The income limits for the Food Stamp Program are set by the federal government and are updated annually. The amount of income the household may have and still be eligible depends on the number of people in the household. For precise eligibility information, check with the nearest public assistance office. *See the Resource Directory at the end of this handbook for contact information.*

If you are destitute and in immediate

need of assistance, you may be entitled to emergency food stamp benefits. If you are eligible for emergency food stamp benefits, the state must make them available to you no later than seven days after you apply. If you are not entitled to emergency food stamp benefits, the Division has 30 days to process your application and give you food stamps if you are eligible.

What is the Alaska Temporary Assistance Program?

The Alaska Temporary Assistance Program (ATAP) is available to low-income families with dependent children under age 18, whether or not both parents are in the household. It is also available to low-income women in their last trimester of pregnancy. Minor parents are not eligible for Temporary Assistance unless they are living with their own parents or guardians or in an approved adult-supervised setting. Also, instead of regular Temporary Assistance payments, some families may be able to get a short-term "diversion" payment to help them start or remain working.

Under Temporary Assistance, the family must make a "family self-sufficiency plan" with their DPA case worker to help them find employment to become self-supporting without welfare. The Temporary Assistance program is focused on work. Participants must

engage in activities designed to develop their skills and get them employed. Child care assistance is also available for most working families on Temporary Assistance.

Temporary Assistance has a 60 month lifetime limit on assistance for most families, requires families to participate in work activities within 24 months of receiving benefits, and penalizes individuals who refuse to develop a Family Self Sufficiency Plan, participate in work activities, or refuse to cooperate with Child Support Services. Other policies include no extra payment amount for a second parent and seasonal benefit reductions of 50 percent for two parent families during July, August, and September. There is also a reduction in benefits for families with no shelter costs.

For a family to meet eligibility requirements for Temporary Assistance, their income must be low enough to meet criteria set by the State of Alaska. However, not all the money you earn will count against your Temporary Assistance income limit. You get to deduct some of it as work incentive. Check with your local DPA office for more information.

DOMESTIC VIOLENCE POLICY

Alaska has chosen the Family Violence

Option that allows battered women temporary respite from welfare-to-work requirements while obtaining needed services. Alaska is responsible for implementing three special provisions for victims of family violence:

- screening applicants and recipients for past or current domestic violence;
- referring victims to specialized community-based services; and
- waiving program requirements including work activities and child support cooperation for victims and survivors when compliance with these requirements would:
 - o endanger the safety of the adult victim and/or dependent children;
 - o interfere with the ability of the victim to escape domestic violence; or
 - o unfairly penalize individuals who have been harmed by domestic violence or are at risk of further domestic violence.

There is a “good cause” exception for program requirements, including refusal of, or voluntary separation from, suitable employment, failure to comply with a condition of the Family Self-Sufficiency Plan, or failure to participate in work activities when participation would interfere with the recipient’s attempt, or the attempt by a member of the

recipient's immediate family, to escape domestic violence or its escalation. [7 AAC 45.261.] There is also a "good cause" exception for failure to cooperate with Child Support Enforcement Division (CSED). You will be provided information about your right to request non-disclosure of information by CSED in the child support packet you will be requested to complete. You also may be allowed additional time beyond the 60 month time limit if as a result of domestic violence, you are unable to participate in work activities or to accept or retain employment at a level that allows your family to be self-sufficient.

MEDICAID

Low income families with children and elderly, blind, and disabled people can get health insurance (medical assistance) through Medicaid. Medicaid covers:

- All children through age 18 and pregnant women under the Denali KidCare program. The income limit for insured children to qualify for Denali KidCare is 150 percent of the Federal Poverty Limit for Alaska.
- The income limit for uninsured children and pregnant women was frozen at 175 percent of the Federal Poverty Limit for Alaska in 2003.
- "Transitional Medicaid" for families who work their way off public assistance (for up to 12 months) or

who cannot get regular Medicaid any more because they are receiving more child support (for up to four months).

- Elderly, blind, or disabled people who receive Adult Public Assistance (state benefit) or Supplemental Security Income (federal benefit) or whose income is below \$1,656 per month and who are in nursing homes or getting home health services under a program called "Project Choice."

Medicaid eligibility, like most public assistance eligibility guidelines, is complicated and it is wise to contact your local Public Assistance Office for more information. *See the Resource Directory at the end of this handbook for more information.*

It is possible to get Medicaid stickers for the three months before the month you actually apply for Medicaid if you would have been eligible had you applied earlier. This can be very helpful if you need Medicaid to cover unexpected medical bills.

Medicaid covers a wide range of medical services, including prescription drugs, doctor's services, hospital charges, and long-term care.

ADULT PUBLIC ASSISTANCE

Adult Public Assistance (APA) is a 100 percent state funded program that provides assistance to three categories of people:

- the elderly, (those who are 65 or older);
- the blind; and
- the physically or mentally disabled.

To qualify for assistance under any of the three sub-programs, an applicant household must meet income and resource guidelines. More information about eligibility should be obtained from the Division of Public Assistance. *See the Resource Directory at the end of this handbook for contact information.*

OTHER BENEFITS

The State of Alaska has other benefits for its residents such as tax rebate programs, alternative energy loans, business loans, student loans, cash or prescription drug benefits for seniors, day care assistance, heating assistance programs, low income housing, and Permanent Fund dividends. For up-to-date information on all programs, write to the Governor's Office in Anchorage, Fairbanks, or Juneau. *See the Resource Directory at the end of this handbook for contact information.*

Chapter Sixteen

WORKING WITH IMMIGRANT CRIME VICTIMS

You may be an immigrant woman needing assistance in determining your options and finding an immigration attorney to assist you with your immigration status, questions regarding child custody, divorce, and the protective order process in domestic violence situations. This chapter has important resources for you in Alaska.

Who are immigrant women?

Immigrant women are a diverse group, and include women who have lived in the United States for one month, as well as women who have lived here for forty years. You may have entered the United States as a refugee fleeing persecution in your country of origin, as a relative with family members in the United States, as a student, as a tourist, or as a worker seeking better economic conditions.

What is domestic violence?

Domestic violence is a pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks, as well as economic coercion that adults or adolescents use against their intimate partner. Domestic violence can include a batterer's control and manipulation of a woman's unsettled immigration status. A batterer may:

- threaten to report a woman to the Department of Homeland Security

(formerly INS) to get her deported;

- threaten to withdraw the petition to legalize her immigration status;
- threaten to take her children away from the United States;
- threaten to report her and her children to the Department of Homeland Security;
- fail to file papers to legalize her immigration status;
- withdraw or threaten to withdraw papers filed for her residency;
- hide or destroy important papers (e.g. passport, ID cards, health care card);
- destroy her only property from her country of origin;
- isolate her from friends, family, or anyone who speaks her language; and/or
- not allow her to learn English.

If you need assistance with your immigration status or have questions about child custody and divorce, there are resources available in Alaska.

What protections are available for battered immigrant spouses?

The Violence Against Women Act allows abused spouses married to United States citizens and lawful permanent residents to self-petition to obtain legal permanent residency status for themselves. Children of the abuser, including stepchildren, are also eligible to self-petition. This removes one means of control from the batterer. The Act also allows abused spouses to apply for cancellation of removal (formerly suspension of deportation).

The Violence Against Women Act also provides that victims of certain crimes including domestic violence, sexual assault, and trafficking may be eligible for a three-year visa and employment authorization if the victim is helpful in the criminal prosecution of the perpetrator.

The Alaska Immigration Justice Project (AIJP) can assist you with your legal status or with a domestic violence protective order. *See the Resource Directory at the end of this handbook for contact information.*

Can an immigrant battered woman obtain a protective order?

Yes. You do not need to be a citizen or

legal resident to obtain a protective order. You will not be deported if you seek a protective order. You have the right to be safe. If you do not feel comfortable speaking English when you seek a protective order, you should ask the judge to appoint an interpreter.

Should an immigrant battered woman call the police?

Yes. Domestic violence is against the law. The police can escort you and your children out of the house if you want to leave and can transport you to a safe place. Always ask the police to complete a report about the incident and get an incident report number so that you can get a copy of the report. Also, ask for the name of the officer and write down the name and badge number of the officer making the report.

You do not need to answer any questions about your immigration status, where you were born, or how long you have been in the United States. This information is completely irrelevant to the police investigation and your safety.

If you have any issues or concerns with calling the police, contact the Alaska Immigration Justice Project immediately. *See the Resource Directory at the end of this handbook for contact information.*

NATIONAL ORIGIN DISCRIMINATION.

Immigrant women are protected from employment discrimination by laws enforced by the Equal Employment Opportunity Commission (EEOC). *See Chapter Three for more information about EEOC.*

The law protects people against employment discrimination on the basis of their national origin. Discrimination because of a person's looks, customs, language, or accent are against the law. The following are examples of discrimination based on a person's national origin.

- Discrimination because of a person's place of birth, or place of birth of her ancestors: It is not necessary for a person to show that her ancestors are from a particular country or region to prove national origin discrimination. For example, a person may look like they are of foreign birth or ancestry and may be discriminated against, which is against the law.
- Discrimination based on association with persons of a different national origin: The law prohibits discrimination because a person associates with people of a national origin group, discrimination because of attendance at schools or places of worship used by persons of a particular nationality, and discrimination because a person's name or the name of their spouse is associated with a national origin group.
- Practices that may have an adverse affect on particular national origin groups: Minimum height requirements, arrest and conviction records, educational requirements, and citizenship requirements may screen out people of a particular national origin. These practices are illegal unless the employer can prove that they are necessary and related to the job.
- Harassment based on national origin: Ethnic slurs or other verbal or physical conduct because of nationality are illegal if they are severe or pervasive and create an intimidating, hostile, or offensive working environment, interfere with job performance, or negatively affect job opportunities and advancement. Examples of potentially unlawful conduct include insults, taunting, or ethnic slurs.
- Discrimination based on a person's accent: Under the law, treating employees differently because they have an accent is only allowed if having an accent keeps a person from being able to do the job. However, if the person has an accent but is able to communicate and be

understood in English, he or she cannot be discriminated against based on their national accent.

