

Women's Legal Rights Handbook



Updated 2004 Edition

Alaska Network on Domestic Violence &
Sexual Assault
Legal Advocacy Project

2 Women's Legal Rights Handbook

WOMEN'S LEGAL RIGHTS HANDBOOK

This project was supported by Grant No. 2003-WF-BX-0201 awarded by the Violence Against Women Grants Office, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

ACKNOWLEDGMENTS

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 fifth edition has been revised to reflect changes in the law since 1998. 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 October 1, 2004. 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 #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.

Special thanks to former Governor Tony Knowles's Office for transferring the copyright from the former Alaska Women's Commission to the ANDVSA.

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1. INTRODUCTION

Alaska has passed a state equal rights amendment guaranteeing Alaskan women the legal right to be treated equally. In practice 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 breaking up a non-marital relationship; or they may face discrimination or harassment in their workplace.

This booklet 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:

- (1) the Constitutions of the United States and the State of Alaska;
- (2) statutes passed by federal or state legislatures;
- (3) regulations passed by government agencies;
- (4) court rules enacted by the courts; and
- (5) 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 provisions 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."
- Federal 1994 Violence Against Women Act & 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 which are kept in law libraries. 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 money 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 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. It should be remembered that legal disputes involving Alaska Natives or their lands may be subject to tribal custom, law or rules which 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 2 - Legal Representation.*] The Alaska Court System does however have 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 which 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

Alaska Court System Website:
www.state.ak.us/courts

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. This web page allows people to surf the site and help themselves. 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 / (866) 279-0851 (Toll-free within Alaska, outside of Anchorage)

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. Currently, the self-help workstations are located in Anchorage, Fairbanks, Juneau, Ketchikan, Kenai, Kodiak, and Palmer.

2. LEGAL REPRESENTATION

In most circumstances when a woman has a legal problem, she should consult an attorney. If the 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:

1. What is at stake?
2. What are the consequences if the problem is ignored?
3. Are there other ways to solve the problem?
4. How much is it likely to cost to hire an attorney?
5. 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.
- Any major financial transaction.
- 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.
- 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, so they may not be appropriate for you.

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. Whenever possible follow up with a letter.

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 some letters by certified mail if you need to have a record that they were received.

When you meet with people, be punctual and businesslike. If possible arrange childcare so you are able to give your full attention to the attorney. Prepare for meetings; 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 Resource Directory at the back of this booklet for the office nearest you.*] You should also check whether you or a relative is entitled to legal help through a union benefit plan. You might consider borrowing money to insure that you are well represented.

How Can I Find an Attorney?

There are several ways to locate an attorney:

1. If you know an attorney, ask for a recommendation to an attorney who handles the type of case you have.
2. Ask a friend who has had a similar case to recommend the attorney they used.
3. 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.
4. Contact the Alaska Bar Association [*See Resource Directory*] 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, bankruptcy, criminal, etc.

The Alaska Bar Association also provides a service called Lawyer Referral. [*See Resource Directory.*] 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 ok 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:

1. 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.
2. 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.
3. 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, while helping 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, but 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 \$500.00. An attorney must also advise you in writing, or in the agreement, if she or he does not have malpractice insurance of a required amount, or in writing later if that insurance drops below that amount or is terminated. As with any contract, 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

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, so 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 should still 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 \$500.00. This agreement can keep you from having a dispute later over your bill. When you hire your attorney, you can tell the attorney not to

work more than a specified amount of hours and not to run up high costs in your case without telling you what she or he is doing. An attorney must also advise you in writing on the agreement if she or he does not have malpractice insurance (of a required amount in the rules), or in writing later if that insurance drops below that amount or is terminated.

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. Also, 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. Finally, in some cases Alaska courts give the winning side an attorney's fee award. [*Civil Rule 82*].

WORKING WITH AN ATTORNEY

Do not be intimidated by your attorney. Don't 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, employment records, etc. 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, mother, father, 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 Worker's 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 [*See Resource Directory*] and they will review and investigate as needed. The Bar Association provides a form for you to fill out. Realize, however, that 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 09.43.120-180. 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.]

3. 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. 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 Employment Opportunity Commission (EEOC); 180 days for the Alaska State Commission on Human Rights (ASCHR); 120 days for the

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

Anchorage Equal Rights Commission (AERC); two years for an action under AS 18.80 in Superior Court; and 90 days to file in federal court after the EEOC issues a right to sue letter.

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?

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, 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 prohibit a variety of discriminatory practices.

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 can not 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. *[For more information on pregnancy discrimination see Chapter 11 Reproductive Rights.]*

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 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 which 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 which 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.

There are caps under federal law on future, compensatory and punitive damages combined, ranging from \$50,000.00 to \$300,000.00, depending on the size of the employer. In 1997, the Alaska State legislature passed a "tort reform" bill which put caps on compensatory and punitive damages under state law. [AS 9.17.020.] It may be important for you to 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/hostile environment; however, 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.

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 agency contact information at the end of this chapter.]

SEX DISCRIMINATION

What is a Sex Discrimination claim?

Both federal and state law prohibit discrimination on the basis of sex. Generally, 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. 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 also unlawful, as is harassment based on age, disability, race or any other protected ground.

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 including the state and its political subdivisions, the University of Alaska, and the Alaska Railroad Corporation are required to post a notice, prepared by the State Commission for Human Rights, that:

- (1) states the federal definition of sexual harassment;
- (2) 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
- (3) sets out the deadlines for filing a complaint of sexual harassment with the agencies listed above.

What are the two major types of sexual harassment?

"Quid pro quo" and "hostile environment" are the two major 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. In addition to verbal conduct such as jokes, remarks or bantering, touching, visuals, gestures and other conduct which 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, i.e. female. Even if harassing behavior lacks sexually explicit content, if the conduct is directed at or motivated by animus 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 work place.

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. A recent 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. [*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, *Broderick v. Ruder*, 685 F.2d 1269 (D.D.C. 1988) involved a hostile work environment at the Securities and Exchange Commission, held that third parties can be injured by a sexual relationship between two other parties if they are denied job benefits.

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, Anchorage Equal Rights Commission, United States Equal Employment Opportunity Commission, or the Alaska Bar Association Lawyers' Referral number. Phone numbers for these agencies are listed at the end of this chapter and in the Resource Directory. 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 within a work establishment where they are performing equal work on jobs requiring equal skill, effort, and responsibility, and under similar working conditions. 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, (907) 344-1002, if you need assistance in this area. 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 whom 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, and 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 at 1-800-478-1234.

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 twelve 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 twelve 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 10 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 the 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 an 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; nor are employers 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.

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 can not be terminated for reasons which 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 includes not only verbal harassment, but also may include

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 (i.e. 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 elsewhere 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 which handles those complaints. They will either 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, parenthood, or 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 for additional resources and phone numbers.*]

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 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. For more information you can contact the ASCHR toll free at **1-800-478-4692** or **1-800-478-3177 TTY/TTD**. If you are in Anchorage call **274-4692**.

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. If there is not an EEOC office in your immediate area, call toll free at **1-800-669-4000** or **1-800-669-6820 (TTD) or (206) 220-6882 (TTD)** for more information. The Seattle District Office serves Alaska. To avoid delay, call or write beforehand if you need special assistance, such as an interpreter, to file a charge.

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

The issuance of a Notice of Right to Sue letter ends the 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 which 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 the 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. Because of a work sharing agreement a complaint filed with one agency is considered filed with the other.

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, (907) 272-0352 or 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; since the law is rapidly changing, you want to consult with an attorney who keeps informed about the law.

Who are the state agencies/commissions?

- Alaska State Commission For Human Rights (ASCHR) is the state agency that enforces the Alaska Human Rights Law. The Commission maintains an investi-

gative unit in Anchorage, (907) 274-4692, (907) 276-3177 TTY or (800) 478-4692, (800) 478-3177 TTY. 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), (907) 269-7495, or (800) 797-7495, is an administrative unit located in the Office of the Governor, which 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 OEEA, 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 (907) 269-4900 or 1-800-478-2435, also enforces the state law regarding family leave.

LOCAL AGENCIES

- The Anchorage Equal Rights Commission (AERC), (907) 343-4342, (907) 343-4894 TTY is the agency that handles complaints regarding discrimination that occurs within the municipal boundaries of Anchorage.
- The Disability Law Center of Alaska
1-800-478-1234
(907) 565-1002 (voice/TTY)
Website: akpa@dlcak.org

The Disability Law Center of Alaska is the statewide Protection and Advocacy (P&A) 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. Also, the Center has authority to conduct investigations of incidents of abuse or neglect of individuals with disabilities.

FEDERAL AGENCIES

- The U.S. Equal Employment Opportunities Commission (EEOC), (800) 669-4000, (800) 669-6820 TTD or (206) 220-6882 TTD is the federal agency charged with enforcing federal laws outlawing employment discrimination. As a practical matter, the EEOC, ASCHR, and AERC have a work sharing agreement; if you file with one agency, your complaint will be simultaneously filed with the other agencies, although only one agency will investigate.
- The U.S. Department of Labor,

(907) 271-2867, 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, (907) 271-2864 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.

4. 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.

Under federal law [15 U.S.C. §§ 1637], 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. The Federal Trade Commission enforces the Fair Credit Billing Act for almost all creditors except banks.

FEDERAL PROTECTION 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. Also, 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.

STATE PROTECTION 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.

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. *[Listed in Resource Directory.]*

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, remember that 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 may also 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 may wish to 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, 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 (1) a prior discharge in bankruptcy in a case filed within six years prior to the current filing, (2) commission of certain fraudulent or dishonest acts and/or inability to explain disappearance of assets.

What is Chapter 13 relief from debt?

Chapter 13 relief is known as Debt Adjustment for Individuals with Regular Income. A Chapter 13 petition for relief in bankruptcy is most often used in three situations: (1) The debtor's disposable income (defined as after tax income minus reasonable and necessary living expenses) over a period of 36 months, including Permanent Fund Dividends

and federal income tax refunds received during that period, would allow for the repayment of 25% or more of her unsecured debt; or, (2) The debtor has debt that is not dischargeable in a Chapter 7 proceeding; or, (3) The debtor has assets that exceed her exemption rights that she wishes to retain. Typically, a Chapter 13 costs more money than a Chapter 7 because it involves the drafting and filing by the debtor and her attorney of a plan of repayment to the pre petition creditors. The debtor has the burden of proving that the creditors will receive as much under her plan of repayment as they would have received had she filed a Chapter 7.

Every state and the 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 ACC 95.030 establish an exemption amount of \$64,800 in a debtor's home, if she owns it. 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 \$64,800 in a Chapter 7

bankruptcy. Similarly, Alaska protects up to \$3,600 worth of equity in a debtor's automobile while the federal statute protects only \$2,950. However, there are some distinct advantages to using the federal system, if the debtor does not own her residence. Among other matters, the federal exemptions allow a portion of the unused residence exemption to be applied to other properties not otherwise protected by exemptions. Therefore, the selection of exemption protection is best done with the assistance of qualified legal advice. Exempt assets in Alaska, include, but are not limited to, clothes, household goods, Limited Entry Fishing permits, Native Corporation Stock, retirement benefits, child support, and alimony. The amount of the exemption varies from property type to property type and is inflation proofed so it is important to check with qualified individuals regarding the amount of every exemption. The Alaska Court System maintains free booklets about your exemption rights in every clerk of the court's office. Assets that are not exempt or that have value in excess of exemption rights become property of the bankruptcy estate and are liquidated by the Chapter 7 trustee. The trustee then pays the proceeds from the sale of these assets to the debtor's creditors.

