MANUAL FOR

LAY LEGAL ADVOCATES

ASSISTING IN CASES OF

VIOLENCE AGAINST WOMEN

IN ARIZONA

Reprinting of this manual is supported by a grant awarded by the Arizona Department of Health Services, Contract Number 961025, 2002. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the Arizona Department of Health Services.

Arizona Coalition Against Domestic Violence
100 W Camelback Rd., Suite 109
Phoenix, AZ 85013
Tel: 602-279-2900 or 1-800-782-6400
TTY: 602-279-7270; Fax 602-279-2980
acadv@azcadv.org

ACKNOWLEDGEMENTS

This manual is the culmination of the work of many people. In 2001, the Maricopa County Bar Association Young Lawyers Division, Domestic Violence Committee under the leadership of Christy Brown took up the challenge of updating and expanding an old lay legal advocate manual when the Family Advocacy Center and lay advocates from across the State called out for help. We want to thank all the members who took part in drafting this manual. Their contributions to making the lives of abused women and children better will live on long after they are no longer "young lawyers." Members who contributed sections were Pat Brown, Patricia Madsen, Christy Brown, Tasha Boggs, Lynn Arouh, Brian Longenbaugh, Robert Moon, Carey Pleasant, Nicole Lasiter, Pamela Bridge, Rita de Soto Ekpe, Rita Anita Linger, Cheryl Brown, and Ruth Swenson.

We also thank those who reviewed the drafts including Lynne Norris, Danae Dotolo, and Kelly Campbell.

Two people made substantial contributions to the 2002 revision, Lynne Norris and C. Allan Perkins, Deputy County Attorney, Graham County, AZ. We want to thank them for their hard work.

The 2003 manual revisions were primarily the work of Sara Lunde, third year law student from the University of Denver, College of Law.

Finally we wish to express our gratitude to The Arizona Department of Health Services for the financial support that made the reprint of this publication possible.

Dianne Post, J.D.
Director of Systems Advocacy
Arizona Coalition Against Domestic Violence

DISCLAIMER

The manual is intended as a training and reference manual for lay legal advocates. The information in this manual is not legal advice. Lay advocates cannot give legal advice. While information is as accurate and up-to-date as possible on the date of publication, the law is constantly changing. AzCADV takes no responsibility for the accuracy of the information in this manual or for the applicability of any law to an individual case. This manual is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations.

LANGUAGE USAGE

Because the overwhelming majority of domestic violence victims are women abused by male partners, this manual uses "she" or "battered or abused woman" when referring to victims, and "he" when referring to batterers or perpetrators. All victims of domestic violence deserve support and responsive advocacy, including victims in same sex relationships and male victims abused by female partners.

DEDICATION

This manual is dedicated to the victims of violence whose daily struggles to provide for themselves and their families – often against overwhelming odds – inspire our commitment to the movement for all women's rights.

Manual for Lay Legal Advocates Assisting in Cases of Violence Against Women in Arizona

AUGUST 2003 UPDATES AND REVISIONS

If you already have a manual, the following are the list of updates and revisions to the existing content. This will help you to know where to look for the changes so you can be current. If you have the original three-ring binder, simply discard the contents and replace with this manual.

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Section One: Violence Against Women

Introduction To Violence Against Women

What is domestic violence?

Domestic violence is a pattern of behavior that includes the use or threat of violence and intimidation for the purpose of gaining power and control over another person.

Violence is characterized by:	
Physical Abuse	Emotional Abuse
Isolation	Sexual Abuse
Economic Abuse	
(Pennsylvania Coalition Against Domestic Violence, The Impact of Domestic Violence Fact Sheet, 1997)	

There is a profound difference between experts' definition of domestic violence and domestic violence under the law. According to Susan Schechter, one of the early and continuing leaders in the field of domestic violence:

> **Battering is a pattern of coercive control that one person exercises over another. Abusers use physical and sexual violence, threats, emotional insults and economic deprivation as a way to dominate their partners and get their way. Relationships in which one partner uses assault and coercion can be found among married and unmarried heterosexuals, lesbians, and gay males. Battering is a behavior that physically harms, arouses fear, prevents an individual from doing what she/he wishes or forces her/him to behave in ways she/he does not want to.**

This definition clearly recognizes that domestic violence is both covert and overt and may occur in any intimate relationship.