- Speak English-only rules: The EEOC has stated that rules requiring employees to speak only English in the workplace violate the law unless they are reasonably necessary for the operation of the business. Rules requiring employees to speak only English in the workplace at all times, including breaks and lunch time, will rarely be justified.
- Discrimination based on appearance: It is a violation of the law to discriminate against someone because of their ethnic appearance. Similarly, if an employer refuses to allow a person to wear clothing unique to their cultural background, but imposes no dress code on any other employee, this may be in violation of the law.

THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA)

Discrimination based on citizenship is expressly prohibited by the Immigration Reform and Control Act of 1986. IRCA is enforced by the United States Department of Justice, Office of Special Counsel (OSC) for Immigration Related Unfair Employment Practices. A memorandum of understanding between the Equal Employment Opportunity

Commission (EEOC) and the Office of Special Counsel provides for EEOC to refer to OSC charges filed with EEOC that allege IRCA violations.

Contents of this chapter, regarding battered immigrant women, were adapted and reprinted with permission of the Family Violence Prevention Fund from the publication entitled, *Working with Battered Immigrant Women: A Handbook to Make Services Accessible*. Written by Leti Volpp and edited by Leni Marin.

GLOSSARY OF LEGAL TERMS

This chapter reprinted with permission from the "Guide to Alaska's Criminal Justice System," Alaska Judicial Council.

Accused: the person charged with a crime; also known as the defendant.

Acquittal: a release from a criminal charge by a court, usually when the jury or judge finds the defendant "not guilty" after a trial.

Adjudication: a juvenile court proceeding at which a judge decides whether or not a juvenile is delinquent. If the judge finds a juvenile delinquent, the court decides whether the juvenile needs programming, supervision, or institutionalization.

Admissible Evidence: evidence the judge or jury can consider in deciding a case.

Affidavit: a written statement sworn before a notary or officer of the court.

Affirmative Defense: an explanation for a crime that makes the act noncriminal, such as duress, or that changes the sentence, such as heat of passion or insanity. The defendant has the burden of proving the defense by a

preponderance of the evidence.

Aggravating Factor: a fact about the crime or offender that lets the judge increase a presumptive sentence, such as a history of similar offenses or a particularly vulnerable victim.

Allegation: a statement made by a person in the case who claims it can be proved as a fact.

Appeal: the legal procedure by which a person asks a higher court to review the decision of a lower court.

Appellant: the person who appeals a decision of a lower court.

Appellate Court: a court that reviews decisions made by a lower court on questions of law and procedure. The appellate court can affirm, reverse, or remand the original decision for more proceedings.

Appellee: the person who won in the lower court.

Arraignment: usually the first court proceeding in a criminal case. The judge tells the defendant what the alleged offenses are, and what rights defendants have. The judge asks the defendant to plead guilty, not guilty or no contest.

Arrest: the legal restraint of a person for the purpose of charging the person with a crime. Police also can arrest a person for investigation in some circumstances, or for violation of a court order.

Arrest Warrant: a legal document issued by the court or parole board authorizing the police to arrest someone.

Arson: intentionally causing a fire or explosion in a building.

Assault: causing or threatening physical harm to another person. Alaska has four degrees of assault, depending on the seriousness of the victim's injuries, the weapon used, and the offender's intent. Fourth degree assault is a misdemeanor; the more serious assaults are felonies.

Attorney: a graduate of a law school, admitted to practice before the courts of a jurisdiction. The attorney advises, represents, and acts for the client or government.

Bail: the release of a person who was arrested or imprisoned. The court can tell the defendant to pay a bond or deposit, require another person to take

responsibility for the defendant, or let the defendant go on the defendant's promise to appear in court ("own recognizance"). Bail is intended to assure the defendant's presence in court and to protect the victim and public.

Bail Hearing: a proceeding at which a judge or magistrate decides whether to release a defendant before a trial or pending appeal, and under what conditions. Defendants often must deposit a sum of money with the court to assure their appearance in court.

Bail Bondsman: an individual who arranges with the court for a defendant's release from jail. The bail bondsman promises the court that he will pay the full bail if the defendant does not come to court when required. The defendant pays the bondsman a fee for this service.

Bailiff: a person appointed by the court to keep order in the courtroom and to have custody of the jury.

Bench Warrant: an order issued by a judge for the arrest of a person – the defendant, a witness, or other participant in the judicial proceeding – who failed to appear in court as required. Judges also issue warrants for the arrest of defendants when charges or indictments are filed.

Beyond a Reasonable Doubt: the degree which a juror must be sure of the

facts in the case before finding the defendant guilty.

Bill of Particulars: a document that tells the defendant about the specific occurrences that the prosecution plans to prove during the trial. It limits the prosecution to asking about only these occurrences.

Booking: a police or jail action officially recording the arrest, person arrested, and reasons for arrest. Fingerprints and photographs are taken at booking.

Bound Over: a change of jurisdiction to another court, such as when a district court judge transfers a felony case to the superior court.

Brief: a written statement of the facts and legal arguments governing a case, presented from the perspective of one party.

Burden of Proof: the requirement of proving a fact or facts in dispute in a case. For instance, the prosecutor must produce enough evidence to prove "beyond a reasonable doubt" the guilt of the defendant in a criminal case.

Burglary: entering a building with intent to commit a crime in the building. It is first degree burglary if the building is a dwelling, if the defendant carries a gun or uses a dangerous instrument, or if the defendant tries to hurt a person

inside. Otherwise, the offense is second-degree burglary. Both crimes are felonies.

Calendar: a daily list of cases to appear before the court. Some courts call this list a docket. At "calendar call," the court sets trial dates for a large number of cases.

Chain of Custody: documentation of all persons who have had responsibility for a piece of evidence to prove that no one has damaged or tampered with it. The court often requires proof of custody for items stolen in theft, drugs seized in a narcotics case, and so forth.

Change of Venue: moving a case begun in one place to another location for trial. The court can change venue when the defendant cannot obtain a fair trial in the place where the crime was committed.

Character Evidence: the prosecutor cannot use evidence about the defendant's character to show that the alleged crime was consistent with that character. The court may admit evidence about the defendant's character when it would help to prove some aspect of the offense such as intent, preparation, method or motive.

Charge: an accusation briefly describing the crime or crimes the suspect allegedly committed. The police or prosecutor spell out the charges in an indictment,

information, or complaint.

Circumstantial Evidence: indirect evidence that this person committed this crime. Examples of circumstantial evidence include finding the defendant's gun at the scene of the crime and testimony that someone saw the defendant near the scene shortly before the crime occurred.

Citation: an order issued by police requiring a person to appear in court at a later date. Also, a reference to legal authority such as a statute or court case.

Common Law: the system of law that started in England and was later developed in the United States. Common law comes from customs and principles upheld by judicial decisions rather than from acts passed by legislatures. Also called "case law."

Community Work Service: as a part of a sentence, a judge may order a defendant to do a certain number of hours of volunteer work for a community or government organization.

Complainant: the victim of a crime who brings the facts to the attention of the authorities.

Complaint: a written statement of the essential facts about the offense charged; usually filed at the beginning of the case.

Concurrent Sentences: a judge's decision to allow the defendant to serve more than one sentence at the same time.

Confession: the defendant's oral or written admission of guilt. The state cannot use the confession against the defendant unless the defendant confessed voluntarily.

Confrontation, Right to: the U.S. and Alaska Constitutions give the defendant the right to confront the witnesses against him or her. This includes the defendant's right to be present at every important stage of the case, the right to cross-examine adverse witnesses, and the right to subpoena witnesses.

Consecutive Sentences: a requirement by the judge that the defendant serve two or more sentences separately, one after the other. Judges can make sentences partially concurrent and partially consecutive.

Consolidation: the act of joining together two or more charges or defendants for a single trial.

Contempt of Court: any act calculated to embarrass or obstruct a court in the administration of justice or calculated to lessen its authority or dignity.

Continuance: the postponement of legal proceedings until some future time or date.

Conviction: the court's judgment that the defendant is guilty of a criminal offense, based on the verdict of a judge or jury, or on the defendant's plea of guilty of no contest.

Correctional Institution: a prison, jail, or other facility for imprisoning offenders.

Corroborating Evidence: evidence that supplements evidence already given and tends to strengthen or confirm it.

Count: one of the parts of a complaint, indictment or information. Each count alleges a separate offense.

Court: a chamber or other room where trials and other judicial hearings take place. A judge presides over the court. "The court" also refers to the judge rather than to the room or building.

Court Clerk: an individual who keeps a record of court proceedings each day and records future dates for the judge's calendar. This person takes charge of all case files and paperwork for each day.

Crime: any act that the legislature has decided to punish by imprisonment and to prosecute in a criminal proceeding.

Criminal Justice System: the combination of police, courts and corrections agencies that operates collectively to prevent crime, enforce the

criminal law, and punish, supervise, and rehabilitate offenders.

Criminal Mischief: the offense of intentionally damaging property. It can be a felony or misdemeanor, depending upon the amount and type of damage.

Cross-Examination: the questioning by a party or attorney of the opponent's witness, after the direct examination. The court usually limits cross-examination to the credibility of the witness and to matters raised on direct examination.