Exempt property that has been used as collateral for a loan can still be lost if the

loan is not paid (unless certain special relief is appropriate and sought under the Bankruptcy Act). Whether or not an I.R.S. debt is dischargeable as a personal obligation, any associated tax liens will continue to apply to exempt property existing as of the date of filing of the bankruptcy. Credit Card companies will be deemed to have a secured interest in assets purchased through use of the credit card and will sometimes seek to recover those assets.

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

Under either form of relief, Chapter 7 or Chapter 13, a debtor is freed from the burden of the collection efforts of creditors. In both cases 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. Upon 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 7 to 10 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, however, the Alaska Bar Association does provide a referral service to the public if you are uncertain as to whom you should contact regarding assistance in this area.

5. CRIMINAL LAW AND VIOLENCE AGAINST WOMEN

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.

Whether or not criminal charges are brought services are available. If you or someone you know is the victim of domestic violence or sexual assault, there are twenty-one 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.

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.

Specific crimes related to sexual assault, domestic violence, violation of a

protective order, and harassment are discussed in this chapter.

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 contained in this handbook.]*

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 our communities from criminal activity. Criminal cases always involve some type of crime; civil cases cover a wide range of subjects including protective orders (discussed below), 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.

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 the greatest single cause of injury to women in the United States.¹ 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.² By other estimates, four million American women experience a serious assault by a partner during an average 12-month period.³ Alaska has high rates of domestic violence and sexual assault compared with the rest of the United States. In 2002, the State of Alaska had the highest rate of reported forcible rape among the 50 states (79.4 per 100,000). Alaska's forcible rape rate is 144 percent higher than the rest of the United States.⁴

References:

¹ Rand, Michael, Chief Victimization

Statistics, U.S. Department of Justice, Bureau of Justice Statistics, "Serious Violent Crime Levels Declined Since 1993," PowerPoint Presentation on file with author (April 2004).

² U.S. Department of Justice, "Extent, Nature, and Consequences of Intimate Partner Violence, Research Report, Findings From the National Violence Against Women Survey," July 2000: iii.

³ American Psychological Association, "Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family," (1996): 10.

⁴ Rosay, André, "Forcible Rapes and Sexual Assaults in Anchorage," Alaska Justice Forum, University of Alaska Anchorage, Winter 2004: 1.

Use of gender specific language in this chapter

Domestic violence 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.¹ Statistics show that seventy-eight 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.² Other studies have shown that 95% of domestic violence is committed by men against women.

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

References:

¹ U.S. Department of Justice, Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends, March 1998.

² Center for Policy Research, Stalking in America, July 1997.

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 ranging from 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, sexually, or emotionally 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; and
- A parent, stepparent, grandparent, child or grandchild, aunt, uncle, cousin, second cousin or children of any of these persons.

(A more detailed definition of household member follows in this chapter.)

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 which 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 does the legal definition of sexual assault include?

Rape, or first degree sexual assault, is a serious felony which 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.]

A spouse can be prosecuted for first degree sexual assault (rape) or second degree sexual assault of his spouse. [AS 11.41.432(b)]. A boyfriend or acquaintance can be prosecuted for sexual assault commonly referred to as date rape.

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 prevent 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].

What protections are available to victims of domestic violence and sexual assault?

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.

What are protective orders?

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;
- 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 to go with you to your home to provide protection while you get personal possessions; and help you get the 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 which 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 (However, with the year long protective order, the provision prohibiting the perpetrator from threatening to commit or committing domestic violence, stalking, or harassment towards the victim remains in effect 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 which 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.

Who may obtain a domestic violence protective order?

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-grand parent, 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 step-parents and step-children); 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.

Is there a fee to obtain a protective order?

No.

What can a protective order do?

Each order has different types of protections that can be granted by the court. The order may:

- prohibit the perpetrator from threatening to commit or committing domestic violence, stalking, or harassment (this prohibition against domestic violence, stalking, and harassment is the only provision that can remain in effect indefinitely unless dissolved by further order of the court);
- prohibit the perpetrator from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner;
- remove and exclude the respondent from the residence of the victim regardless of ownership of the residence (a perpetrator can be removed and excluded from a shared residence regardless of whether his name is on the rental agreement or he has some type of ownership interest in the residence);
- direct the perpetrator to stay away from the residence, school or place of the victim's employment;
- prohibit the perpetrator from entering a propelled vehicle in possession of, or in use, by the victim;
- prohibit the perpetrator from using or possessing a deadly weapon or firearm;

- request that a peace officer accompany the victim to her address to ensure that she safely obtains possession of the residence, vehicle, or her personal items;
- award temporary custody of minor children to the victim;
- prohibit the perpetrator from consuming controlled substances;
- require the perpetrator to pay child support;
- require the perpetrator to reimburse the victim for medical expenses, counseling, shelter stay, and repair or replacement of damaged property;
- require the perpetrator to pay for costs and fees in obtaining the protective order; order the perpetrator to attend a batterers intervention program; and
- any other relief that the court determines is necessary to protect the petitioner or any household member from further violence.

Can a protective order establish permanent child custody, give me a divorce or settle property issues?

No. A protective order can not 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 protection 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.]*

Do I need an attorney to get a protective order?

No. Contact your local domestic violence/sexual program and/or court clerk's office for help in filing a protective order.

Will the protective order keep me safe?

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. *[A Sample Safety Planning Checklist is located at the end of the handbook.]*

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.

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 partner 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.

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 occur 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 1-7 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.

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 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;
- 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.” This pamphlet gives you general information about how to get your protective order enforced in a state other than the one that granted the order. It also gives you specific information about how to get your order enforced in Alaska.

How Do I Get My Domestic Violence 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 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 booklet.
- 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, and you may want to contact an attorney or an advocate from a domestic violence 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 Domestic Violence 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 re-located 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. There are other laws which govern child custody orders: the Uniform Child Custody Jurisdiction Act (UCCJA), the new Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Parental Kidnapping and 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 DOMESTIC VIOLENCE PROTECTIVE ORDERS & TRIBAL ORDERS ENFORCED IN ALASKA

Can the State Prosecute for a Violation of an Out-of-State or Tribal Order?

Under Alaska statute 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, trespass, etc. 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 protection 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?

1. Immediately call any local law enforcement agency or state trooper office if the abuser violated the order.
2. 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.
3. 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 in

contained in APSIN. However, it is still very important that you always have a copy of your filed order with you.

4. 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.

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% of stalking cases involve women stalked by former male partners.
- As many as 90% 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, e-mails 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.

STALKING PROTECTIVE ORDERS

There are three types of civil protective orders available to victims of stalking 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 Protective Order
- Ex Parte 20-Day Stalking Protective Order
- Regular Six-Month Stalking Protective Order

A stalking protective order may:

- (1) prohibit the respondent from threatening to commit or committing stalking;
- (2) 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
- (3) 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 victim could file for a stalking protective order if the stalker is a:

- Former friend
- Neighbor
- Classmate
- Co-worker
- Client or former client
- Or other category that does not fall within the definition of household member for a domestic violence protective order.

A stalking victim would need to fill out a domestic violence petition instead of a stalking protective order petition if the stalker is one of the following: spouse, former spouse, parent, grandparent, child, grandchild, brother, sister, first cousin, aunt, uncle, nephew, 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 for example a stepparent or stepchild. These all fall within the definition of household member in the domestic violence protective order statute.

What is Stalking?

To qualify as "stalking" a person's acts must meet all the following requirements: repeated acts of contact without the person's consent involving the person or a family member done knowingly and that place the person in fear of either their own death or physical injury or the death or physical injury of 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
- Placing an object on, or delivering an object to, property that you own, lease, or occupy

[AS 11.41.270(b)(3)]

Stalking Resources

Stalking Resource Center
www.ncvc.org/src

You can contact your local domestic violence or sexual assault program for stalking resources and help. *[See the Resource Directory for Assistance at the end of the Handbook]*

CYBERSTALKING

Stalking has now taken a turn into cyberspace on the information superhighway. Although there is no universally accepted definition of cyberstalking, the term is generally used to refer to the use of the Internet, e-mail, or other telecommunication technologies to harass or stalk another person.

Essentially, cyberstalking is an extension of the physical form of stalking. Cyberstalkers use a variety of techniques. They may initially use the Internet to identify and track their victims. They may then send unsolicited e-mail, 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). With newsgroups, the cyberstalker can create postings about the victim or start rumors which spread through the bulletin board system. Cyberstalkers may also set up a Web page(s) on the victim with personal or fictitious information or solicitations to readers. Another technique is to assume 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. More complex forms of harassment include mail bombs (mass messages that virtually shutdown the victim's e-mail system by clogging it), sending the victim computer viruses, or sending electronic junk mail (spamming). There is a clear difference between the annoyance of unsolicited e-mail 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.

SAFETY PLANNING

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 Resource Directory in Chapter 18 for a list of programs in Alaska.]*

Here are some safety tips for you:

Personal Safety

- Vary daily schedule and routes taken to work, school, stores.
- Accompany children to and from school or bus stops.
- Remove residential address and phone number from checks.
- Destroy discarded mail.
- Make sure telephone number is unlisted and unpublished.
- Learn about Caller ID and "block" telephone number from appearing on Caller ID systems.
- Use an answering machine to screen calls.
- 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.

- Do not give or verify personal information (such as home address or phone number) to anyone.

Home Security

- Keep doors and windows of home locked. Get an alarm system.
- Change the locks. Get dead-bolts.
- Keep lights and a radio or TV on at all times.
- Have a functioning smoke detector and fire extinguisher.
- Install adequate outdoor lighting.
- Tell trusted neighbors/apartment manager of your situation. Give them a photo or description of the stalker and any possible vehicles.
- Identify visitors before opening doors.

Workplace Security

- 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.

Vehicle Security

- 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 or fire station, or a busy shopping center.

You can also register with VINE (Victim Information and Notification Everyday). VINE is a computerized network that is supposed to automatically notify victims of crime when an offender is released from prison or jail, escapes or is transferred to another facility. You can call 1-800-247-9763 to find out the status of a prisoner by name or prisoner number. You can also register for notification with a specific prisoner. Although this may be a useful safety tool, do not rely exclusively on the accuracy of this information. There may be a delay in updated information getting entered into the system or timely notification.

CRIMES CONCERNING CHILDREN

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 which 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 Resource Directory for telephone numbers and addresses.]*

In 1983, the legislature made sexual assault against minors separate crimes from adult victims. There are four levels of sexual abuse of a minor; ranging from serious felonies to misdemeanors depending sometimes on the age of the victim and perpetrator, whether there was penetration, and whether the victim was the perpetrator's child or entrusted to the perpetrator by authority of law. [AS 11.41.434-440.]