Prevalence

Accurate identification of the prevalence of domestic abuse is difficult because many women are reluctant to report abuse or seek help because doing so may expose them to further harm.

(Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C., Amici Curiae US vs. Emerson, 1999)

Nearly one-third, thirty-one percent, of American women report being physically or sexually abused by a husband or boyfriend at some point in their lives.

(Commonwealth Fund survey, 1998)

An estimated 4 million American women experience a serious assault by an intimate partner during an average 12-month period.

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

Who are the victims?

In 2001, of the 691,710 nonfatal violent victimizations committed by intimate partners, about 588,490 or 85% of the victims were women.

(U.S. Department of Justice: Intimate Partner Violence, 1993-2001, 2003, NCJ-197838)

In 2001, intimate partner violence made up 20% of violent crime against women, while only 3% of violent crimes against men were committed by an intimate partner.

(U.S. Department of Justice: Intimate Partner Violence, 1993-2001, 2003, NCJ-197838)

Domestic violence occurs regardless of age, race, ethnicity, mental or physical ability, socioeconomic status, sexual orientation/identity, or religious background.

(Pennsylvania Coalition Against Domestic Violence, Impact of Domestic Violence Fact Sheet, 1997)

Domestic violence is statistically consistent across racial and ethnic boundaries.

(Bureau of Justice Statistics Special Report: Violence Against Women:
Estimates from the Redesigned Survey, 1995, p. 3, NJC-154348)

In almost nine out of ten incidents of domestic elder abuse and neglect, the perpetrator is a family member.

(1998 National Elder Abuse Incidence Study)

Domestic violence among gay and lesbian couples occurs in approximately 25-30% of relationships—the same statistical frequency as in heterosexual relationships.

(Barnes, "It's Just a Quarrel", American Bar Association Journal, February 1998, p. 25)

Violence against women occurs in 20% of dating couples.

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

Forty percent of teenage girls between the ages of 14 and 17 report knowing someone their age who has been hit or beaten by a boyfriend.

(Children Now/Kaiser Permanente poll, December 1995)

Seventy-eight percent of stalking victims are women. Women are significantly more likely than men (60% and 30%, respectively) to be stalked by intimate partners. Eighty percent of women who are stalked by former husbands are physically assaulted by that partner and 30% are sexually assaulted by that partner.

(Center for Policy Research, Stalking in America, July 1997)

Who are the perpetrators?

As many as 95% of domestic violence perpetrators are male.

(A Report of the Violence Against Women Research Strategic Planning Workshop sponsored by the
National Institute of Justice in cooperation with the US Department of Health and Human Services, 1995)

Much of female violence is committed in self-defense, and inflicts less injury than male violence.

(Chalk & King, eds., Violence in Families: Assessing Prevention & Treatment Programs, National Resource Council and Institute of Medicine, p. 42 (1998).

Effects on Children

In a study in Florida, 27% of domestic homicide victims were children.
(Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.45)

Each year an estimated 3.3 million children witness violence perpetrated by family members against their mothers or female caretakers.
(American Psychological Association, Violence and the Family, Report of the American Psychological Association Presidential Task Force on Violence and the Family, 1996, p.11)

A child's exposure to the father abusing the mother is the strongest risk factor for transmitting violent behavior from one generation to the next.
(Report of the American Psychological Association Presidential Task Force on Violence in the Family, APA, 1996)

Forty to sixty percent of men who abuse women also abuse children.
(American Psychological Association, Violence and the Family, Report of the American Psychological Association Presidential Task Force on Violence and the Family, 1996, p.80)

Fathers who batter mothers are two times more likely to seek sole physical custody of their children than are non-violent fathers.
(American Psychological Association, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family, 1996, p.40)

In spite of evidence of violence against the women and/or their children, the courts consistently ordered sole or joint custody to the **perpetrators** in 74% of the cases in Maricopa County and 56% of the cases in the other counties combined.
(Arizona Coalition against Domestic Violence, Battered Mothers' Testimony Project: A Human Rights Approach to Child Custody and Domestic Violence, 2003)

Impacts of Domestic Violence

In 2000, 1,687 men and women were killed by an intimate partner. In recent years, an intimate killed about 33% of female murder victims and 4% of male murder victims.
(U.S. Department of Justice: Intimate Partner Violence, 1993-2001, 2003, NCJ-197838)