Custody: detained by authority of the law; arrest and detention. The courts often release defendants to the custody of a responsible third person before trial. They also often let juveniles stay in the custody of a parent or guardian during proceedings and after disposition.

Defendant: the person charged with a crime; also called the accused.

Delinquency: a formal finding by a court that a juvenile has committed a crime and should be subject to state supervision.

De Novo: literally anew, as in trial de novo – the granting of a new trial.

Detention: the legal confinement of a person awaiting criminal or juvenile proceedings.

Direct Evidence: proof of facts by witnesses who saw the acts done or heard the words spoken, as distinguished from circumstantial or indirect evidence.

Discovery: pre-trial procedures where the parties exchange information about evidence.

Dismissed with Prejudice: when the judge dismisses the charges against the accused and does not let the government file the charges again.

Dismissed without Prejudice: when the judge dismisses one or more charges against the defendant, but lets the government refile the charges later.

Disposition: the outcome of a case, which may include dismissal, conviction, or other action. In juvenile cases, disposition is similar to sentencing.

Diversion: the official suspension of criminal proceedings against an alleged offender. The person may go to a treatment or care program as a condition of the diversion.

Double Jeopardy: a constitutional protection that keeps the government from prosecuting a person twice for the same charges.

Due Process of Law: the constitutional and common law principles that protect

fairness and justice in the courts. The constitutional guarantee of due process requires that every person have the protection of a fair trial.

Evidence: information offered to the court or jury to prove something.

Exclusion of Witnesses: an order requiring witnesses to stay out of the courtroom until the judge calls them to testify. The judge tells these witnesses not to discuss the case or their testimony with anyone except the attorneys in the case.

Exhibits: documents, charts, weapons, or other tangible evidence used in a court case.

Ex Parte: a judicial proceeding or action that involves only one of the parties in a case.

Expert Evidence: testimony given in relation to some scientific, technical, or professional matter by a qualified person. Experts can testify only on matters that are beyond the experience of ordinary citizens.

Extradition: the process of returning a fugitive from one state or country to another, usually so that the government can send the fugitive to trial.

Felony: in Alaska any criminal offense that carries a possible sentence of one

year or more in jail.

Fine: a sum of money paid as a form of punishment. A “day-fine” uses the defendant’s ability to pay and the seriousness of the offense as factors in deciding the amount of the fine.

First Offender: a person committing a first adult felony offense, for purposes of applying presumptive sentencing laws. A first offender may have a history of juvenile offenses or adult misdemeanors.

Foundation: a party seeking to have evidence admitted often must first “lay a foundation” by showing preliminary facts related to the evidence. For example, before an eyewitness can testify about what happened during an alleged crime, someone must show that the witness actually saw the crime.

Forfeiture: a court order requiring the defendant to give the government an item connected to the crime. Property commonly forfeited includes cars, planes, or weapons used in a crime, and money, animals, or goods gained by the crime.

Forgery: counterfeiting or altering a document like a deed, a will, or a check, or knowingly using a forged document. Forgery can be a felony or a misdemeanor.

Furloughs: release of a prisoner into the

community for education, employment, training, or treatment. Furloughs are granted to low-risk offenders, and offenders making the transition from prison back to the community.

Good Time: days credited to the offender’s sentence for good behavior in prison. If the offender does not lose good time through misbehavior, he or she can be released after serving two-thirds of the sentence. Good time gives offenders an incentive to comply with prison rules.

Grand Jury: a body of citizens that hears evidence against a person suspected of a crime and decides if there is probable cause to charge the suspect formally. In Alaska, the grand jury also can conduct its own investigations and issue reports.

Guardian Ad Litem: a person appointed by the court to represent the rights of a child in a legal matter. The court also may appoint a guardian ad litem for a person who is legally incapable of managing his or her own affairs.

Guilty: a plea accepting guilt, or a verdict from a judge or jury that the prosecution has met its burden of proof.

Guilty but Mentally Ill: when the defendant committed the crime but, as a result of mental disease or defect, did not know it was wrong or could not control

his or her conduct. The defendant is still subject to imprisonment combined with mental health treatment.

Habeas Corpus: an order to bring a person before the judge that issued the order. The court then decides whether the person has been held in custody without due process of law.

Halfway House: also called a community residential center (CRC). A residential facility for offenders on furlough, probation or parole. Offenders can leave the building by themselves to find or keep a job, go to school, or go to treatment programs. An offender must get permission to leave, and must be back by a set time.

Hearsay: evidence not based upon a witness's personal knowledge, but on information the witness got from someone else. Hearsay evidence is admissible in very limited circumstances.

Homicide: the killing of one human being by another. Homicide may be murder, manslaughter, or criminal negligence. It may even be non-criminal, as in self-defense.

Hung Jury: a jury unable to agree unanimously on whether to convict or acquit a defendant.

Immunity: protection from a duty or

penalty. A witness may be granted immunity from prosecution to encourage the witness to answer questions. Otherwise, the witness might refuse to answer to avoid self-incrimination.

Impanelling: the process by which the court selects potential jurors and swears them in.

Impeachment: an attack on the credibility of a witness or the accuracy of the witness's testimony.

Inadmissible Evidence: evidence that cannot be used at a hearing or trial because it is irrelevant, misleading, improperly obtained, or for some other reason.

Incarcerated: jailed, imprisoned.

Incompetent: refers to persons whose testimony the court will not admit because of mental incapacity, immaturity, lack of proper qualifications, or similar reasons. This term also describes defendants, who, because of a physical or mental disorder, cannot help their lawyers prepare a defense or cannot understand the nature of proceedings against them.

Indictment: a document prepared by a grand jury formally charging a person with a crime. Also called a true bill.

Indigent: a person who cannot afford an

attorney.

Information: a sworn affidavit charging a person with a crime based on facts supplied to the prosecutor.

Insanity: the degree of mental disorder, defect, or disease that relieves a person of criminal responsibility for his or her actions. The judge can send a defendant found not guilty by reason of insanity to prison, unless the defendant proves that he or she is no longer dangerous.

Intake: a process occurring early in juvenile criminal actions, when a DFYS intake officer decides how to proceed with the case.

Jail: a facility for confining those convicted of a crime or those charged with a crime and waiting trial. Jails are usually used for offenders awaiting trial or serving short sentences.

Judge: a public official appointed to hear and decide cases in a court of law.

Judgment: the official decision of a court.

Judicial Notice: a court finding that parties do not need to prove certain facts because most people know them or can find them from reliable sources. Examples include geographic facts, historical events, and weather information.

Jurisdiction: the legal authority of a court over the defendant or the subject matter of the dispute.

Jury: a panel of citizens who evaluate the evidence presented to them and decide the truth of the matter in dispute.

Jury Instructions: instructions that the judge gives to the jury. Jury instructions explain the principles of law that the jury should apply to the facts of the case to reach a verdict.

Juvenile: a person who, because he or she is under 18 years old, is within the sole jurisdiction of the juvenile court unless bound over for adult processing.

Kidnapping: restraining or hiding another person with the intent of holding the victim for ransom, using him or her as a shield or hostage, or injuring or sexually assaulting the victim. Kidnapping is among the most serious felonies.

Leading Question: a question asked in words that instruct or suggest to the witness what to answer. This type of question is prohibited on direct examination.

Magistrate: a judicial officer with less authority than a judge. Magistrates issues search and arrest warrants, try and sentence violations, try and sentence misdemeanor cases with the consent of

the defendant, and conduct felony bail hearings.

Manslaughter: causing the death of another person under circumstances not amounting to murder in the first or second degree.

Master: an attorney appointed to juvenile or other proceedings to hear the facts of a case and make recommendations to the judge.

Misconduct Involving Controlled Substances: criminal drug possession, manufacture and sale. Alaska law sets out six degrees of this offense, ranging from major drug trafficking (an unclassified felony), to possession of marijuana (a Class B misdemeanor).

Misconduct Involving Weapons: prohibited possession, use or sale of firearms. First-degree misconduct (a Class C felony) includes gun possession by a felon and illegal weapon sales. Second-degree misconduct includes recklessly discharging a gun and carrying a gun while intoxicated. Third-degree misconduct includes carrying a concealed weapon and bringing a gun into a bar. The lesser degrees of misconduct are misdemeanors.

Misdemeanor: an offense that authorizes a sentence of imprisonment up to one year in jail.

Mistrial: a trial that the judge has ended and declared void before the verdict because of some extraordinary circumstance or some fundamental error that cannot be cured by appropriate instructions to a the jury.

Mitigating Factor: a fact about the crime or offender set out by law that lets the judge reduce a presumptive sentence.

Motion: a request by a party in a case that the court make a certain ruling.

Murder: first-degree murder includes killing another person with intent to kill, by forced suicide, or through torture. Second-degree murder includes killing another person with intent to cause serious physical injury, during another serious felony (felony-murder), or while acting in a way that shows extreme indifference to the value of human life.

Nolo Contendre or No Contest: a plea in a criminal offense indicating that the defendant neither admits nor denies the charges, but does not contest the facts of the case. The criminal case proceeds as if the defendant pled guilty. A plea of no contest cannot be used against the defendant to decide liability in a separate civil case.

Not Guilty: a plea by a defendant denying guilt. Also, a verdict indicating that the prosecution failed to meet its burden of proof, also known as acquittal.

Objection: opposition to the form or consent of a question asked by opposing counsel. The judge rules on the validity of the objection. Parties also can object to evidence or to the conduct of opposing counsel.

Offender: the person convicted of a crime.

Offense: the violation of any criminal law.

Offer of Proof: when a judge excludes evidence, the party asking to have the evidence admitted makes an "offer of proof" to the court about what the evidence would have shown. For example, a party might state on the record what the witness would say if permitted to answer the question, and what the answer would prove. The offer of proof gives the trial court a chance to reconsider, and preserves the question for appeal.