Other crimes include incest when a person 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: 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.]

CRIMES CONCERNING CHILD CUSTODY

Every parent should know that interference with the custodial rights of another, even if the children are their natural children, may constitute a crime. [AS 11.41.320-330.] 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 to do so. *[See Chapter 14, Divorce, Dissolution, Child Custody & Child Support.]*

If no court orders have been entered regarding the children, a woman can

take the children with her when leaving a relationship. 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, unless a court has officially given custody of those children to someone else. [AS 11.41.300.]

If at all possible, a victim of domestic violence should not leave her children at home with the perpetrator. It is important to know that the police will not help a mother retrieve her children from the house if she has left them there. The police will not interfere with whoever has the children unless the court orders them to do so. A victim of domestic violence in this situation could obtain a protective order granting her temporary custody of the children and directing law enforcement to assist her in safely obtaining custody of the children.

With regard to visitation a victim should ask her attorney to arrange to have the court order provide that she will not have to be alone with her children's father if he picks them up to visit. For example, she could arrange pickups at a relative's home, a church, or a public place. Whenever possible, a third party should also be involved in making arrangements and transferring the children for visits, and if necessary in supervising visits. [See Chapter 14 for more information on available visitation

conditions.]

Perpetrators often use children as tools to get to the victim of domestic violence. For this reason it is important to safety plan with children before an unsupervised or supervised visitation with a perpetrator. If the perpetrator refuses to return the children, contact the police, your attorney, and/or an advocate. It is important to document all events that occur around visitation including when the children are not returned on time, missed visitations, or other issues that arise. Keep a journal with specific dates, times, and description of events.

COMPENSATION FOR VICTIMS OF VIOLENT CRIMES

Alaska has a Violent Crimes Compensation Board which 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 *Resource Directory for address and telephone number.*]

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 time frame.
- 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?

- Medical care for your injuries;
- Crime victim related counseling;
- Lost wages due to crime-related injuries (even if reimbursed through leave time at work);
- Loss of support for your dependents; and
- Funeral and burial costs if you are murdered up to \$7,000.

The Violent Crimes Compensation Board will not pay for:

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

FEDERAL CRIMINAL LAW

What is the federal law regarding domestic violence?

Violence Against Women Act and Gun Control Act

In 1994, Congress passed the Violence Against Women Act "VAWA", which recognized domestic violence as a national crime and allowed federal laws to help overburdened state and local criminal justice system. In 2000, Congress reauthorized the Violence Against Women Act and amended the federal domestic violence and stalking offenses. In 1994 and 1996, Congress passed changes to the Gun Control Act making it a federal crime in certain situations for domestic violence perpetrators to possess guns. The majority of domestic violence cases will continue to be handled by your state and local authorities. In some cases, however, the federal laws and the benefits gained from applying these laws may be the most appropriate course of action.

Who should I call to report a possible federal crime?

For a possible Gun Control Act

violation, call your local Alcohol, Tobacco and Firearms ("ATF") Office or local/state law enforcement agency. For a possible VAWA violation, call your local Federal Bureau of Investigation ("FBI") Office or local/state prosecutor's office. If you need additional assistance in accessing these agencies call your local domestic violence/sexual assault program listed in the back section of the handbook.

What are the federal crimes and penalties?

All federal domestic violence crimes are felonies.

SEC. 1107. AMENDMENTS TO DOMESTIC VIOLENCE AND STALKING OFFENSES

It is a federal crime under VAWA when:

- **TRAVEL OR CONDUCT OF OFFENDER:** A person who travels in interstate or foreign commerce or enters or leaves Indian country with the intent to kill, injure, harass, or intimidate a spouse or intimate partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner [18 U.S.C. § 2261];
- **CAUSING TRAVEL OF**

VICTIM: A person who causes a spouse or intimate partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse or intimate partner [18 U.S.C. § 2261];

- **INTERSTATE STALKING:** Whoever travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family of that person, or the spouse or intimate partner of that person; or
- with the intent-- (A) to kill or injure a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or (B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious

bodily injury to--

- (i) that person;
- (ii) a member of the immediate family of that person; or
- (iii) a spouse or intimate partner of that person, uses the mail or any facility of interstate or foreign commerce to engage in a course of conduct that places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii) [18 U.S.C. § 2261A];

- **INTERSTATE VIOLATION OF A PROTECTIVE ORDER:** A person who travels in interstate or foreign commerce, or enters or leaves Indian country, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct [18 U.S.C. § 2262];
- A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress,

or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued. [18 U.S.C. § 2262]

What does bodily injury mean?

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

What does course of conduct mean?

The term 'course of conduct' means a pattern of conduct composed of two or more acts, evidencing a continuity of purpose. [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. [18 U.S.C § 2266]

What qualifies as a protective order under the federal domestic violence and stalking laws?

The term 'protection order' includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection. [18 U.S.C. § 2266]

What does the term spouse or intimate partner include?

The term 'spouse or intimate partner' includes--
(A) for purposes of--
(i) sections other than 2261A, a spouse or former spouse of the abuser, a person who shares a child in common with the

abuser, and a person who cohabits or has cohabited as a spouse with the abuser; and

(ii) section 2261A, a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; and

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides. [18 U.S.C. § 2266]

What does the term travel in interstate or foreign commerce mean?

The term 'travel in interstate or foreign commerce' does not include travel from one State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member. [18 U.S.C. § 2266]

GUN CONTROL ACT

It is a federal crime under the Gun Control Act:

- to possess a firearm and/or ammunition while subject to a qualifying Protection Order.

[18 U.S.C. § 922(g)(8).]

- 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 under VAWA, Sections 2261, 2261A and 2262, has a maximum prison term of five years to life, depending on the seriousness of the bodily injury caused by the defendant.

In a VAWA case, the court must order restitution to pay the victim the full amount of losses. These losses include costs for medical or psychological care, physical therapy, transportation, temporary housing, child care expenses, lost income, attorney's fees, costs incurred in obtaining a civil protection order and any other losses suffered by the victim as a result of the offense.

In a Gun Control Act case, the Court may order restitution and you should keep a record of all expenses caused by the domestic violence crime.

For further information contact:

Audrey Renschen
(907) 271-5071
United States Attorney

Fed. Bldg. & Cthse., 222 W. 7th Ave., #9, Rm. 253
Anchorage, AK 99513-7567

What is a qualifying misdemeanor crime of domestic violence?

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, after it has been investigated by federal agents, and determine whether the prior domestic violence misdemeanor conviction qualifies under Section 922(g)(9).

What is a qualifying protection order?

Possession of a firearm and/or ammunition while subject to a protection order, is a federal crime if the protection order “qualifies” under Section 922(g) (8). Generally, a protection order will qualify under federal law if actual notice and an opportunity to be heard was given to the person against whom the court’s order was entered and if the

order forbids future threats of violence. The order must include either: (a) a finding that such person represents a credible threat to the physical safety of the “intimate partner or child” or (b) an explicit provision prohibiting such person from using, attempting to use, or threatening to use physical force against the “intimate partner or child” that would reasonably be expected to cause bodily injury. You should keep copies of all orders so that federal agents can include the orders in their federal investigation.

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.

PROTECTIONS FOR BATTERED IMMIGRANT SPOUSES

[See Chapter 16, Immigration.]

CONFIDENTIALITY FOR VICTIMS OF DOMESTIC VIOLENCE & SEXUAL ASSAULT

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

important for you to keep your location confidential. Many victims of domestic violence/sexual assault 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 the batterer when they file for a protection 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. *[Please 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. *[Please see Chapter 8 on Names, Name Changes, Social Security Number, and Birth Certificates for more*

information.]

VICTIMS' RIGHTS

A federal domestic violence victim 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.

**THE ALASKA OFFICE OF
VICTIMS RIGHTS:**

What is the Alaska Office of Victims' Rights?

In 2001 the Alaska legislature passed a law 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. The 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, which may be found in Alaska statute (AS) 24.65.010-.250, went into effect on July 1, 2002.

The Alaska Office of Victims Rights may be contacted at:

State of Alaska Office of Victims' Rights
1007 West 3rd Avenue, Suite 205
Anchorage, Alaska 99501-1936

Phone: 907-272-2620
Toll free within Alaska: 866-274-2620
Fax: 907-272-2640

<http://www.officeofvictimsrights.legis.state.ak.us>

**JURISDICTION AND DUTIES OF
THE OVR**

**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, the 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.

Investigation Of Complaints By Victims

If you are a victim of crime you have a right to file a written complaint with the 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. The 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 the OVR may:

- (1) Make inquiries and obtain information considered necessary from justice agencies;
- (2) Hold private hearings; and
- (3) 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 the OVR are police reports, witness statements, lab reports, photos, taped statements, grand jury proceedings and exhibits, officers notes, scene diagrams, dispatch records, autopsy reports, pre-sentence reports, access to all physical evidence, and more. All information and/or records obtained during any investigation, including information and records subpoenaed by the OVR, are deemed confidential. If you would like assistance from the OVR, please fill out a complaint form on their website at <http://www.officeofvictimsrights.legis.state.ak.us> or call the office at 907-272-2620 or toll free in state at 1-866-274-2620.

The OVR Does Not Assist Criminal Defendants:

It is the policy of the OVR to not accept complaints from criminal defendants for investigation regarding events that are connected with any prosecution they were involved with, 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 3 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.

All Matters That Come Before The OVR Are Confidential:

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

WHAT ARE MY RIGHTS AS A CRIME VICTIM?

As a crime victim you have both constitutional and statutory rights. Your constitutional rights are those contained in Alaska's constitution. Statutory rights are those created by the Alaska legislature.

Constitutional Rights

Article 1 Section 24 of Alaska's constitution guarantees crime victims the following constitutional rights:

1. The right to be reasonably protected from the accused through the imposition of appropriate bail or

conditions of release by the court;

2. The right to confer with the prosecution;
3. The right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process;
4. The right to timely disposition of the case following the arrest of the accused;
5. The right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present;
6. The right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered;
7. The right to restitution from the accused; and
8. The right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.

Statutory Rights

AS 12.61.010. Rights of crime victims.

(a) Victims of crimes have the following rights:

(1) the right to be present during any proceeding in

(A) the prosecution and sentencing of a defendant if the defendant has the right to be present, including being present during testimony even if the victim is likely to be called as a witness;

(B) the adjudication of a minor as provided under AS 47.12.110;

(2) the right to be notified by the appropriate law enforcement agency or the prosecuting attorney of the date of trial, sentencing, including a proceeding before a three-judge panel under AS 12.55.175, an appeal, and any hearing in which the defendant's release from custody is considered;

(3) the right to be notified that a sentencing hearing or a court proceeding to which the victim has been subpoenaed will not occur as scheduled;

(4) the right to receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts and to be provided with information

as to the protection available;

(5) the right to be notified of the procedure to be followed to apply for and receive any compensation under AS 18.67;

(6) at the request of the prosecution or a law enforcement agency, the right to cooperate with the criminal justice process without loss of pay and other employee benefits except as authorized by AS 12.61.017 and without interference in any form by the employer of the victim of crime;

(7) the right to obtain access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having medical assistance administered; however, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance;

(8) the right to make a written or oral statement for use in preparation of the presentence report of a felony defendant;

(9) the right to appear personally at the defendant's sentencing hearing to

present a written statement and to give sworn testimony or an unsworn oral presentation;

(10) the right to be informed by the prosecuting attorney, at any time after the defendant's conviction, about the complete record of the defendant's convictions;

(11) the right to notice under AS 12.47.095 concerning the status of the defendant found not guilty by reason of insanity;

(12) the right to notice under AS 33.16.087 of a hearing concerning special medical parole of the defendant;

(13) the right to notice under AS 33.16.120 of a hearing to consider or review discretionary parole of the defendant; and

(14) the right to notice under AS 33.30.013 of the release or escape of the defendant.