Ninety-eight people died in Arizona in 1999 in domestic violence related homicides, and 18 perpetrators committed suicide. In 2000, 106 people died in domestic violence related homicides or suicides.
(Arizona Coalition Against Domestic Violence, Domestic Violence Related Homicides, 1998, 1999 and 2000)

Ninety-two people died in Arizona in 2001, in domestic violence related homicides or suicides, including 10 children, and 45 women. Nineteen male perpetrators committed suicide.
(Arizona Coalition against Domestic Violence, Arizona Domestic Violence Fatality Review: A Review of 2000 & 2001 Murder Suicides, 2002)

A total of 96 people were killed as a result of domestic violence in 2002.
(Arizona Coalition against Domestic Violence, AZ Domestic Violence Related Deaths, 2002)

More female homicides were committed with firearms (52%) than with all other weapons combined.
(Violence Policy Center, When Men Murder Women: An Analysis of 1997 Homicide Data, 1999 p.3)

A study conducted at Rush Medical Center found that the average charge for medical services provided to abused women, children, and older people was $1,633 per person per year, amounting to an estimated national annual cost of $875.3 million.
(Meyer, "The Billion Dollar Epidemic", American Medical News, 1992)

In 1994, approximately 37% of women seeking injury-related treatment in hospital emergency rooms were there because of injuries inflicted by a current or former spouse or intimate partner.
(Rund, Violence Related Injuries Treated in Hospital Emergency Room Departments, Bureau of Justice Statistics, 1997)

A National Institute of Justice study estimates that domestic violence accounts for almost 15% of total crime costs—$67 billion per year.
(Victim Cost and Consequences: A New Look, National Institute of Justice Research Report, 1996)

Family violence costs the nation from $5 to $10 billion annually in medical expenses, police and court costs, shelters and foster care, sick leave, absenteeism, and non-productivity.
(Medical News, American Medical Association, January, 1992)

Domestic violence incidents account for the largest category of calls to police each year. One-third of all police time is spent responding to domestic violence calls.
(Women Battering: High costs and the State of the Law, Clearinghouse Review, Special Issue, 1994)

(Developed 11/99, updated August 2003, by the Arizona Coalition Against Domestic Violence)

Myths About Domestic Violence

- Most battered women fall into particular age, socio-economic, ethnic, educational, religious, occupational, personality, or sexual orientation groups.
- Battered women are smaller and physically weaker than their abusers.
- Battered women are more quiet, passive, and dependent than their abusers.
- The battered woman has less social and personal power than the abuser. This power includes education, income, economic security, employment skills, marketability, class, age, religious experience, health, social skills, and networks.
- In some cultures, abuse is acceptable, and the women are used to being abused.
- Most battered women saw violence or abuse at home as a child or were abused as children.
- Most battered women had low self-esteem even before they got into their relationship.
- Many battered women choose the wrong partner because of something in their past that affects their judgment.
- Most battered women have poor decision-making skills.
- Most battered women are economically dependent and socially isolated.
- Most battered women don't have good parenting skills.
- There is something that makes battered women different from the general population. Otherwise they wouldn't stay. Most women would leave immediately at the first sign of abuse.
- There is something masochistic or extremely dependent about battered women. This is why they go back to an abuser after trying to leave.
- Many so-called battered women are actually involved in "mutual abuse" or are just as violent as the abusers.

(Myths About Domestic Violence, continued)

- If you try to intervene in a domestic violence situation, the battered woman doesn't really want any help and will attack you for interfering.
- Battered women exaggerate, lie, and often make unfounded or frivolous accusations of abuse in order to get a partner in trouble.
- Women "cry domestic violence" or "abuse" just to win in custody cases.
- Battered women misuse the police and legal system.
- Battered women need a highly structured program or shelter for their own safety because they do not know how to make good decisions or how to live their own lives in safety. Therefore, shelters have to have curfews, specified times for lights out, times to get up in the morning, rules about child care, rules about whether or not to drink, and mandatory counseling.
- Battered women who work in the sex industry are different from other battered women and should not be allowed into the safety of shelters or domestic violence support groups.
- Battered women who have a substance abuse or addiction illness are different from other battered women and should not be allowed into the safety of shelters or domestic violence support groups.
- Immigrant battered women, elderly battered women, and disabled battered women should not be allowed into the safety of shelters and domestic violence support groups.
- Battered women would get all the help they need, if they just asked for it.