Opinion Evidence: evidence of what the witness thinks, believes, or infers about a fact in dispute, as distinguished from personal knowledge of the facts or observation. Opinion evidence is usually only admissible if the opinion comes from an expert witness.

Opinion of the Court: a written or oral statement by a judge explaining the reasons for a decision.

Ordinance: a law passed by a local government.

Overrule: the term used when the judge denies a point raised by one of the parties, as in "objection overruled."

Own Recognizance (OR): the defendant's release from custody based on the defendant's promise to appear in court, without giving money or security for bail. Sometimes the court imposes special conditions such as remaining in the custody of another, following a curfew, or keeping a job.

Pardon: the power of the governor of a state to relieve a convicted person from the legal consequences of the conviction.

Parole, Discretionary: the release of an inmate from prison by the parole board, before the whole sentence is served, on conditions of supervision. A parole officer supervises the parolee until the term of the parole ends. Parole can reduce the costs of imprisonment and increase the chance of rehabilitation.

Parole, Mandatory: the release of an inmate from prison after serving at least a two-year prison term minus good time. The Department of Corrections must release an inmate who has earned good time, but the parole board can set conditions of supervision if the sentence was over two years.

Peremptory Challenge: when choosing a jury, each side can reject a fixed number of potential jurors without giving any reason. In Alaska, each side also can peremptorily challenge the judge assigned at the beginning of the case, without giving a reason.

Perjury: the offense of giving false testimony under oath. It can be a felony or a misdemeanor.

Petition: a document filed in juvenile court setting forth the facts that bring the youth within the jurisdiction of the court, and stating that the youth needs treatment, supervision or rehabilitation.

Plea: the defendant's response to the prosecution's charges. A defendant may plead guilty, not guilty, no contest, or not guilty by reason of insanity.

Plea Bargaining: negotiations between the defense and the prosecution to resolve a criminal case without a full trial. For example, the prosecution can agree to dismiss some charges if the defendant pleads guilty to other charges, or the defendant can agree to plead guilty to a lesser charge. The prosecutor also may agree to recommend a certain sentence to the court.

Post-Conviction Relief: a request to the trial judge to modify a sentence or overturn a conviction.

Preliminary Examination: a district court hearing at which the judge decides whether probable cause exists to believe that a felony was committed and that the defendant committed it.

Preponderance of Evidence: proof that would lead the trier of fact (judge or jury) to find that the existence of the contested fact is more probable than not. Courts use this standard in criminal trials when the defendant asserts an affirmative defense. It is a lower burden of proof than proof beyond reasonable doubt.

Presentence Report: a thorough background investigation ordered by the court in felony cases to help decide the appropriate sentence. A probation officer prepares the presentence report.

Pretrial Detention: custody awaiting trial or, on occasion, awaiting the filing of charges.

Prima Facie Case: evidence presented by the prosecution that, unless contradicted, would prove each element of the crime beyond a reasonable doubt. If the prosecution cannot make a prima facie case, the court will grant the defendant's motion for judgment of acquittal.

Prison: a facility for confining someone convicted of a crime. Prisons are usually used by offenders serving longer

sentences.

Pro Se: a Latin expression for a defendant who acts as his or her own attorney. Also known as “pro per.”

Probable Cause: facts and circumstances that would make a reasonable person believe that someone has committed a crime, or that property that the government can seize is at a designated location. Depending on the circumstances, a police officer, grand jury or judge may decide that probable cause exists.

Probation: release of a convicted defendant, either without imprisonment or after some imprisonment, subject to condition imposed by the court. A probation officer may supervise the offender. If the offender violates the conditions of probation, the prosecutor or probation officer can ask the court to revoke probation. If the judge finds a violation, the judge can change the conditions or send the offender to jail.

Probation Modification: a formal court proceeding started by the defendant, the prosecutor, or the probation officer, to change the defendant's conditions of probation.

Prosecutor: a government attorney who represents the citizens' interests in criminal cases. The prosecutor charges crimes, takes cases to trial or negotiates

pleas, makes recommendations at sentencing, and handles appeals.

Public Advocate: an attorney working for the Office of Public Advocacy who represents indigent adults and juveniles accused of crimes.

Public Defender: an attorney working for the Public Defender Agency who represents indigent adults and juveniles accused of crimes.

Question of Fact: a fact about which the parties disagree. The judge or jury decides whether the parties have proven the fact.

Question of Law: a legal question about which the parties disagree. The judge decides the proper interpretation of the law.

Rap Sheet: an adult offender's prior record of criminal arrests and dispositions. The law restricts general public access to the list.

Reasonable Doubt: a doubt about the defendant's guilt, based upon reason and common sense, arising from a fair consideration of all the evidence in the case. If a jury has a reasonable doubt about the truth of the charge, then it must give a verdict of not guilty.

Rebuttal: evidence that explains away or contradicts the evidence of the other

side. Generally refers to evidence that the prosecutor presents after the defense has completed its case.

Recidivism: repeated criminal activity. A recidivist is a repeat criminal.

Redirect Examination: questions following cross-examination, asked by the party who first examined the witness.

Rehabilitation of Offender: an attempt to keep an offender from committing future crimes. Rehabilitation often includes drug and alcohol treatment, education, counseling, finding and keeping a job, and understanding the effect of the crime on the victim.

Rehabilitation of Witness: an attempt to re-establish the credibility of a witness whose testimony has been attacked, or whose character has been discredited during cross-examination.

Rest: a party “rests” when it has presented all the evidence it intends to offer.

Restitution: to pay back, to make whole again. A judge can make the defendant pay the victim of the crime for any money spent or lost because of the crime, including medical and counseling costs, lost wages, and lost or damaged property.

Restraining Order: a court order

forbidding the defendant to do certain acts, or to approach or harass certain persons. Violation of restraining order can lead to arrest.

Revocation Hearing: a court hearing requested by a probation officer or prosecutor to decide whether the offender violated the conditions of probation and what the consequences should be. The parole board holds similar hearings for parole violations.

Robbery: taking or attempting to take property by force from the presence of another person. It is first-degree robbery when the defendant uses or pretends to use a dangerous instrument (such as a gun or knife) or attempts to cause serious physical injury to the victim. It is second-degree robbery without these factors. Both are felonies.

Search and Seizure: the police practice of looking for and then taking evidence useful in the investigation and prosecution of a crime. The United States and Alaska Constitutions set limits on searches and seizures. Except in certain urgent circumstances, police must get a search warrant prior to the search and seizure.

Search Warrant: an order issued by a judge that lets police officers look through certain premises, vehicles or containers for certain things or persons, and bring them before the court.

Self-defense: protecting one's person or property against an immediate injury attempted by another. The state cannot punish a person criminally to the extent that he or she acted in justified self-defense.

Self-incrimination: making a statement against one's own criminal interests. The Alaska and U.S. Constitutions provide that an accused person has a right to remain silent, and the right to the presence and advice of an attorney, before any police questioning while the accused is in custody. Statements and evidence obtained in violation of this rule cannot be used in the defendant's criminal trial. A defendant taken into custody must be notified of these rights (often referred to as *Miranda* warnings). The defendant can remain silent throughout the trial.

Sentence: the penalty imposed on a defendant after conviction for a crime. A sentence can include a combination of imprisonment, probation, restitution, community work service, treatment, fines, loss of license, or other restrictions and punishments.

Sequestration: keeping jurors together throughout the trial and deliberations (or just during deliberations), and guarding them from contact with other sources of information about the trial.

Severance: separation of the trials of two or more defendants, or separation of charges for the same defendant, to prevent prejudice that might arise if tried together.

Sexual Abuse of a Minor: sexual conduct by an adult with a young person. First-degree sexual abuse of a minor includes sexual penetration with a person under 13 (with or without the victim's consent), or sexual penetration of a person under 18 living with the defendant or in the defendant's care. Second-degree sexual abuse of a minor includes sexual contact with a person under 13, sexual penetration with a person 13-15 years old, or sexual contact with a young person living with the defendant or in the defendant's care. Both are felonies.

Sexual Assault: also known as rape. First-degree sexual assault includes sexual penetration (of the genitals, anus or mouth) without consent of the victim. Second-degree sexual assault includes sexual contact (knowingly touching the victim's genitals, anus, or female breast) without consent. Both are felonies.

Speedy Trial: the constitutional right of an accused person to have a trial free from unreasonable delay.

Statute: a law passed by the state legislature.

Statute of Limitations: the time limits within which the state must prosecute a defendant or else be barred from prosecuting the person for that particular crime.

Stipulation: an agreement by attorneys on opposite sides of a case about facts or procedures. It does not bind the parties unless both agree and the judge approves it.

Subpoena: a court order requiring a witness to appear and give testimony before the judge.

Summons: a written order from a judge telling a person to appear at certain time and place to answer charges or questions.

Suspended Imposition of Sentence (SIS): in some cases, the judge does not impose a sentence until after the defendant has completed certain conditions similar to probation, including jail time. If the defendant meets all conditions, the judge can set aside the conviction. If not, the judge can impose sentence. SIS is most often used for young, first offenders.

Suspended Sentence: in some cases, the judge can suspend part or all of a sentence to imprisonment and give probation instead. If the defendant fails to meet the conditions, the judge can impose the suspended time.

Sustain: to support as in “the judge sustained the objection because she/he found the question irrelevant.”

Testimony: evidence given by a witness who took an oath to tell the truth.

Theft: taking the property of another with intent to deprive the person of it. Thefts are felonies or misdemeanors, depending on the amount and conditions of the crime.

Transcript: the official, word-for-word record of a trial or hearing.