(b) Law enforcement agencies, prosecutors, corrections agencies, social services agencies, and the courts shall make every reasonable effort to ensure that victims of crimes have the rights set out in (a) of this section. However, a failure to ensure these rights does not give rise to a separate cause of action against law enforcement agencies, other

agencies of the state, or a political subdivision of the state.

DUTIES OF PROSECUTING ATTORNEY WHEN THERE IS A VICTIM OF A FELONY OR A CRIME INVOLVING DOMESTIC VIOLENCE

If a victim of a felony or a crime involving domestic violence requests, the prosecuting attorney shall make a reasonable effort to:

(1) confer with the person against whom the offense has been perpetrated about that person's testimony before the defendant's trial;

(2) in a manner reasonably calculated to give prompt actual notice, notify the victim

(A) of the defendant's conviction and the crimes of which the defendant was convicted;

(B) of the victim's right in a case that is a felony to make a written or oral statement for use in preparation of the defendant's presentence report, and of the victim's right to appear personally at the defendant's sentencing hearing to present a written statement and to give sworn testimony or an unsworn oral presentation;

(C) of the address and telephone number of the office that will prepare the presentence report; and

(D) of the time and place of the sentencing proceeding;

(4) the recommendation of the victim for an appropriate sentence. [AS 12.61.015.]

(3) notify the victim in writing of the final disposition of the case within 30 days after final disposition of the case; and

(4) confer with the victim of a crime involving domestic violence concerning a proposed plea agreement before entering into an agreement.

The notice given under this section must inform the victim that the statement, sworn testimony, or unsworn oral presentation of the victim may contain any relevant information including:

(1) an explanation of the nature and extent of physical, psychological, or emotional harm or trauma suffered by the victim;

(2) an explanation of the extent of economic loss or property damage suffered by the victim;

(3) an opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage; and

6. 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, please feel free to contact a domestic violence and sexual assault program in your region. Their contact information is listed on the last page of this handbook.

What is sexual assault?

Sexual assault is any type of unwanted sexual activity that can range from inappropriate and unwanted touching to sexual penetration. A sexual assault may include the use of physical force, threats or intimidation and often includes coercion and manipulation. Sexual assaults can include rape or attempted rape, child molestation, voyeurism, exhibitionism, incest and sexual harassment. Sexual assault is always a crime.

What is the difference between sexual assault and sexual harassment?

Sexual assault usually involves some physical contact. 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. Sexual assault is physical sexual contact. [See Chapter 3 for more information on Workplace Sexual Harassment Laws.]

What does the legal definition of sexual assault include?

Someone can be charged with sexual assault in the first degree, second degree or third degree depending on the severity of the offense. All three charges are felonies. The severity of the offense is judged upon several factors including but not limited to: whether the two parties had a special relationship (i.e. a

health care provider and a patient or a teacher and a student); whether a weapon was used in the assault; and the severity of the sexual contact. Below are the legal definitions of sexual assault:

Rape, or first degree sexual assault, is a serious felony which 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]

Sexual assault is a crime regardless of who commits the act. Often, someone is sexually assaulted by someone they know and in a place that they know such as their car or their home. According to the American Medical Association, 80% of sexual assault is committed by friends, acquaintance, intimates and family members. **Acquaintance rape**, when a woman is sexually violated by someone she knows, and **marital rape**, when a woman is raped by her husband, are both very common occurrences and are both crimes. Marital rape is so common that 1 in 7 women will be sexually assaulted by their husband. A

spouse can be prosecuted for first degree sexual assault (rape) or second degree sexual assault of his spouse. [AS 11.41.432(b)] A boyfriend or acquaintance can be prosecuted for sexual assault commonly referred to as date rape.

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 prevent 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

Sexual abuse of a minor is a felony offense. Someone can be charged with sexual abuse of a minor in the first, second and third degrees. Sexual abuse of a minor in the fourth degree is a

misdemeanor offense. The degree to which someone is charged depends on the severity of the abuse. Sexual abuse of a minor is committed in various ways including but not limited to:

- when someone over the age of 16 engages in sexual penetration with someone who is under the age of 13 (sexual abuse of a minor (SAM) in the first degree [AS 11.41.434];
- when someone in a position of authority over the victim engages in sexual penetration (SAM in the first) or sexual contact (SAM in the second) with someone under the age of 16. [AS 11.41.434 and AS 11.41.436]; or
- when a parent, stepparent, adopted parent or legal guardian engages in sexual penetration of their child under the age of 16 (SAM in the first) or engages in sexual contact if their child is under the age of 18 (SAM in the second). [AS 11.41.434 and AS 11.41.436]

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%

of sexual assault victims are female and 9% of victims are male. However, 99% 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 which you could call. These numbers are listed on the last page of this handbook.

You also have the option of going to the hospital. At the hospital they will ensure that your physical injuries are treated, protect against sexual transmitted diseases, provide the option of receiving emergency contraception to protect against pregnancy and to 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. You can also report the crime to law enforcement. This is entirely your decision.

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 an Order of Protection against their perpetrator. For information on how to get a protective order, please refer to the chapter on Criminal Law and Violence Against Women in this handbook.

SART (SEXUAL ASSAULT RESPONSE TEAM)

Many communities in Alaska have SART (Sexual Assault Response Team). 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 SART, many victims were forced to wait at the emergency room for several hours and were required to tell their story multiple times to various agencies. With SART, the victim is seen right away at the hospital and only has to tell their story once.

The police officer is present at the beginning of a SART exam and takes the

victim's statement and then investigates the crime. 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 a 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 do 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 72 hours after the assault has taken place. After 72 hours, it is unlikely that significant forensic evidence can be gathered but a police report can still be made.

SART is not available in all communities in Alaska although similar services are available to victims of sexual assault even if there is not SART. The SART exam is free of charge to the

victim. 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.

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
- of the address and telephone number of the office doing the pre-sentence report.

Notification of the right to make a statement for the inclusion in a pre-

sentence 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 pre-sentence report before the sentencing hearing.

- 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 or by calling the program's toll-free number at 1-800-764-3040.

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 <http://www.dps.state.ak.us/nSorcr/asp>.

All sex offenders and child kidnappers who are present in the state of Alaska must register with the state within 30 days of release from an in-state correction facility, by the next working day after a conviction if the person was not incarcerated at the time of conviction, or by the next working day of being physically present in the state of Alaska. Once a person has been convicted of a sex offense, they must register with the state for the rest of their lives.

SEXUAL ASSAULT AND HIV/STDS

A victim of sexual assault has the right to be tested for any number of sexually transmitted diseases (STDs) which 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 RAPE

The use of "date rape" drugs have increased over the years. Drugs such as Rohypnol (referred to as "Roofies") 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 and so someone will have no idea that the drug has been slipped in their drink. Being given one of these "date rape" 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.

Special thanks to Standing Together Against Rape (STAR) for portions of this chapter that were found in *Sexual Assault in Alaska: A Guide for Service Providers and Other Professionals*. You can reach STAR at (907) 276-7279 and their crisis line is (907) 276-7273.

7. 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 (over \$1,500,000 in 2004 & 2005), 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 which 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 (currently a taxable estate in excess of \$1,500,000) 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 he/she 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; however, 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 (i.e. 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 should also 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/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 may also consider the wishes of children over fourteen 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 can also 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 step-parent, 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 eighteen 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 3/4 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 1/2 of the remainder, and your joint children get the rest. If he has any

children from a prior marriage, you receive \$100,000 plus 1/2 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 1/3 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 1/3 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 if you own native stock that you check your beneficiary designations.

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 are also 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" means different things in different contexts. Your probate estate consists of everything you own at the time of your death that does not pass to someone else automatically because of how you owned it. For example, you may have a home owned jointly (as "tenants by the entirety") with your husband; when you die, that house will belong to your husband automatically. However, if the house is only in your name or if you own it with someone (including your husband) as tenants in common, it will have to go through the court process so ownership can be changed.

Your Will only controls assets that pass through probate. There are many assets which 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 \$1,500,000 is taxable at a rate beginning at and increasing to 48% 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 \$1,000,000. No one knows what will really happen between now and 2011, but for estates worth more than \$1,000,000 this is an issue to keep in mind.

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 to use 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 yourself in the event you become disabled. You should carefully read, understand, and consult an attorney before signing a power of attorney.

Effective January 1, 2005, 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 can also 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. Effective January 1, 2005, this Living Will is a part of the Health Care Advance 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.

PLANNING FOR DISABLED FAMILY MEMBERS

Estate planning for disabled children or adults involves special concerns. Receiving money or property by Will or

Trust (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 which would disqualify the beneficiary for benefits such as Medicaid but which 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 attorney are all distinct legal acts which have special statutory and legal effects. It is recommended that you see an attorney to discuss any and all aspects of these legal documents.

**8. 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, however, 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 can not 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 office 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. 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 that before changing your social security number to ensure that there is no record of the old name on the new social security number.

Please contact your local social security office listed below for information and assistance on changing your social security number:

Juneau Office
Federal Building
709 West 9th Room 231
Juneau, AK 99801
(907) 586-7070

Anchorage Office
222 West 8th Avenue, Room A-11
Anchorage, AK 99513
(907) 271-4455

Fairbanks Office
101 12th Avenue
Fairbanks, AK 99701
(907) 456-0391

Ketchikan Office
Commodore Building
109 Main Street
Ketchikan, AK 99901
(907) 225-5200

9. 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 s/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 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 can not 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 in-patient care may be transferred to out-patient 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 also 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 also 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 the person: (1) is an alcoholic or drug abuser; and (2) 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 thirty days. At the conclusion of that thirty 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).

The privilege may however be waived or given up: (1) when the communication is information the doctor or therapist is required by law to report to the authorities, including suspected or known child abuse; (2) 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; (3) when the communications are relevant in proceedings for hospitalization/commitment of the patient; (4) when the patient sues the doctor and the communications are relevant to the issues presented; and (5) 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 disclosure. [ARE 504.]

10. 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.

The main advantage of adoption to the adoptive parents and child is permanency. You may have a foster child living in your home whom you treat as your own; but if you die in an accident, Social Security or Worker's Compensation Benefits may not be immediately available to the child. Adoption protects children by giving them inheritance rights.

You should not assume that a child will inherit from you just because the child lives with you. You can, of course, leave a Will naming anyone as your beneficiary, but this would not bind Social Security or other employment death benefits.