Types Of Abuse

When the general public thinks about domestic violence, they usually think in terms of physical assault that results in visible injuries to the victim. This is only one type of abuse. There are several categories of abusive behavior, each of which has its own devastating consequences. Lethality involved with physical abuse may place the victim at higher risk, but the long-term destruction of personhood that accompanies the other forms of abuse is significant and cannot be minimized.

Physical Abuse

> ***He kept pushing my head against the glass in the window. He kept telling me, "Shut up, shut up," and he kept on pushing my head. Then we got home and he started trashing the house. We had these plastic shelves for the kids' toys – he broke them and tore molding off the doors.***
>
> -Tanya

> ***I ended up having a miscarriage as a result of that Friday night that he punched me. I did not realize it, but the bleeding started the next day and I did not know what it was.***
>
> -Erin

According to the AMEND Workbook for Ending Violent Behavior, physical abuse is "any physically aggressive behavior, withholding of physical needs, indirect physically harmful

behavior, or threat of physical abuse (AMEND, p. 4). This may include but is not limited to:

- Hitting, kicking, biting, slapping, shaking, pushing, pulling, punching, choking, beating, scratching, pinching, pulling hair, stabbing, shooting, drowning, burning, hitting with an object, threatening with a weapon, or threatening to physically assault.
- Withholding of physical needs including interruption of sleep or meals, denying money, food, transportation, or help if sick or injured, locking victim into or out of the house, refusing to give or rationing necessities.
- Abusing, injuring, or threatening to injure others like children, pets, or special property.
- Physically restraining a victim against her will, such as trapping her in a room, blocking her exit, or holding her down.
- Hitting or kicking walls, doors, or other inanimate objects during an argument, throwing things in anger, or destroying property.
- Holding the victim hostage.

Emotional Abuse

> ***He took everything that he knew about me and used it against me. Any of the things that were my weakness or my insecurities, like not being able to have children, or the fact that all these men dumped me, he'd say things like: "Boy, this really makes me a great man, doesn't it. Thirty years old, got a hold of a thirty-eight year old has-been with huge tits and no children." … Words to hurt, words to stab -- anything that could cut deep is what he used.***
>
> -Judy

According to the *AMEND Workbook for Ending Violent Behavior*, emotional abuse is "any behavior that exploits another's vulnerability, insecurity, or character. Such behaviors include continuous degradation, intimidation, manipulation, brainwashing, or control of another to the detriment of the individual." (AMEND, p. 3). This may include but is not limited to:

- Insulting or criticizing the victim in order to undermine her self-confidence. This includes public humiliation, as well as actual or threatened rejection.
- Threatening or accusing the victim, either directly or indirectly, with intention to cause emotional or physical harm or loss. For instance, threatening to kill the victim, commit suicide, or both.
- Using reality-distorting statements or behaviors that create confusion and insecurity in the victim like saying one thing and doing another, stating untrue facts as truth, and neglecting to follow through on stated intentions. This can include denying the abuse occurred and/or telling the victim she is "making up" the abuse. It might also include "crazy making" behaviors like hiding the victim's keys and berating her for losing them.
- Consistently disregarding, ignoring, or neglecting the victim's requests and needs.
- Using actions, statements or gestures that attack the victim's self-esteem and self-worth with the intention to humiliate.
- Telling the victim that she is mentally unstable or incompetent.
- Forcing the victim to take drugs or alcohol.

- Not allowing the victim to practice her religious beliefs, isolating her from the religious community, or using religion as an excuse for abuse.
- Using any form of coercion or manipulation that is disempowering to the victim.

Sexual Abuse

> ***He said, "I'm going to tell you something. I never loved you; I used you. I feel nothing for you. I look at you and I feel total disgust that I ever married you. I never loved you because I think you're fat, you're ugly, I think you're a bitch, and the best thing I ever did was leave you." He goes "I cannot believe you took me back after I cheated on you every year. Just remember that. You're fat, you're ugly, and you're the worst thing that ever happened to me. I have a great woman now, she's got a nice body, and she gives me great sex." And he just laughed, laughed the whole way out the door, lit a cigarette in his girlfriend's car, and just stayed there in my driveway for awhile, laughing.***
>
> -Tanya

> ***The first time he ever really beat me up, he accused me of flirting with another man. I was not even 16 years old.***
>
> -Annie