Trial: a formal judicial proceeding through which courts decide criminal and civil disputes.

Venue: place of trial.

Verdict: the formal conclusion of a judge or jury, deciding whether the prosecution has proven that the defendant is guilty of the crime.

Violation: an offense that carries no jail time but may be penalized by a fine not exceeding \$500. A violation is not considered a crime.

Victim Impact Statement: the victim’s account of the harm the victim suffered from the crime, to be considered by the judge at sentencing.

Voir Dire: the questions asked of

potential jurors by the attorneys or judge to decide whether the jurors will serve on the jury.

Waiver: the intentional and voluntary giving up of a known right. A person can waive a right by agreeing to give it up, or the judge can infer the waiver from circumstances. Examples: waive jury; waive presentence report.

Warrant: a written order from a judge that authorizes a police officer to make an arrest or a search, or carry out a judgment.

Work Release: a program that lets inmates leave a jail, prison, or halfway house during the day to work at a job.

RESOURCE DIRECTORY

If you have questions or need help, you can call one of these agencies. The area code for all Alaska numbers is (907).

CHILD HEALTH AND WELFARE

Office of Children's Services

*Statewide Reports of Child Abuse or
Neglect:*

1-800-478-4444

269-4000 Anchorage

Director's Office

PO Box 110630

Juneau, AK 99811

465-3191

465-3397 fax

Anchorage Regional and Field Office

550 West 8th Ave.

Anchorage, AK 99501

269-4000

269-3901 fax

South Central

695 E. Parks Hwy. Unit 3

Wasilla, AK 99654

357-9780

357-9763 fax

Southeast Regional Office

3025 Clinton Dr.

Juneau, AK 99801

465-3235

465-1669 fax

Northern Regional Office

751 Old Richardson Hwy., #300

Fairbanks, AK 99701

451-2650

451-2616 fax

Alaska Parent's Line

1-800-643-KIDS (5437)

CHILD SUPPORT SERVICES

Child Support Services Division

Alaska Department of Revenue

Anchorage Main Office:

550 W. 7th Avenue, Suite 310

Anchorage, AK 99501

269-6900

1-800-478-3300

269-6894 TTY

269-6650 fax

MatSu Regional Office

845 W. Commercial Dr.

Wasilla, AK 99654

357-3550

357-3552 fax

Southeast Regional Office

333 Willoughby Ave.

Juneau, AK 99801

Mailing Address:

PO Box 110402

Juneau, AK 99801

465-5887

465-5190 fax

Northern Interior Office
675 Seventh Ave., Station
J-2
Fairbanks, AK 99701
451-2830
451-3140 fax

CIVIL AND HUMAN RIGHTS

Alaska State Commission for Human Rights

800 "A" Street, Suite 204
Anchorage, AK 99501
274-4692
1-800-478-4692
276-3177 TTY
1-800-478-3177 TTY
278-8588 fax

Anchorage Equal Rights Commission

632 W. 6th Ave., Ste. 110
Anchorage, AK 99501
343-4342
343-4894 TTY
343-4395 fax

U.S. Equal Employment Opportunity Commission: Seattle District Office

909 First Ave., Suite 400
Seattle, WA 98104
206-220-6883

1-800-669-4000
206-220-6882 TTY

451-8303
451-8308 fax

COURT SYSTEM

Alaska Court System

Website:
www.state.ak.us/courts

Self-Help Center

Website:
www.state.ak.us/courts/selfhelp.htm

Statewide Telephone Helpline

1-866-279-0851

CREDIT COUNSELING

Consumer Credit Counseling Service of Alaska

Main office:
208 E. 4th Ave.
Anchorage, AK 99501
279-6501
1-800-478-6501
276-6083 fax
www.cccsofak.com

Fairbanks Office:
250 Cushman St., Suite 4B
Fairbanks, AK 99701

DISABILITY RIGHTS

ACCESS Alaska

Main Office:
121 W. Fireweed Lane,
Suite 105
Anchorage, AK 99503
248-4777
1-800-770-4488
248 - 8799 TTY
248-0639 fax
www.accessalaska.org

Fairbanks Office
3550 Airport Way, Suite 3
Fairbanks, AK 99709
479-7940
1-800-770-7940
474-8619 TTY
474-4052 fax

Mat-Su Office
897 Commercial Drive
Wasilla, AK 99687
357-2588
1-800-770-0228
357-05585 fax

Disability Law Center of Alaska

Main/Anchorage Office:
3330 Arctic Boulevard,

Suite 103
Anchorage, AK 99503
565-1002 voice/TTY
1-800-478-1234 voice/
TTY
565-1000 fax
www.dlcak.org

Bethel Office
PO Box 2303
Bethel, AK 99559
543-3357 voice/TTY
1-888-557-3357
543-3359 fax

Fairbanks Office
1949 Gillam Way
Suite H
Fairbanks, AK 99701
456-1070 voice/TTY
456-1080 fax

Juneau Office
230 S. Franklin, #206
Juneau, AK 99801
586-1627 voice/TTY
586-1066 fax

**DIVISION OF
BEHAVIORAL
HEALTH**
PO Box 110620
Juneau, AK 99811
465-3370
1-800-465-4848
465-2225 TTY

465-2668 fax
*Anchorage Regional
Office*
3601 C street, Suite 878
Anchorage, AK 99503
269-3600
1-800-770-3930
269-3624 TTY
269-3623 fax

Northern Regional Office
751 Old Richardson Hwy.,
Suite 123
Fairbanks, AK 99701
451-5045
1-800-770-1672
451-5093 TTY
451-5046 fax

*Senior and Disability
Services*
240 Main St. Ste 601
Juneau, AK 99801
465-3372
1-866-465-3165
465-1170 fax
hss.state.ak.us/dsds

3601 C. Street suite 3101
Anchorage, AK 99503
269-3666
1-800-478-9996
269-3688 fax

**DOMESTIC
VIOLENCE
& SEXUAL
ASSAULT**

National Resources

*Battered Women's Justice
Project*
1-800-903-0111
612-824-8768 voice/TTY
www.bwjp.org

*Health Resource Center on
Domestic Violence*
1-888-Rx-ABUSE (792-
2873)
1-800- 595-4889 TTY
www.fvpf.org/health

*National Domestic
Violence Hotline*
1-800-799-SAFE (7233)
1-800-787-3224 TTY
www.ndvh.org
Administrative
512-453-8117
512-453-8541 fax

*National Resource Center
on Domestic Violence*
1-800-537-2238
1-800-553-2508 TTY
717-545-9456 fax

National Sexual Violence
Resource Center
1-877-739-8395
www.nsvrc.org

*Rape, Abuse and Incest
National Network*
1-800-656-Hope
www.rainn.org

*Resource Center on
Domestic Violence Child
Protection and Custody*
1-800-527-3223

**Statewide Agencies and
Programs**

*Alaska Family Violence
Prevention Project*
Alaska Dept. of Health &
Social Services, Division
of Public Health
PO Box 240249
Anchorage, AK 99524
269-3454
1-800-799-7570
269-5236 fax
www.hss.state.ak.us/dph/
chems/injury_prevention/
akfvpp/

*Council on Domestic
Violence and Sexual
Assault*
Alaska Department of
Public Safety

PO Box 111200
Juneau, AK 99811
465-4356
465-3627 fax

State Coalitions

*Alaska Native Women's
Coalition Against
Domestic Violence and
Sexual Assault*
PO Box 1153
Sitka, AK 99835
747-7689
www.aknwc.org

*Alaska Network on
Domestic Violence and
Sexual Assault*
130 Seward, Suite 209
Juneau, AK 99801
586-3650
463-4493 fax
www.andvsa.org

**Domestic Violence/
Sexual Assault Resource
Centers**

*Alaska Family Services
(AFS)*
403 South Alaska Street
Palmer, AK 99645
746-4080 office/crisis

*Advocates for Victims of
Violence (AVV)*

PO Box 524
Valdez, AK 99686
835-2980
835-2999 crisis
1-800-835-4044 crisis

*Abused Women's Aid in
Crisis (AWAIC)*
100 W. 13th Avenue
Anchorage, AK 99501
279-9581
272-0100 crisis

*Aiding Women in Abuse &
Rape Emergencies
(AWARE)*
PO Box 20809
Juneau, AK 99802
586-6623
586-1090 crisis/TTY
1-800-478-1090 crisis/
TTY

*Arctic Women in Crisis
(AWIC)*
PO Box 69
Barrow, AK 99723
852-0261
852-2261 crisis
1-800-478-0267 crisis

*Alaska Women's Resource
Center (AWRC)*
111 W. 9th Avenue
Anchorage, AK 99501
279-6528 office/crisis

Bering Sea Women's Group (BSWG)
 PO Box 1596
 Nome, AK 99762
 443-5491
 443-5444 crisis
 1-800-570-5444 crisis

Cordova Family Resource Center (CFRC)
 PO Box 863
 Cordova, AK 99574
 424-5674
 424-4357 crisis
 1-866-790-4357

Interior Alaska Center for Non-Violent Living (IAC, formerly WICCA)
 717 9th Avenue
 Fairbanks, AK 99701
 452-2293
 452-7273 crisis
 1-800-478-7273
 1-800-452-1120 TTY

Kodiak Women's Resource and Crisis Center (KWRCC)
 PO Box 2122
 Kodiak, AK 99615
 486-6171
 486-3625 crisis

The LeeShore Center
 325 S. Spruce St.
 Kenai, AK 99611

283-9479
 283-7257 crisis
 www.alaska.net/~leeshore

Maniilaq Family Crisis Center (MFCC)
 PO Box 38
 Kotzebue, AK 99752
 442-3724
 442-3969 crisis
 1-888-478-3969