Adoption is not limited to children. An older woman living with a younger woman might want to adopt her friend in order to provide for her in the event of her death. [AS 25.23.010.] Single persons, step-parents, grandparents or strangers may adopt. [AS 25.23.010.]

Adoption of Native children may occur under a tribe's customary rules. The State of Alaska has regulations [7 AAC 05.700(b).] so that new birth certificates

may be issued for such adoptions. People who have adopted according to tribal custom should contact their tribal government or local Native non-profit corporation for assistance.

ADOPTION PROCEDURES

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 name, place and date of birth and any property owned by the person to be adopted; the date of placement of a minor and the person effecting the placement; the name, age, place and duration of residence of the petitioner(s); the marital status of the petitioner(s); that the petitioner has facilities and resources suitable to care for any minor; the name (s) of persons whose consent to adoption is required and facts that excuse any lack of consent; a certified copy of the birth record of the person to be adopted; and

any consents required by statute. [AS 25.23.080.]

Except in the case of step-parent 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 or 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 may also 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 10 years old or has a spouse, the child or spouse must also consent. [AS 25.23.040.] Consent by the Department of Health and Social Services will likely also be required unless the adoption is a step-parent 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 10 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 can not 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 [25 U.S.C. § 1901-1963] [also referred to as ICWA] is a federal statute which governs the adoption of Native American children. 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, in the absence of good cause to the contrary, to a placement with:

- (1) a member of the child's extended family;
- (2) other members of the Indian child's tribe;
- (3) 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 knowledgeable in the field of Federal Indian Law.

11. 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?

Planned Parenthood of Alaska 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;
- 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 & cryotherapy;
- Menopausal services; and
- Many more services.

Planned Parenthood of Alaska

You can call 1-800-230-PLAN for the clinic nearest you or go online to www.plannedparenthoodalaska.org. You can also call any of the following centers to find out more information on the services available in Alaska:

Anchorage Center

4001 Lake Otis Parkway
Anchorage, AK 99508
PHONE (907) 563-2229
FAX (907) 563-7419

Fairbanks Center

1867 Airport Way, Suite 160B
Fairbanks, AK 99701
PHONE (907) 455-7285
FAX (907) 455-7280

Soldotna Center

130 East Redoubt Avenue
Soldotna, AK 99669
PHONE (907) 262-2622
FAX (907) 262-8564

Sitka Center

514 Lake St., Suite B
Sitka, Alaska 99835
PHONE (907) 747-3883
FAX (907) 747-8282

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. Planned Parenthood offers services on a sliding scale basis according to income and family size.

SEXUALLY TRANSMITTED DISEASES (STDs)

There are two types of sexual transmitted diseases (STDs), **bacterial infections** and **viral infections**. Bacterial infections can be treated and cured while 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 and C, herpes simplex I and 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, but left untreated can have negative effects on your health and your reproductive health such as causing cancer or sterility. Other STDs, such as HIV/AIDS, may shorten the length of 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, Health Aides can provide prescription birth control materials. (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 planned parenthood, 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 and even with withdrawal, 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 which are both available at pharmacies. The male condom is 85-98 percent effective and the female condom is 79-95 percent effective and 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 84-94 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 which is 92-99 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 97-99 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. Finally, there is a **intrauterine device (IUD)** which is inserted in the uterus by a physician and prevents fertilization and is 98-99 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.

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), often referred to as the morning after pill, which is the equivalent of a high dose of hormones found in birth control. Emergency contraception pills can reduce the risk of pregnancy for up to 120 hours after sexual intercourse.

The pills are most effective, however, 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 5 to 7 days of unprotected sex.

Planned Parenthood can provide emergency contraception prescriptions by phone for patients who are unable to get to a clinic within the 72 hour treatment time frame. Public Health Clinics can also provide emergency contraception. To find out more information you can call your health care provider, Planned Parenthood, or the following number for additional public health care providers in your area.

1-888-NOT-2-LATE

**Emergency Contraception Hot Line
(Information & Referrals)**

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.

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.

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, the appropriate one depends 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 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 can not 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, in Alaska. 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 the fall of 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. Planned Parenthood has a Choice Assistance 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. To find out more about this fund, call (907) 770-9703 and ask for the Choice Assistance Loan Fund Administrator. There are also funds available for travel

support for Alaska women to travel to Seattle to obtain an abortion. The Washington chapter of NARAL (National Abortion and Reproductive Rights Action League) provides housing, transportation and logistical support to Alaskan women to travel to Seattle for an abortion. You can reach NARAL at (206) 624-1990. For more information on other abortion funds, visit the National Network of Abortion Funds website at <http://www.nnaf.org>.

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 can not 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.

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 try to make sure that you are not being pressured 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 listed in this chapter.

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 thirty 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.

What types of financial assistance is available 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 WIC which provides nutritional assistance to women, infants

and children. Information about the WIC program in your area is available through any public clinic or hospital. [See *Resource Directory for more information.*]

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 which 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.

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.]

Special thanks to Rachel Johnson with the ANDVSA Legal Advocacy Project for updating this chapter. Also 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.

The national ACLU's website is www.aclu.org. The Alaska Civil Liberties Union can be contacted regarding legal matters of reproductive choice at (907) 276-2258 or P.O. Box 201844, Anchorage, AK 99520-1844.

12. 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 - Marriage.]

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/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/local effort to collect child support from parents who are legally obligated to pay. *[See Chapter 14, Divorce, Dissolution, Child Custody, and 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) which 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 which 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 or non-emergency major medical care. [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).] However, the new child protection law that went into effect on September 16, 1998, provides for time limited services.

That means that if the state has made reasonable efforts to reunify the family, but the parental conduct has not been remedied after 15 months the state does not have to continue to provide services. For Alaska Native children 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 in the Department of Health and Human Services is responsible for investigating child abuse. You can contact them by calling, toll free: 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 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 also Chapter 10 on Adoption.*]

ILLEGITIMATE CHILDREN

A child is illegitimate if the parents are unmarried at the time of birth. But a child is legitimized if the parents marry sometime after the birth or if the father admits his paternity in writing. 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. A child can also be legitimized by a court in a paternity action. [AS 25.20.050(a).]

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 which shows the child as legitimate. [AS 25.20.050(c).]

Even if the child is not formally legitimized but 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 worker's 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 may also 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 may otherwise be difficult to receive benefits from the father if the children were illegitimate and 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 and 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 can not 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.]

13. 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:

- (1) apply for a marriage license, and
- (2) 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 Social Security. 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 which 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 which 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 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.

While Alaska courts have not granted property rights to those who have not had a conventional marriage solely based on the fact of a romantic relationship, property rights can arise from contract, formation of a partnership or joint business venture, or equitable trust principles.

What is a contract?

A contract is an oral or written agreement in which both parties agree to exchange something of value. Before a contract can be enforced, the court must find there was agreement as to all essential terms of the agreement. If you and your partner intend to share your property, you should put that agreement in writing, specifying the promises each person has made as consideration for the agreement. Sex should not be included in or related to any such contract, as a contract for sexual favors is

unenforceable. However, an agreement to pool resources for a common benefit (such as jointly contributing funds to purchase of specific property) or to share in subsequently acquired property may be enforceable as a contract.

What is a partnership?

A business partnership is defined as "an association of two or more persons to carry on as co-owners of a business for profit." [AS 32.05.010.] "Association" requires the existence of an agreement to combine the spouses' property, money, effects, skill, and knowledge to carry out a business enterprise. "Co-ownership" is the existence of a right in each partner to exercise authority in the management of the business. Finally, the business partners must be engaged in a "business."

Domestic partnerships are not all business partnerships. However, where domestic partners jointly work toward a common business goal (such as each contributing to a commercial fishing enterprise or family-run business), equitable distribution of the partnership assets must occur when the partnership ends, regardless of whose name the property might be held in. While a business partnership can be implied from the conduct or words of the parties, it is advisable to have a formal partnership agreement prepared that is in conformity with the Alaska Partnership Act. [AS 32.05.010 et seq.]

One problem with partnerships is that you can become liable for expenses or

debts made by the other partner on behalf of the partnership. [AS 32.05.080-100.] Thus, unless you are prepared to share profits and losses from any business partnership arrangement with your partner, you should exercise caution in entering a joint business enterprise.

What is Implied Contract, Constructive Trust and Unjust Enrichment?

While the Alaska Supreme Court has stated that a "marriage-like" relationship may not in itself justify treating the breakup of the relationship the same as a marital divorce case [*Batey v. Batey*, 933 P.2d 551 (Alaska 1997)], other laws may prevent unfair distribution of assets between domestic partners when their relationship ends. For example, if two people buy or improve property together (by pooling money or pooling money and labor or other services), but legal title to the property is only in one name, both people probably have some legal interest in the property.

Unjust enrichment is a broad equitable concept that allows a court to order one person to pay another in money, land or possessions where the other person has performed services beneficial to or at the request of the other, satisfied the debt of the other, or in any way added to the other's advance. [*Sparks v. Gustafson*, 750 P.2d 338 (Alaska 1988).]

A *constructive trust* may also be imposed on money, land or possessions where the person in possession of the

property would be unfairly enriched if permitted to keep that property. For example, if one domestic partner contributes money or property or services to the acquisition of property, a constructive or resulting trust can be imposed on that property at least to the extent of the contribution made.

Finally, an *implied contract* can arise from acts and conduct of the parties that show mutual intent and agreement to treat their property in a given way. For example, if you provided household or child-rearing duties while your partner earned wages with the mutual unwritten understanding that your assets would be shared, at your separation you may have a claim for reimbursement or a portion of the property based on an implied contract.

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 and 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 insure 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.

14. 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. The laws may change, and in the subjects covered in this chapter they 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/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 2 for more information on finding an attorney.]

Usually, you will have a first interview with an attorney before he/she will take your case. There is sometimes no fee for this interview, but you should check this out 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 twenty 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 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 Resource Directory at the end of this Handbook]*

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; if a domestic violence criminal complaint has been filed; if there is a minor child; if there is evidence that one party committed a crime involving domestic violence during the marriage; if a protective order has been filed in this or another state; or if 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 1 for 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, Marriage and Domestic Partnerships.]*

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, once you are seriously considering a divorce you have interests separate from his and should be represented separately. This is vital. Even if you decide eventually 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?

Currently 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
- 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:
 - ⇒ providing for the freedom of each spouse from the control of the other;
 - ⇒ for a civil protective order under AS 18.66.100-18.66.180 *[See Chapter 5 for more information on civil protective orders];*
 - ⇒ for an order directing one spouse to vacate the marital residence or home of the other spouse;
 - ⇒ restraining a spouse from communicating directly or indirectly with the other spouse;
 - ⇒ restraining a spouse from entering a propelled vehicle in the possession of or occupied by the other spouse; and
 - ⇒ 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 which 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 section later in this chapter, regarding whether mediation is mandatory in Alaska, 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% of the population in the U.S., they account for 75% 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 the 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, or series of conferences, as determined by the mediator. 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 most states including Alaska, 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 although 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
- 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, which 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 8 on Names.]

ALIMONY

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 or the woman is past middle age, unemployable, 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 their 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.]

TAX CONSEQUENCES - 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.]

ATTORNEY FEES

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% of adjusted income for one child, 27% for two children, 33% for three children, and an extra 3% for each additional child.