Safe and Fear-Free Environment (SAFE)
 PO Box 94
 Dillingham, AK 99576
 842-2320
 842-2316 crisis
 1-800-478-2316

Sitkans Against Family Violence (SAFV)
 PO Box 6136
 Sitka, AK 99835
 747-3370
 747-6511 crisis
 1-800-478-6511

SeaView Community Services (SCS)
 PO Box 1045
 Seward, AK 99664
 224-5257
 224-3027 crisis
 1-888-224-5257 crisis

South Peninsula Women's Services (SPWS)
 3776 Lake Street,
 Suite 100
 Homer, AK 99603
 235-7712
 235-8101 crisis
 1-800-478-7712 crisis
 278-9988 TTY

Standing Together Against Rape (STAR)
 1057 W. Fireweed,
 Suite 230
 Anchorage, AK 99503
 276-7279
 276-7273 crisis
 1-800-478-8999 crisis
 278-9988 TTY

Tundra Women's Coalition (TWC)
 PO Box 2029
 Bethel, AK 99559
 543-3444
 543-3456 crisis
 1-800-478-7799 crisis

Unalaskans Against Sexual Assault & Family Violence (USAFV)
 PO Box 36
 Unalaska, AK 99685
 581-1500 office/crisis
 1-800-478-7238 crisis

Women in Safe Homes
(WISH)
PO Box 6552
Ketchikan, AK 99901
225-9474 crisis
1-800-478-9474 crisis

**STOP Violence Against
Women Native Women
Alaska Grantees**

Central Council of Tlingit
and Haida Indians
320 W. Willoughby Ave.
Suite 300
Juneau, AK 99801
586-1432
www.ccthita.org

Mount Sanford
Consortium
PO Box 357
Gakona, AK 99886
822-5399
www.mstc.org

Sitka Tribe of Alaska
429 Katlian St.
Sitka, AK 99835
747-7500

Tetlin Tribal Council
PO Box 519
Tetlin, AK 99780
324-3132
324-3130 fax

**FEDERAL
AGENCIES**

**Alcohol, Tobacco,
Firearms (ATF)**
271- 5701

FBI Office in Alaska
276-4441

**United States Attorney's
Office**
Federal Building
222 W. 7th Ave. #9 Room
253
Anchorage, AK 99513
271-5071

**Social Security
Administration**
Juneau Office
Federal Building
709 West 9th Room 231
Juneau, AK 99801
586-7070

Anchorage Office
222 West 8th Avenue,
Room A-11
Anchorage, AK 99513
271-4455

Fairbanks Office
101 12th Avenue
Fairbanks, AK 99701
456-0391

Ketchikan Office
Commodore Building
109 Main Street
Ketchikan, AK 99901
225-5200

EMPLOYMENT

**Alaska State Commission
for Human Rights**
274-4692
1-800-478-4692
276-3177 (TTY)
1-800-276-3177(TTY)

**Office of Equal
Employment
Opportunity**
279-0299

**Anchorage Equal Rights
Commission**
343-4342
343-4894 (TTY)

**U.S. Equal Employment
Opportunities
Commission**
1-800-669-4000
1-800-669-6820 (TTY)

**Office of Federal
Contract Compliance
Programs**
415-848-6969
415-848-6955 fax

**GOVERNOR'S
OFFICE**

Office of the Governor
3rd Floor, State Capitol
PO Box 110001
Juneau, AK 99811
465-3500
465-3532 fax
465-3489 TDD
State Info: 465-2111

Anchorage Office
550 West 7th Avenue
Suite 1700
Anchorage, AK 99503
269-7450
269-7461 fax
State Info: 269-5111

Fairbanks Office
675 7th Avenue
Suite H5
Fairbanks, AK 99701
451-2920
451-2858 fax

Washington DC Office
202-624-5858
202-624-5857 fax

**HIV/AIDS
RESOURCES**

**Alaskans AIDS
Assistance Association**
1057 W. Fireweed
Suite 102
Anchorage, AK 99503
263-2050
263-2051 fax

**Statewide AIDS
Helpline:**
1-800-478-AIDS (2437)
276-4880

**Interior AIDS
Association**
710 Third Ave
Fairbanks, AK 99707
452-IAAA (4222)
452-8176 fax

Shanti of Juneau
PO Box 22655
Juneau, AK 99802
463-5665
586-3025 fax

HOUSING

**Alaska Housing Finance
Corporation
Division of Public
Housing**
4300 Boniface Parkway

99504
PO Box 101020
Anchorage, AK 99510
338-6100
1-800-478-AHFC (2432)
338-9218 fax
www.ahfc.state.ak.us

*Check your directory for
local listings, contact the
Alaska Housing Finance
Corporation or contact the
following:*

*Anchorage Family
Investment Center*
624 W. International
Airport Road
PO Box 241385
Anchorage, AK 99524
330-6100
1-800-478-2432
277-2559 TTY
1-800-478-5558 TTY

*Fairbanks Family
Investment Center*
1441 22nd Avenue,
Q Building
Fairbanks, AK 99707
456-3738
456-4621 TDD/TTY
1-800-478-4621 TTY

*Juneau Family Investment
Center*
3410 Foster Ave.

PO Box 021265
Juneau, AK 99802
586-3750
586-3956 TTY/TDD
1-800-478-3750 TTY

**REGIONAL HOUSING
AUTHORITIES**

Anchorage Office:
4300 Bonifase Parkway
Anchorage, AK 99504
338-6100

Bethel Office:
122 Ataq
PO Box 587
Bethel, AK 99559
543-2228

Cordova Office:
401 Second St.
PO Box 1728
Cordova, AK 99574
424-7697

Fairbanks Office:
1441 22nd Ave.,
Fairbanks, AK 99701
456-3738

Homer Office:
270 W. Pioneer Avenue
Suite D
Homer, AK 99603
235-2447

Juneau Office:
3410 Foster Ave.
PO Box 021265
Juneau, AK 99801
586-3750

Kenai/Soldotna Office:
44539 Sterling Hwy.
Suite 201-A
Soldotna, AK 99669
260-7633

Ketchikan Office:
130 Bryant St.
PO Box 5124
Ketchikan, AK 99901
225-6030

Kodiak Office:
521 Maple
PO Box 317
Kodiak, AK 99615
486-5513

Nome Office:
406 I Street
PO Box 930
Nome, AK 99762
443-2888

Petersburg Office:
102 1st St.
PO Box 729
Petersburg, AK 99833
772-3550

Seward Office:
200 Lowell Canyon Rd.
PO Box 1475
Seward, AK 99664
224-3737

Sitka Office:
404 Lake St.
Sitka, AK 99835
747-5700

Soldotna Office:
44539 Sterling Hwy.
Suite 201-A
Soldotna, AK 99669
260-7633

Valdez Office:
104-B Bremner
PO Box 926
Valdez, AK 99686
835-2119

Wasilla/Mat-Su Office:
851 E. West Point Dr.
Suite B06
PO Box 873347
Wasilla, AK 99687
376-5744

Wrangell Office:
720 Zimovia Hwy. #107
PO Box 950
Wrangell, AK 99929
874-3018

**IMMIGRATION
SERVICES**

*Alaska Immigration
Justice Project*
431 W. 7th Avenue, Suite
208
Anchorage, AK 99501
279-AIJP (2457)
279-2450 fax

LABOR

**Alaska Department of
Labor**
Employment Security
(Unemployment
Insurance Benefits)
Anchorage UI Call Center
PO Box 107224
Anchorage, AK 99510
269-4700
269-4790 fax
www.labor.state.ak.us

Fairbanks UI Call Center
PO Box 71010
Fairbanks, AK 99707
451-2871
451-2870 fax

Juneau UI Call Center
PO Box 25510
Juneau, AK 99802
465-5552
465-5573 fax

All other areas:
1-888-252-2557
1-888-353-2937 fax

Job Line Numbers:
Anchorage/In-State:
269-4770
Anchorage/Out-of-State:
269-4865
Homer: 235-7200
Juneau: 465-4571
Kodiak: 486-6838
Mat-Su: 352-2593
www.jobs.state.ak.us

**Labor Standards &
Safety**
PO Box 21149
Juneau, AK 99802
465-4855
465-3584 fax
[www.labor.state.ak.us/lss/
home.htm](http://www.labor.state.ak.us/lss/home.htm)

Workers' Compensation
Main Office
PO Box 111512
Juneau, AK 99811
465-2790
465-2797 fax
labor.state.ak.us/wc

Anchorage Office
PO Box 107019
Anchorage, AK 99510
269-4980
269-4975 fax

Fairbanks Office
675 Seventh Ave. Station
H2
Fairbanks, AK 99701
451-2889
451-2928 fax

**State Department of
Labor Wage & Hour
Administration**
269-4900
1-800-478-2435

Fishermen's Fund
PO Box 111149
Juneau, AK 99802
465-2766
1-800-520-2766
465-2797 fax
[www.labor.state.ak.us/wc/
ffund.htm](http://www.labor.state.ak.us/wc/ffund.htm)

**State Employee Claims
Harbor Adjustment
Services**
900 W. Benson Blvd, Ste.
101
Anchorage, AK 99517
277-1377

**U.S. Department of
Labor**
271-2867

LEGAL

Alaska Bar Association

550 W. 7th Avenue Suite
1900
Anchorage, AK 99501
272-7469
272-2932 fax
www.alaskabar.org

Lawyer Referral Service:

272-0352
Anchorage, AK
Outside Anchorage:
1-800-770-9999

Alaska Legal Services

www.state.ak.us/local/
akpages/ADMIN/pd/
office.htm

Anchorage Office

1016 W. 6th Ave. # 200
Anchorage, AK 99501
272-9431
1-888-478-2572
279-7417 fax

Bethel Office

PO Box 248
Bethel, AK 99559
543-2237
1-800-478-2230
543-5537 fax

Dillingham Office

PO Box 176

Dillingham, AK 99576
842-1452

1-888-391-1475
842-1430 fax

Fairbanks Office

1648 Cushman,
Suite 300
Fairbanks, AK 99701
452-5181
1-800-478-5401
456-6359 fax

Juneau Office

419 6th St., Suite 322
Juneau, AK 99801
586-6425
1-800-789-6426
586-2449 fax

Ketchikan Office

306 Main St.
NBA Bldg, #218
Ketchikan, AK 99901
225-6420
225-6896 fax

Kotzebue Office

PO Box 526
Kotzebue, Alaska 99752
442-3500
442-4111 fax

Nome Office

Is not currently staffed.
Contact Fairbanks office if
you are from the Nome
area.

Alaska Office of Victims Rights

www.officeofvictimsrights
.legis.state.ak.us
272-2620
1-866-274-2620

Family Law Self-Help Center, Alaska Court System

www.state.ak.us/courts/
selfhelp.htm
264-0819
1-866-279-0851

MENTAL HEALTH

National Alliance for the Mentally Ill (NAMI)

144 W. 15th Avenue
Anchorage, AK 99501
272-0227
www.nami.org

Juneau Alliance for Mental Health (JAMHI)

3406 Glacier Hwy.
Juneau, AK 99801
463-3303

Healthy Alaskans Information Line

A Statewide Referral for
Health & Human Services
in Alaska
1-800-478-2221

See the Disability section for additional resources.

1-800-478-2624
465-3330 fax

Palmer Office:
268 E Fireweed Lane, Ste
101
Palmer, AK 99645
745-0435
745-0467 fax

**NATIVE
ALASKAN**

**PUBLIC
ADVOCATE**

**Alaska Federation of
Natives**
1577 "C" Street, Suite 300
Anchorage, AK 99501
274-3611
276-7989 fax
www.nativefederation.org

**Office of Public
Advocacy**
*(Includes Public
Guardian)*
Anchorage Office:
900 W. 5th Ave., Ste. 525
Anchorage, AK 99501
269-3500
269-3535 fax

**PUBLIC
ASSISTANCE**

Public Assistance Website:
www.hss.state.ak.us/dpa/

*See the Social Services
section for additional
resources.*

Bethel Office:
P.O Box 2129
Bethel, AK 99559
534-1234
534-1316 fax

Anchorage District
400 Gambell St., Suite 101
Anchorage, AK 99501
269-6599
269-6450 fax

OMBUDSMAN

**Office of the
Ombudsman**
State of Alaska
PO Box 102636
Anchorage, AK 99510
269-5290
269-5291 fax
www.state.ak.us/local/
akpages/LEGISLATURE/
ombud/home.htm

Fairbanks Office:
100 Cushman, Suite 502
Fairbanks, AK 99701
451-5933
451-5934 fax

Bethel District Office
PO Box 365
Bethel, AK 99559
543-2686
1-800-478-2686
543-5912 fax

Juneau Office
PO Box 113000
Juneau, AK 99811
465-4970

Juneau Office:
Assembly Building,
Rm. 103
PO Box 110225
Juneau, AK 99811
465-4173
465-3645 fax

Coastal Field Office
3601 "C" St., Suite 410
PO Box 240249
Anchorage, AK 99524
269-8950
1-800-478-4372
563-1619 fax

Denali KidCare Office
PO Box 240047

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Anchorage, Alaska 99524
269-6529
1-888-318-8890

Eagle River Job Center
11723 Old Glenn Hwy S-
B4
Eagle River, AK 99577
694-7006
694-1490 fax

Fairbanks District
675 7th Ave., Station D
Fairbanks, AK 99701
451-2850
1-800-478-2850
451-2923 fax

Homer District Office
270 W. Pioneer, Suite C
Homer, AK 99603
235-6132
235-6176 fax

Juneau District Office
10002 Glacier Hwy.,
Suite 201
Juneau, AK 99801
465-3551
1-800-478-3551
465-5238 fax

*Kenai Peninsula Job
Center*
11312 Kenai Spur Hwy #2
Kenai, AK 99611
283-2900

1-800-478-9032
283-2975 fax

Ketchikan District Office
2030 Sea Level Dr.
Suite 301
Ketchikan, AK 99901
225-2135
1-800-478-2135
247-2135 fax

Kodiak District Office
307 Center Ave.
Kodiak, AK 99615
486-3783
1-888-480-3783
486-3116 fax

Kotzebue District Office
PO Box 1210
Kotzebue, AK 99752
442-3451
1-800-478-3451
442-2151 fax

Mat-Su District Office
855 W. Commercial Dr.
Wasilla, AK 99654
376-3903
1-800-478-7778
373-1136 fax

Nome District Office
PO Box 2110
Nome, AK 99762
443-2237
1-800-478-2236

443-2307 fax

*SE APA/Specialized
Medicaid*
10002 Glacier Hwy., Suite
105
Juneau, Alaska 99801
465-3537
1-800-478-8234

Sitka District Office
201 Katlian St., #107
Sitka, AK 99835
747-8234
1-800-478-8234
747-8224 fax

**REPRODUCTIVE
RIGHTS**

**Alaska Emergency
Contraception Project**
1-888-NOT-2-LATE
www.alaskec.org
www.not-2-late.com

**Planned Parenthood of
Alaska**
For the clinic nearest you
and free information/
counseling
1-800-230-PLAN
www.ppak.org

Anchorage Center
4001 Lake Otis Parkway

Anchorage, AK 99508
563-2229
563-7419 fax
Fairbanks Clinic
1867 Airport Way, Suite
160B
Fairbanks, AK 99701
455-7285

Soldotna Center
East Redoubt Avenue
Soldotna, AK 99669
262-2622
262-8564 fax

Sitka Center
514 Lake Street
Sitka, AK 99835
747-3883
747-8282 fax

Family Planning Clinics
*Bethel Center and
Itinerant Nursing Services*
PO Box 1048 (1490 State
Hwy)
Bethel, AK 99559
543-2110
543-0435 fax

*Craig Public Health
Center*
PO Box 130 (404 Spruce)
Craig, AK 99921
826-3433
826-3435 fax

*Fairbanks Regional Public
Health Center Interior
Region*
1025 West Barnette
Fairbanks, AK 99701
452-1776
451-1611 fax

*Juneau Public Health
Center*
3412 Glacier Highway
Juneau, AK 99801
465-3353
465-3389 fax

*Kenai Public Health
Center (City Hall)*
630 Barnacle Way, Suite
A
Kenai, AK 99611
335-3400
335-3405 fax

*Ketchikan Public Health
Center*
3054 Fifth Avenue
Ketchikan, AK 99901
225-4350
247-0978 fax

*Kodiak Public Health
Center*
316 Mission Road, Room
207
Kodiak, AK 99615
486-3319
486-8149 fax

*Mat-Su Public Health
Center*
3223 E. Palmer Wasilla
Hwy., Ste 3
Wasilla, AK 99654
376-2437
376-3096 fax

SOCIAL SERVICES

**Alaska Department of
Health & Social Services**
*Community Coordinator,
Office of the
Commissioner*
350 Main St Room 404
PO Box 110601
Juneau, AK 99801
465-3030
586-4265 TTY
465-3068 fax
www.hss.state.ak.us/

**Alaska Native Non-Profit
Regional Corporations**
*[Please check your local
listings for regional &
local contact numbers]*

Aleutian Pribilof
Islands Association

Arctic Slope Native
Association

Association of Village
Council Presidents

Bristol Bay Native
Association

Central Council of Tlingit
& Haida

Chugachmiu, Inc.

Cook Inlet Tribal Council

Copper River Native
Association

Kawerak, Inc.

Kodiak Area Native
Association

Maniilaq Association

Tanana Chiefs Conference

**U.S. Department of the
Interior**

*Bureau of Indian Affairs-
Alaska Region*

PO Box 25520
Juneau, AK 99802
586-7177
1-800-645-8397
586-7252 fax

**SEXUAL
ASSAULT**

*See the Domestic Violence/
Sexual Assault section for
resources.*

**VICTIMS'
SERVICES**

Alaska Office of Victims
Rights
272-2620
1-866-274-2620
www.officeofvictimsrights
legis.state.ak.us

Violent Crimes
Compensation Board
PO Box 110230
Juneau, AK 99811
465-3040
1-800-764-3040
465-2379 fax
www.state.ak.us/admin/
vccb/

Victims for Justice
www.victimsforjustice.org
1057 W. Fireweed Lane,
Suite 101
Anchorage, AK 99503
278-0977
258-0740 fax

*See the Domestic Violence/
Sexual Assault section for
additional resources.*

**ADDITIONAL
RESOURCE
MATERIALS-
BOOKS AND
PUBLICATIONS**

Managing Your Divorce:
A Guide for Battered
Women
Resource Center on
Domestic Violence: Child
Protection and Custody
Family Violence
Department of the
National
Council of Juvenile and
Family Court Judges
(1998)
1-800- 527-3223

Personalized Safety Plan

This is my plan for increasing my safety and preparing in advance for the possibility of further violence. Although I do not have control over my partner's violence, I do have a choice about how to respond to him and how to best get myself and my children to safety.

MY IMPORTANT TELEPHONE NUMBERS

Police: 911 and _____
(non-Emergency)
Domestic Violence Program/Safe Home:

District Attorney's Office _____

SAFETY DURING AN ASSAULT

Women cannot always avoid violent incidents, but they can do a number of things to increase their safety during violent incidents.