If the parent has an adjusted annual income of over \$84,000 the court cannot award more than the parent would pay based on a \$84,000 adjusted annual income, unless it is just and proper, taking into account the needs of the children and their standards of living. Parents whose gross incomes are below poverty level must still pay minimal child support which is \$50 per month.

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% 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% 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:

- (1) child support guidelines were adopted or significantly amended after the existing support order,
- (2) the income of the obligor changes so that the support order is 15 percent higher or lower than the present support order, or
- (3) 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 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 Enforcement 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, Permanent Fund Dividend Division and other places the paying parent may have income or assets.
- Collect and mail out payments.
- 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, the Child Support Enforcement Division 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 Child Support Enforcement Division 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.] *Also, see Chapter 15 "Good Cause Exception" under 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 5 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 (toll free in Alaska, 1-800-478-3300 or 1-907-269-6900 in Anchorage). 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. The withholding order is the required method of ensuring timely payment of support.

It is not punitive, but the federal required method, much like IRS/Tax Withholding. 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 which 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 which 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 Resource Directory for numbers and locations.]* You can also request an application by mail/e-mail 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% 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% of the time).

The idea of joint legal or physical custody requires the parents to work together so 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:

- 1) the physical, emotional, mental, religious, and social needs of the child;
- 2) the capability and desire of each parent to meet these needs;
- 3) the child's preference;
- 4) the love and affection existing between the child and each parent;
- 5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- 6) 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;

- 7) any evidence of domestic violence, child abuse or child neglect in the proposed custodial household or a history of domestic violence between the parents;
- 8) evidence of drug abuse by either parent or any other member of the household which may affect the physical or emotional well-being of the child;
- 9) 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 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, then 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 which 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
- 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 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 will 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 evening during the week he was not going to have them on the weekend, alternate holidays, (i.e., Thanksgiving in even years and Christmas in odd years, Spring Break in even years, etc.), and one-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

It is a crime in Alaska to interfere with the custody of children. [AS 11.41.320-

330.] 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. Therefore, if the state or your spouse has legal custody of your child, it is a crime (involving potential fine and jail) for you to attempt to take the child from their custody without a court order. When the parents share joint custody, even without a court order, it is also a crime for one parent to take custody of the child in a way that defeats the rights of the other joint custodian. [*Stoother v. State*, 891 P.2d 214 (Alaska 1995).]

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 \$200.00 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:

- (1) the transfer of the child for visitation must occur in a protected setting;
- (2) visitation shall be supervised by another person or agency and under specified conditions as ordered by the court;
- (3) the perpetrator shall attend and complete, to the satisfaction of the court, a program for the rehabilitation of perpetrators of domestic violence;
- (4) the perpetrator shall abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours before visitation;
- (5) the perpetrator shall pay costs of supervised visitation as set by the court;
- (6) the prohibition of overnight visitation;
- (7) the perpetrator shall post a bond to the court for the return and safety of the child; and

- (8) 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) than 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) which 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.

15. 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 Veterans' Administration, 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. For more information, contact the Federal Information Center at (800) 729-8003.

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
- 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 who are village residents 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:

1. to receive an application form when

- you ask for it;
2. to 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 in your first month of assistance you will only get benefits from the date you file your application, rather than for the full month);
 3. to have a face-to-face interview;
 4. to receive a written notice telling you if you are eligible (time limits for how soon these notices must get to you vary by program);
 5. to have your benefits on the way within 30 days for most programs (emergency food stamps should be paid within seven (7) calendar days).
 6. to receive fair and equal treatment regardless of age, sex, race, color, handicap, religion, national origin, or political belief;
 7. to be notified in writing in advance of any changes in your benefits, however there may be instances when notice arrives after the benefit change.
 8. to 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.
 9. to 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. During the hearing 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.

Any time you are dissatisfied with an action in your case. You should request a hearing as soon as possible. Generally, you must ask for a hearing within thirty (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 timeframes described in the notice. If you decide to keep on 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

Food Stamps

The Food Stamp Program provides low-income households benefits which 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 may also 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 Resource Directory.*]

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.

Alaska Temporary Assistance Program (ATAP)

The Alaska Temporary Assistance Program 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% 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 which 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:
 1. Endanger the safety of the adult victim and/or dependent children;
 2. Interfere with the ability of the victim to escape domestic violence;or

3. 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:

- 1) 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% of the Federal Poverty Limit for Alaska.
- 2) The income limit for uninsured children and pregnant women was frozen at 175% of the Federal Poverty Limit for Alaska in 2003.
- 3) "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); and
- 4) 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 *Resource Directory*.]

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% state funded program which provides assistance to three categories of people:

- 1) the elderly, (those who are 65 or older);
- 2) the blind; and
- 3) 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. Call your local office.

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.

16. IMMIGRATION

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 batterers 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 (i.e. passport, ID cards, health care card, etc.);
- 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 step-children, 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.

For more information or assistance with your legal status or obtaining a domestic violence protective order if you are a victim of a crime contact the:

Immigration and Refugee Services Program
Catholic Social Services/Anchorage
(907) 276-5590
(907) 258-1091 (fax)
3710 East 20th
Anchorage, AK 99508

Can an immigrant battered woman obtain a protective order?

Yes. You do not need to be a citizen or legal resident to obtain a protection order. You will not be deported if you seek a protection 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 Immigration & Refugee Services

program immediately.

For a complete list of domestic violence programs in Alaska see the Resource Directory contained in Chapter 18 of this booklet.

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.

WHAT YOU SHOULD KNOW ABOUT NATIONAL ORIGIN DISCRIMINATION.

Immigrant women are protected from employment discrimination by laws enforced by the Equal Employment Opportunity Commission (EEOC). For more information about the EEOC please refer to Chapter 3 of this booklet.

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. 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 EEOC and the Office of Special Counsel provides for the EEOC to refer to the OSC charges filed with the EEOC that allege IRCA violations. EEOC forwards these complaints to OSC in Washington, D.C. for investigation.

Office of Special Council for Immigration Related Unfair Employment Practices:

PO Box 65490

Washington, D.C. 20035-5490

17. GLOSSARY

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 or 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.

FY 2000: fiscal year 2000; in Alaska, from July 1, 2000, to June 30, 2001. State agencies receive their budgets and often issue reports to cover a fiscal year.

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 please 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.

18. 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).

<p><u>CHILD HEALTH & WELFARE</u></p> <p>Office of Children's Services <i>Statewide Reports of Child Abuse or Neglect:</i> <i>1-800-478-4444</i> <i>Anchorage: (907) 269-4000</i></p> <p><i>Director's Office</i> PO Box 110630 Juneau, AK 99811-0630 465-3191 office 465-3397 fax</p> <p><i>Anchorage Regional and Field Office</i> 550 West 8th Ave. Anchorage, AK 99501 269-4000 office 269-4001 fax</p> <p><i>South Central</i> 695 E. Parks Hwy. Unit 3 Wasilla, AK 99654 357-9780 office 357-9763 fax</p>	<p><i>Southeast Regional Office</i> Vintage Park, 3025 Clinton Dr. Juneau, AK 99801 465-1650 office 465-1669 fax</p> <p><i>Northern Regional Office</i> 751 Old Richardson Hwy., #300 Fairbanks, AK 99701 451-2650 office 451-2616fax</p> <p>Healthy Alaskans Information Line <i>A Statewide Referral Service for Health & Human Services in Alaska</i> 1-800-478-2221</p> <p><u>CHILD SUPPORT SERVICES</u></p> <p>Child Support Services Division Alaska Department of Revenue 550 W. 7th Avenue, Suite 310 Anchorage, AK 99501 269-6900 office</p>	<p>269-6650 fax 269-6894 TTY Outside Anchorage: 1-800-478-3300</p> <p><i>MatSu Regional Office</i> 845 W. Commercial Dr. Wasilla, AK 99654 357-3550 office 357-3552 fax</p> <p><i>Southeast Regional Office</i> 410 Willoughby Ave., Suite 107 Juneau, AK 99801 465-5887 office 465-5190 fax</p> <p><i>Northern Interior Office</i> 675 Seventh Ave., Station J-2 Fairbanks, AK 99701 451-2830 office 451-3140 fax</p>
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CIVIL RIGHTS/HUMAN RIGHTS

Alaska State Commission for Human Rights
800 "A" Street,
Suite 204
Anchorage, AK
99501-3669
274-4692 office
278-8588 fax
Outside Anchorage:
800-478-4692

Anchorage Equal Rights Commission
632 W. 6th Ave.,
Suite 110
Anchorage, AK 99501
343-4342 office
343-4395 fax
343-4894 TTY

U.S. Equal Employment Opportunity Commission
Seattle District Office
909 First Ave., Suite 400
Seattle, WA 98104-1061
(206)220-6883 office
(206)220-6882 TDD
1-800-669-4000

CREDIT COUNSELING

Consumer Credit Counseling Service of Alaska
Main office:

208 E. 4th Ave.
Anchorage, AK 99501
279-6501 office
276-6083 fax
1-800-478-6501
Email: www.cccsofak.com

Fairbanks Office:
250 Cushman St.,
Suite 4B
Fairbanks, AK 99701
451-8303 office
451-8308 fax

DISABILITY

ACCESS Alaska
121 W. Fireweed Lane
Suite 105
Anchorage, AK 99503
248-4777 office
248-0639 fax
1-800-770-4488 toll free

ACCESS Alaska
Fairbanks
3550 Airport Way Suite 3
Fairbanks, AK 99709
479-7940 phone
474-4052 fax
1-800-770-7940

ACCESS Alaska
Mat-Su
897 Commercial Drive
Wasilla, AK 99687
357-2588 phone

357-05585 fax
1-800-770-0228

Disability Law Center of Alaska
Anchorage Office
3330 Arctic Boulevard
Suite 103
Anchorage, AK 99503
565-1002 (voice/TTY)
565-1000 fax
1-800-478-1234
email: akpa@dlcak.org
Website: www.dlcak.org

Bethel Office
PO Box 2303
Bethel, AK 99559
543-3357 (voice/TTY)
543-3359 fax
1-888-557-3357

Fairbanks Office
250 Cushman St., Suite 3H
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 99811-0620
465-3370 office
465-2668 fax
465-2225 TTY

Anchorage Regional Office
3601 C street, Suite 878
Anchorage, AK 99503
269-3600 office
269-3623 fax
269-3624 TTY
1-800-770-3930

Northern Regional Office
751 Old Richardson Hwy.,
Suite 123
Fairbanks, AK 99701
451-5045 office
451-5046 fax
1-800-770-1672
451-5093 TTY

SENIOR AND
DISABILITY SERVICES

240 Main St. Ste 601
Juneau, AK 99801
465-3372 office
465-1170 fax
1-866-465-3165 Toll Free
<http://hss.state.ak.us/dsds>

3601 C. Street suite 3101
Anchorage, AK 99503
269-3666 office
269-3688 fax

1-800-478-9996 Toll Free

DOMESTIC
VIOLENCE
& SEXUAL ASSAULT

National Domestic Violence Hotline
Austin, TX
1-800-799-SAFE (7233)
1-800-787-3224 TTY
Administrative
512-453-8117
512-453-8541 fax