I can do some or all of the following:

1. If I decide to leave, I can get out of the house by _____.
(Practice how to get out safely. What doors or windows will you use?)
2. I can go to _____.
(Decide this even if you don't think there will be a next time.)
3. In order to be able to leave quickly, I can keep my purse and vehicle key ready by putting them _____.

4. I can tell _____
(neighbors) about the violence and ask them to call the police if they hear suspicious noises coming from the house.

5. I can teach my children how to use the telephone or radio to contact the police and to get help in an emergency.

6. I can use _____ as my code word with my children and/or friends when I am in danger, so they will call for help.

7. When I expect an argument, I can try to move to _____,
a space near an outside door that has no guns, knives or other weapons (usually bathrooms, garages and kitchen areas are dangerous places).

8. I can use my judgment and intuition. If the situation is very serious, I can give my partner what he wants to calm him down. I have to protect myself until I am out of danger.

9. I can call the police when it is safe, and I can get a protective order from the

court.

SAFETY WHEN PREPARING TO LEAVE

Leaving must be done with a careful plan to increase safety. Batterers often strike back when they believe the woman is leaving the relationship.

I can do some or all of the following:

1. So I can leave quickly, I can leave money, an extra set of keys, extra clothing and important documents with _____.

2. I can open a savings account to increase my independence.

3. I can check with _____ and _____ to see who would be able to let me stay with them or lend me some money.

4. The National Domestic Violence hotline number is **1-800-478-2316**. By calling this free hotline, I can get the number of a shelter near me.

5. I can rehearse my escape plan and, as appropriate, practice it with my children.

6. Other things I can do to increase my independence: _____

Checklist – What you may want to take with you, if it is safe to do so:

- Identification
- Address book
- Money
- Credit cards
- Medications
- Social Security Cards
- Keys (house/car/work)
- Welfare identification
- Driver's license/vehicle registration
- Address book
- Birth and marriage certificates
- Checkbook, ATM card, and other bank books
- Work permit
- School and vaccination records
- Children's birth certificates
- Divorce papers
- Copy of protective order
- Passport
- Pets (if you can)
- Jewelry
- Photo Album
- Children's special blanket, doll, or stuffed animal

SAFETY IN MY HOME

There are many things that a woman can do to increase safety in her home. It may be impossible to do everything at once, but safety measures can be added step by

step.

1. I can inform _____ that my partner no longer resides with me and they should call the police if he is seen at my residence.

2. I can change the locks on my doors and windows as soon as possible.

3. I can replace wooden doors with steel/metal doors.

4. I can install security systems including additional locks, window bars, poles to wedge against doors, an electronic system, etc.

5. I can purchase rope ladders to be used for escape from second floor windows.

6. I can install smoke detectors and purchase fire extinguishers for my home.

7. I can install an outside lighting system that lights up when a person is coming close to my house.

8. I can teach my children how to use the telephone, in case my partner takes them, to make a collect call to me and to:

(friend/advocate/minister/other)

9. I can tell people who take care of my children which people have permission to pick up my children and that my

partner does not have permission. The people I will inform about this are:

_____ (school)

_____ (day care)

_____ (babysitter)

_____ (teacher)

_____ (others)

SAFETY WITH A PROTECTIVE ORDER

Protective orders are available from the court. An advocate is available at the nearest domestic violence/sexual assault program to help you get one. Many batterers obey protective orders, but some do not.

I understand that I may need to ask the police and the courts to enforce my protective order. I can do some or all of the following to increase my safety:

1. I can keep a copy of my protective order with me at all times.

2. I can check with my local police department to make sure my protective order is on record with them. If not, I will give a copy of my protective order to them. I will also give a copy of my protective order to police departments in the community where I work and in those communities where I usually visit family or friends.

3. I can tell my employer, my domestic violence program advocate, my minister, my closest friend, and _____ that I have a protective order in effect.

4. If my partner destroys my protective order, I can get another copy from the courthouse by calling _____.

5. If my partner violates the protective order, I can call the police and report a violation, call my attorney, call an advocate at a domestic violence program, and/or advise the court of the violation.

SAFETY ON THE JOB AND IN PUBLIC

Each battered woman must decide for herself if and when to tell others about the violence. Friends, family and co-workers can help to protect her, and she needs to consider carefully who to ask for help.

I can do any or all of the following:

1. I can tell my boss, the security supervisor, and _____ at work of my situation.

2. I can ask _____ to help screen my telephone calls at work.

3. When I leave work, I can walk with _____ to my car or the bus stop. I can park my car where I will feel safest getting in and out of the car.

4. When traveling home if problems occur, I can _____.

5. I can use different grocery stores, shopping malls, and banks to shop and do business at hours that are different from those I used when residing with my battering partner.

6. I can also _____

_____.

SAFETY AND DRUG OR ALCOHOL USE

Many people use alcohol and drugs. Using illegal drugs and abusing alcohol can be very hard on a battered woman physically and emotionally. It may hurt her relationship with her children and put her at a disadvantage in court. Beyond this, the use of alcohol or other drugs can reduce a woman's awareness and ability to act quickly to protect herself from her battering partner. Therefore, in the context of drug or alcohol use, a woman needs to make specific plans.

If drug or alcohol use has occurred in my

relationship with my partner, I can enhance my safety by doing some or all of the following:

1. If I am going to use, I can do so in a safe place and with people who understand the risk of violence and are committed to my safety.
2. If my partner is using, I can _____.
3. To safeguard my children, I can _____.
4. I can also _____
_____.

SAFETY AND MY EMOTIONAL HEALTH

The experience of being battered and verbally degraded by partners is exhausting and emotionally draining. The process of building a new life for myself takes much courage and incredible energy.

To conserve my emotional energy and to avoid hard emotional times, I can do some of the following:

1. If I feel down and ready to return to a potentially abusive situation, I can _____.

2. When I have to communicate with my partner in person or by telephone, I can _____.

3. I can use, "I can" statements with myself and be assertive with others.

4. I can tell myself _____ whenever I feel others are trying to control or abuse me.

5. I can read _____ to help me feel stronger.

6. I can call _____, _____, and _____ as other resources to be of support to me.

7. I can attend workshops and support groups at the domestic violence program or _____ to gain support and strengthen my relationships with other people.

8. Other things I can do to help me feel stronger are: _____
_____.

SAFETY AND TECHNOLOGY

Technology can assist me in achieving help and safety. However, it is also important to consider how technology might be misused. I trust my instincts. If I suspect that my phone, computer, email or other activities are being monitored, I

can do some or all of the following:

1. If I suspect my partner is monitoring me, I can contact an advocate or law enforcement at _____.

2. Computers keep records of users' actions. If I need to use a computer or the internet to look for help or make plans to leave, I can use a safer computer that my partner does not have access to. It may be at a friend's house, library, or café. A safer computer I can use is: _____.

3. If I suspect my email is being monitored, I can open an account through a free web based company such as yahoo or gmail that I do not read on a computer my partner has access to. I can create a safer account name that is anonymous and does not include my real name.

4. I can change my passwords and pin numbers frequently.

5. Cordless phones use radio waves to transmit sounds, and therefore conversations can be intercepted by other cordless devices, radios, and radio scanners. Phones with wires are generally safer, but they may also be tapped. A safe phone for me to use when discussing my escape plans, safety plans, or speaking with an advocate is _____.

6. Digital cell phone calls may be intercepted by law enforcement. If my abuser has access to these tools, or if he has access to my cell phone records, a safe phone I can use is _____.

7. Cell phones may be programmed to track someone's location through Global Positioning System (GPS) Chips. If I think I am being tracked, I can call law enforcement. I can also turn off my cell phone or leave it behind when this is safe.

8. Often domestic violence programs have donated cell phones for emergency calls. A place where I can get a used or donated cell phone is _____.

This section was adapted from safety planning materials prepared by Jody Lown, former Victim-Witness Program Coordinator.

A note of thanks to Barbara Hart, Esq., Legal Director, Pennsylvania Coalition Against Domestic Violence, whose materials on safety planning made this safety planning section possible.

Notes

Notes

**ALASKA NETWORK ON DOMESTIC VIOLENCE &
SEXUAL ASSAULT MEMBER PROGRAMS**

Program	Location	Local Phone	Toll Free
AVV	Valdez	(907) 835-2999	1-800-835-4044
AWAIC	Anchorage	(907) 272-0100	*
AWARE	Juneau	(907) 586-1090/TTY	1-800-478-1090/TTY
AWIC	Barrow	(907) 852-0266	1-800-478-0267
AWRC	Anchorage	(907) 276-0528	*
BSWG	Nome	(907) 443-5444	1-800-570-5444
CFRC	Cordova	(907) 424-4357	1-866-790-4357
IAC	Fairbanks	(907) 452-7273	1-888-478-7273 1-800-452-1120 TTY
KWRCC	Kodiak	(907) 486-3625	*
LeeShore Center	Kenai	(907) 283-7257	*
MFCC	Kotzebue	(907) 442-3969	1-888-478-3969
SAFE	Dillingham	(907) 842-2316	1-800-478-2316
SAFV	Sitka	(907) 747-6511	1-800-478-6511
SCS	Seward	(907) 224-3027	1-800-224-5257
SPHH	Homer	(907) 235-8101	1-800-478-7712 (9-5 pm) 1-800-235-8101
STAR	Anchorage	(907) 276-7273 (907) 278-9988/TTY	1-800-478-8999
TWC	Bethel	(907) 543-3456	1-800-478-7799
USAFV	Unalaska	(907) 581-1500	1-800-478-7238
WISH	Ketchikan	(907) 225-9474	1-800-478-9474

*Programs accept collect crisis calls