National Resource Center on Domestic Violence
Harrisburg, PA
717-545-9456 fax
1-800-537-2238
1-800-553-2508 TTY

Battered Women's Justice Project
Minneapolis, MN
1-800-903-0111
612-824-8768
(voice/TTY)

Resource Center on Domestic Violence Child Protection and Custody
Reno, NV
1-800-527-3223
http://www.dvlawsearch.com/res_center

Health Resource Center on Domestic Violence
San Francisco, CA
1-888-Rx-ABUSE
(792-2873)
<http://www.fvpf.org/health>
health@fvpf.org (e-mail)

Statewide Agencies and Programs

Immigration and Refugee Services Program, Catholic Social Services Center
3710 E. 20th Avenue
Anchorage, AK 99508
276-5590 office
258-1091 fax

Alaska Family Violence Prevention Project
Alaska Dept. of Health & Social Services, Division of Public Health,
P.O. Box 240249
Anchorage, AK 99524
269-3454 office
1-800-799-7570
www.hss.state.ak.us/dph/chems/injury_prevention/akfvpp/

State Coalitions

Alaska Native Women's Coalition against

<i>Domestic Violence and Sexual Assault</i>	746-4080 office/crisis	111 W. 9th Avenue Anchorage, AK 99501
P.O. Box 86 Allakaket, AK 99720 Eleanorned@hotmail.com	<i>Advocates for Victims of Violence, AVV</i>	279-6316 office/crisis
P.O. Box 1153 Sitka, AK 99835 tammymy@ptialaska.net	P.O. Box 524 Valdez, AK 99686 835-2980 office 835-2999 crisis 1-800-835-4044 crisis	<i>Bering Sea Women's Group, BSWG</i> P.O. Box 1596 Nome, AK 99762 443-5491 office 443-5492 office 443-5444 crisis 1-800-570-5444 crisis
<i>Alaska Network on Domestic Violence and Sexual Assault</i>	<i>Abused Women's Aid in Crisis, AWAIC</i>	<i>Cordova Family Resource Center, CFRC</i>
130 Seward, Suite 209 Juneau, AK 99801 586-3650 office 463-4493 fax	100 W. 13th Avenue Anchorage, AK 99501 279-9581 office 272-0100 crisis	P.O. Box 863 Cordova, AK 99574 424-5674 office 424-4357 crisis 1-866-790-4357
<i>Council on Domestic Violence and Sexual Assault</i>	<i>Aiding Women in Abuse & Rape Emergencies</i>	<i>Emmonak Women's Shelter</i>
Alaska Department of Public Safety PO Box 111200 Juneau, AK 99811-1200 465-4356 office 465-3627 fax 465-5491 TTY	AWARE P.O. Box 20809 Juneau, AK 99802 586-6623 office 586-1090 crisis/TTY 1-800-478-1090 crisis/TTY	EWS P.O. Box 207 Emmonak, AK 99581 949-1443 office 949-1434 crisis
Domestic Violence/ Sexual Assault Resource Centers	<i>Arctic Women in Crisis</i>	<i>Interior Alaska Center for Non-Violent Living IAC (Formerly WICCA)</i>
<i>Alaska Family Resource Center</i>	AWIC P.O. Box 69 Barrow, AK 99723 852-0261 office 852-2261 crisis 1-800-478-0267 crisis	717 9th Avenue Fairbanks, AK 99701 452-2293 office 452-7273 crisis 1-800-478-7273 1-800-452-1120 TTY
403 South Alaska Street Palmer, AK 99645	<i>Alaska Women's Resource Center, AWRC</i>	

- Kodiak Women's Resource and Crisis Center*
 KWRCC
 P.O. Box 2122
 Kodiak, AK 99615
 486-6171 office
 486-3625 crisis
- Maniilaq Family Crisis Center, MFCC*
 P.O. Box 38
 Kotzebue, AK 99752
 442-3724 office
 442-3969 crisis
 1-888-478-3969
- Safe and Fear-Free Environment, SAFE*
 P.O. Box 94
 Dillingham, AK 99576
 842-2320 office
 842-2316 crisis
 1-800-478-2316
- Sitkans Against Family Violence, SAFV*
 P.O. Box 6136
 Sitka, AK 99835
 747-3370 office
 747-6511 crisis
 1-800-478-6511
- SeaView Community Services, SCS*
 P.O. Box 1045
 Seward, AK 99664
 224-5257 office
- 224-3027 crisis
 1-888-224-5257 crisis
South Peninsula Women's Services, SPWS
 3776 Lake Street,
 Suite 100
 Homer, AK 99603
 235-7712 office
 235-8101 crisis
 1-800-478-7712 crisis
 1-907-278-9988 TTY
- Standing Together Against Rape, STAR*
 1057 W. Fireweed,
 Suite 230
 Anchorage, AK 99503
 276-7279 office
 276-7273 crisis
 1-800-478-8999 crisis
 278-9988 TTY
- The LeeShore Center*
 325 S. Spruce St.
 Kenai, AK 99611
 283-9479 office
 283-7257 crisis
 www.alaska.net/~leeshore
- Tundra Women's Coalition*
 TWC
 P.O. Box 1537
 Bethel, AK 99559
 543-3455 office
 543-3456 crisis
 1-800-478-7799 crisis
- Unalaskans Against Sexual Assault & Family Violence, USAFV*
 P.O. Box 36
 Unalaska, AK 99685
 581-1500 office/crisis
 1-800-478-7238 crisis
- Women in Safe Homes*
 WISH
 P.O. Box 6552
 Ketchikan, AK 99901
 225-9474 crisis
 1-800-478-9474 crisis
- STOP Violence Against Women Native Women Alaska Grantees
- Bristol Bay Native Association (BBNA)*
 (30 villages)
 P.O. Box 310
 Dillingham, AK 99576
 842-4139
 842-4106 fax
- Central Council of Tlingit and Haida Indian Tribes*
 320 W. Willoughby Ave,
 Suite 300
 Juneau, AK 99801
 586-1432
 463-7343 fax
- Chugachmiut*
 (7 communities)
 4201 Tudor Centre Drive,

Suite 210
Anchorage, AK 99508
562-4155
563-2891 fax

Hoonah Indian Association
P.O. Box 602
Hoonah, AK 99829
945-3545
945-3703 fax

Ketchikan Indian Corporation (KIC)
2960 Tongass Avenue
5th Floor
Ketchikan, AK 99901
225-4061
247-4061 fax

Native Village of Larsen Bay
P.O. Box 35
Larsen Bay, AK 99624
847-2207
847-2306 fax
Native Village of St. Michael
P.O. Box 59058
St. Michael, AK 99659
923-8019
923-2406 fax

Sitka Tribe of Alaska
429 Katlian Street
Sitka, AK 99835
747-7500

747-7502 fax

South-Central Foundation
670 W. Fireweed Lane,
Suite 106
Anchorage, AK 99503
265-4245
265-4233 fax

Tanana Chiefs Conference
122 First Avenue, Suite
600
Fairbanks, AK 99701
452-8251
459-3851 fax

FEDERAL AGENCIES

State Contacts
*Alcohol, Tobacco,
Firearms (ATF)*
271- 5701

FBI Office in Alaska
276-4441

United States Attorney's Office
Federal Building
222 W. 7th Ave. #9
Rm.253
Anchorage, AK 99513
271-5071 office

EMPLOYMENT

Alaska State Commission for Human Rights
274-4692
1-800-478-4692
Office of Equal Employment Opportunity
269-7495
1-800-797-7495

Local Agencies
Anchorage Equal Rights Commission
343-4342

Federal Agencies
U.S. Equal Employment Opportunities Commission
1-800-669-4000
1-800-669-6820 TTD
(206) 220-6882 TTD

The Office of Federal Contract Compliance Programs
(415) 975-4720
(415) 975-4723 fax

GOVERNOR'S OFFICE

Office of the Governor
3rd Floor, State Capitol
PO Box 110001
Juneau, AK 99811
465-3500 office

465-3532 fax
465-3489 TDD
State Info: 465-2111

Anchorage Office
550 West 7th Avenue
Suite 1700
Anchorage, AK 99503
269-7450 office
269-7461 fax
State Info: 269-5111

Fairbanks Office
675 7th Avenue
Suite H5
Fairbanks, AK 99701
451-2920 office
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 office
263-2051 fax

Statewide AIDS Helpline:
1-800-478-2437 or
276-4880

Interior AIDS Association
PO Box 71248
Fairbanks, AK 99707
452-4222 office
452-8176 fax

Shanti of Juneau
PO Box 22655
Juneau, AK 99802
463-5665 office
586-3025 fax

HOUSING

Alaska Housing Finance Corporation
Division of Public Housing
Check your directory for local listings or contact the following:

Anchorage Family Investment Center
624 W. International Airport Road
PO Box 241385
Anchorage, AK 99524
330-6100 office
1-800-478-2432
277-2559 TTY or
1-800-478-5558

Fairbanks Family Investment Center
1441 22nd Avenue,
Q Building

Fairbanks, AK 99707
456-3738 office
456-4621 TDD/TTY or
1-800-478-4621

Juneau Family Investment Center
3410 Foster Ave.
PO Box 021265
Juneau, AK 99802
586-3750 office
586-3956 TTY/TDD or
1800-478-3750

Municipality of Anchorage, Safe City Program
Financial assistance for emergency housing needs
825 L Street, Suite 215
PO Box 196650
Anchorage, AK 99519
343-4694 office

REGIONAL HOUSING AUTHORITIES

Public Housing
Website: www.alaska.net/~aaha/members.html

Anchorage Office:
4300 Bonifase Parkway
Anchorage, AK 99504
338-6100 office

Bethel Office:

122 Ataq
PO Box 587
Bethel, AK 99559
543-2228 office

Cordova Office:
401 Second St.
PO Box 1728
Cordova, AK 99574
424-7697 office

Fairbanks Office:
1441 22nd Ave.,
Fairbanks, AK 99701
456-3738 office

Homer Office:
270 W. Pioneer Avenue
Suite D
Homer, AK 99603
235-2447 office

Juneau Office:
3410 Foster Ave.
PO Box 021265
Juneau, AK 99801
586-3750 office

Kenai/Soldotna Office:
44539 Sterling Hwy.
Suite 201-A
Soldotna, AK 99669
260-7633 office

Ketchikan Office:
130 Bryant St.
PO Box 5124

Ketchikan, AK 99901
225-6030 office

Kodiak Office:
521 Maple
PO Box 317
Kodiak, AK 99615
486-5513 office

Nome Office:
406 I Street
PO Box 930
Nome, AK 99762
443-2888 office

Petersburg Office:
104 S. 3rd St.
PO Box 729
Petersburg, AK 99833
772-3550 office

Seward Office:
200 Lowell Canyon Rd.
PO Box 1475
Seward, AK 99664
224-3737 office

Sitka Office:
404 Lake St.
Sitka, AK 99835
747-5700 office

Valdez Office:
310-B Jago
PO Box 926
Valdez, AK 99686
835-2119 office

Wasilla/Mat-Su Office:
851 E. West Point Dr.
Suite B06
PO Box 873347
Wasilla, AK 99687
376-5744 office

Wrangell Office:
720 Zimovia Hwy.
PO Box 950
Wrangell, AK 99929
874-3018 office

IMMIGRATION SERVICES

*Catholic Community
Services Immigration and
Refugee Services Program*
3710 East 20th
Anchorage, AK 99508
276-5590 office

LABOR

ALASKA
DEPARTMENT OF
LABOR
Employment Security
(Unemployment
Insurance Benefits)
Anchorage UI Call Center
PO Box 107224
Anchorage, AK 99510
269-4700 office
269-4790 fax

<p><i>Fairbanks UI Call Center</i> PO Box 71010 Fairbanks, AK 99707 451-2871 office 451-2870 fax</p> <p><i>Juneau UI Call Center</i> PO Box 25510 Juneau, AK 99802 465-5552 office 465-5573 fax</p> <p><i>All other areas:</i> 1-888-252-2557 office 1-888-353-2937 fax</p> <p>Job Line Numbers: Anchorage/In-State: 269-4770 Anchorage/Out-of-State: 269-4865 Homer: 235-7200 Juneau: 465-4571 Kodiak: 486-6838</p> <p>Mat-Su: 352-2593 www.jobs.state.ak.us</p> <p>Labor Standards & Safety PO Box 21149 Juneau, AK 99802 465-4855 office 465-3584 fax www.labor.state.ak.us/lss/ home.htm</p>	<p>Worker's Compensation P.O. Box 25512 Juneau, AK 99802-5512 465-2790 office 465-2797 fax</p> <p>P.O. Box 107019 Anchorage, AK 99510- 7019 269-4980 office 269-4975 fax</p> <p>675 Seventh Ave. Station H2 Fairbanks, AK 99701- 4586 451-2889 office 451-2928 fax</p> <p>Fishermen's Fund P.O. Box 25512 Juneau, AK 99802-5512 277-1377 office</p> <p>State Employee Claims Harbor Adjustment Services 900 W. Benson Blvd, Ste. 101 Anchorage, AK 99517 277-1377 office</p> <p><u>LEGAL</u></p> <p>Alaska Bar Association 550 W. 7th Avenue Suite 1900</p>	<p>Anchorage, AK 99501-1958 272-7469 office 272-2932 fax</p> <p>Lawyer Referral Service: 272-0352 Anchorage, AK Outside Anchorage: 1-800-770-9999</p> <p>Alaska Legal Services www.state.ak.us/local/ akpages/ADMIN/pd/ office.htm</p> <p><i>Anchorage Office</i> 1016 W. 6th Ave. # 200 Anchorage, AK 99501-1963 272-9431 office 279-7417 fax 1-888-478-2572</p> <p><i>Bethel Office</i> PO Box 248 Bethel, AK 99559 543-2237 office 543-5537 fax 1-800-478-2230 bethel@alsc-law.org</p> <p><i>Dillingham Office</i> P.O. Box 176 Dillingham, AK 99576-0176 842-1452 office</p>
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842-1430 fax
1-888-391-1475
dillingham@alsc-law.org
Fairbanks Office
1648 Cushman,
Suite 300
Fairbanks, AK 99701
452-5181 office
456-6359 fax
1-800-478-5401
fairbanks@alsc-law.org

Juneau Office
419 6th St., Suite 322
Juneau, AK 99801
586-6425 office
586-2449 fax
1-800-789-6426
juneau@alsc-law.org

Ketchikan Office
306 Main St.
NBA Bldg, #218
Ketchikan, AK 99901
225-6420 office
225-6896 fax
ketchikan@alsc-law.org

Kotzebue Office
P.O. Box 526
Kotzebue, Alaska 99752-
0526
442-3500 office
442-4111 fax
alsckotz@yahoo.com

Nome Office

P.O. Box 1429
Nome, AK 99762-1429
1-888-495-6663 Toll Free
443-4111 fax
nome@alsc-law.org

Alaska Office of Victims
Rights
<http://www.officeofvictimsrights.legis.state.ak.us>
907-272-2620 or toll free
in state at 1-866-274-2620

Family Law Self-Help
Center, Alaska Court
System
<http://www.state.ak.us/courts/selfhelp.htm>
264-0819 (in the Municipality of Anchorage)
1-866 279-0851 (outside the Municipality of Anchorage but in Alaska).

MENTAL HEALTH

National Alliance for the
Mentally Ill (NAMI)
144 W. 15th Avenue
Anchorage, AK 99501
272-0227 office
www.nami.org

Juneau Alliance for the
Mentally Ill (JAMI)
3406 Glacier Hwy.
Juneau, AK 99801

463-3303 office
Healthy Alaskans
Information Line
*A Statewide Referral for
Health & Human Services
in Alaska*
1-800-478-2221

*See also the listings for
Mental Health services
under "DISABILITY",
above.*

NATIVE ISSUES

Alaska Federation of
Natives
1577 "C" Street, Suite 300
Anchorage, AK 99501
274-3611 office
276-7989 fax
*See also the listings for
Alaska Native services
under "SOCIAL
SERVICES," below*

OMBUDSMAN

Office of the
Ombudsman
State of Alaska
PO Box 102636
Anchorage, AK 99510
269-5290 office
269-5291 fax

Outside Anchorage:

1-800-478-2624
Juneau Office
 PO Box 113000
 Juneau, AK 99811
 465-4970 office
 465-3330 fax
 1-800-478-2624

PUBLIC ADVOCATE

Office of Public
 Advocacy
*(Includes Public
 Guardian)*
Anchorage Office:
 900 W. 5th Avenue,
 Suite 525
 Anchorage, AK 99501
 269-3500 office
 269-3535 fax

Fairbanks Office:
 100 Cushman, Suite 502
 Fairbanks, AK 99701
 451-5933 office
 451-5934 fax

Juneau Office:
 Assembly Building,
 Rm. 103
 PO Box 110225
 Juneau, AK 99811
 465-4173 office
 465-3645 fax

PUBLIC ASSISTANCE

Anchorage District
 400 Gambell St., Suite 101
 Anchorage, AK 99501
 269-6599 office
 269-6450 fax

Bethel District Office
 PO Box 365
 Bethel, AK 99559
 543-2686 office
 543-5912 fax
 1-800-478-2686

Coastal Field Office
 3601 "C" St., Suite 410
 PO Box 240249
 Anchorage, AK 99524
 269-8950 office
 563-1619 fax
 1-800-478-4372

Denali KidCare Office
 PO Box 240047
 Anchorage, Alaska 99524-
 0047
 269-6529 office
 1-888-318-8890 (toll free)

Fairbanks District
 675 7th Ave., Station D
 Fairbanks, AK 99701
 451-2850 office
 451-2923 fax
 1-800-478-2850

Homer District Office
 270 W. Pioneer, Suite C

Homer, AK 99603
 235-6132 office
 235-6176 fax

Juneau District Office
 10002 Glacier Hwy.,
 Suite 201
 Juneau, AK 99801
 465-3551 office
 465-5238 fax
 1-800-478-3551

*Kenai Peninsula Job
 Center*
 11312 Kenai Spur Hwy #2
 Kenai, AK 99611
 283-2900 office
 283-2975 fax
 1-800-478-9032

Ketchikan District Office
 2030 Sea Level Dr.
 Suite 301
 Ketchikan, AK 99901
 225-2135 office
 247-2135 fax
 1-800-478-2135

Kodiak District Office
 307 Center Ave.
 Kodiak, AK 99615
 486-3783 office
 486-3116 fax
 1-888-480-3783

Kotzebue District Office
 PO Box 1210

Kotzebue, AK 99752
442-3451 office
442-2151 fax
1-800-478-3451

Mat-Su District Office
855 W. Commercial Dr.
Wasilla, AK 99654
376-3903 office
373-1136 fax
1-800-478-7778

Nome District Office
PO Box 2110
Nome, AK 99762
443-2237 office
443-2307 fax
1-800-478-2236

*SE APA/Specialized
Medicaid*
10002 Glacier Hwy., Suite
105
Juneau, Alaska 99801
465-3537 office
1-800-478-8234

Sitka District Office
201 Katlian St., #107
Sitka, AK 99835
747-8234 office
747-8224 fax
1-800-478-8234

REPRODUCTIVE
RIGHTS

Planned Parenthood of
Alaska
For the clinic nearest you
call:
1-800-230-PLAN
Or surf the web at:
[www.planned
parenthoodalaska.org](http://www.plannedparenthoodalaska.org)

Anchorage Center
4001 Lake Otis Parkway
Anchorage, AK 99508
563-2229 office
563-7419 fax

Fairbanks Clinic
1867 Airport Way, Suite
160B
Fairbanks, AK 99701
455-7285 office

Soldotna Center
East Redoubt Avenue
Soldotna, AK 99669
262-2622 office
262-8564 fax

Sitka Center
514 Lake Street
Sitka, AK 99835
747-3883 office
747-8282

SOCIAL SERVICES

Alaska Department of
Health & Social Services

Community Coordinator
Office of the
Commissioner
3601 "C" Street, Suite 578
PO Box 240249
Anchorage, AK 99524
269-7800 office
561-1308 fax

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
1-800-764-3040
Victims for Justice
1057 W. Fireweed Lane,
Suite 101
Anchorage, AK 99503
278-0977 office
258-0740 fax

Maniilaq Association
Tanana Chiefs Conference
U.S. Department of the Interior
Bureau of Indian Affairs-
Alaska Region
P.O. Box 25520
Juneau, AK 99802
586-7177 office
1-800-645-8397 voice
586-7252 fax
*See also Domestic
Violence/Sexual Assault
Resource Centers*

SEXUAL ASSAULT
ADDITIONAL
RESOURCE
MATERIALS- BOOKS
AND PUBLICATIONS

See Domestic Violence

VICTIM'S SERVICES

Alaska Office of Victims
Rights
www.officeofvictimsrights
legis.state.ak.us
907-272-2620 or toll free
in state at 1-866-274-2620

Violent Crimes
Compensation Board
PO Box 110230
Juneau, AK 99811
465-3040 office
465-2379 fax
Outside Juneau:

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 For Victims of Domestic Violence & Sexual Assault

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 by _____ .

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 (Automatic Teller Machine) 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, and 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: _____.

Note: Because the vast majority of domestic violence is committed by men against women, this booklet was written using the female gender when referring to the battered victim. This does not mean to imply that men cannot be victims of battering.

* * * * *

This booklet was adapted from safety planning materials prepared by:

Jody Lown
Victim-Witness Program Coordinator
P.O. Box 110300
Juneau, AK 99811
Phone: (907)465-3428

A note of thanks to Barbara Hart, Esq., Legal Director, Pennsylvania Coalition Against Domestic Violence, whose materials on safety planning made this safety planning booklet possible.

OTHER IMPORTANT NUMBERS

*Programs accept collect crisis calls

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ALASKA'S DOMESTIC VIOLENCE & SEXUAL ASSAULT PROGRAMS

AFRC	Palmer	(907) 746-4080	1-866-746-4080
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
EWS	Emmonak	(907) 949-1434	1-800-478-1434
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
SPWS	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

Notes