Sexual abuse is using sex in an exploitative fashion or forcing sex on another person. Having consented to sexual activity in the past does not indicate current consent. Sexual abuse may involve both verbal and physical behavior. This may include, but is not limited to:

- Using force, coercion, guilt, or manipulation without regard to the victim's desires to have sex. This may include making the victim have sex with others, have unwanted sexual experiences, or be involuntarily involved in prostitution.
- Exploiting a victim who is unable to make an informed decision about involvement in sexual activity because of being asleep, intoxicated, drugged, disabled, too young, too old, or dependent upon or afraid of the perpetrator.
- Laughing or making fun of another's sexuality or body, making offensive statements, insulting, or name-calling in relation to the victim's sexual preferences/behavior.
- Making contact with the victim in any non-consensual way, including unwanted penetration (oral, anal or vaginal) or touching (stroking, kissing, licking, sucking or using objects) on any part of the victim's body.
- Exhibiting excessive jealousy resulting in false accusations of infidelity and controlling behaviors to limit the victim's contact with the outside world.
- Having affairs with other people and using that information to taunt the victim.
- Withholding sex from the victim as a control mechanism.

Verbal Abuse

> ***He'd tell me I could not do anything -- over and over and over. I used to get sick a lot, because he made me feel that way ... switch it around to where it was all my fault, so it was my problem.***
>
> -Jill

Verbal abuse is any abusive language used to denigrate, embarrass or threaten the victim. This may include but is not limited to:

- Threatening to hurt or kill the victim or her children, family, pets, property or reputation.
- Name-calling ("ugly," "bitch," "whore," or "stupid" for example).
- Telling the victim she is unattractive or undesirable.
- Yelling, screaming, rampaging, terrorizing or refusing to talk to victim.

Financial Abuse

> ***I had a secret bank account, which he found out about. So then I started sneaking money around the house. It was not much before I left, maybe fifty bucks, but it was enough. He'd never go in his closets and stuff, so I'd stick it in his clothes pockets. He only wore certain jackets, so I put it in the ones he never wore for years.***
>
> -Jill

Financial abuse is a way to control the victim through manipulation of economic resources. This may include but is not limited to:

- Controlling the family income and either not allowing the victim access to money or rigidly limiting her access to family funds. This may also include keeping "financial secrets" or hidden accounts, putting the victim on an allowance or allowing her no say in how money is spent, or making her turn her paycheck over to him.
- Causing the victim to lose a job or preventing her from taking a job. Abusers can make their victims lose their jobs by making them late for work, refusing to provide transportation to work, or by calling and harassing them at work.
- Spending money designated for necessities (i.e. food, rent, utilities) on non-essential items (i.e. drugs, alcohol, stereo equipment, hobbies).

Control

> ***He controlled everything. He planned the meals; he decorated the house. ... I had to ask him for money and for groceries, and he'd ask me what for, what do you need, and made it count for everything. If I stopped and got a yogurt, I got in trouble for it. It was really nuts.***
>
> -Judy

> ***He'd go one way, or the other. If he saw me wearing something I felt comfortable with, he'd ask, "Why are you dressing like an old lady?" Or it'd be a putdown, with, "Are those pants too tight?" It'd be one way or the other; it really did not matter. ...***
>
> -Annie

Controlling behavior is a way for the batterer to maintain his dominance over the victim. The batterer believes that he is justified in using controlling behavior. The resultant abuse is the core issue in violence against women. Controlling behavior is often subtle, almost always insidious and pervasive. This may include but is not limited to:

- Checking the mileage on the odometer following her use of the car.

- Monitoring phone calls, using caller ID or other number monitoring devices, or not allowing her to make or receive phone calls.
- Not allowing her freedom of choice in terms of clothing styles, makeup or hairstyle. This may include forcing her to dress more seductively or more conservatively than she is comfortable with.
- Calling or coming home unexpectedly to "check up on" her. This may initially appear to be a loving gesture, but soon becomes a sign of jealousy or possessiveness.
- Invading her privacy by not allowing her time and space of her own.
- Forcing or encouraging her dependency by making her believe that she is incapable of surviving or performing simple tasks without the batterer or on her own.
- Using children to control the victim by having them spy on her, threatening to kill, hurt or kidnap them, physically and/or sexually abusing them, and threatening to call Child Protective Services if the victim leaves the relationship.

Isolation

> ***I have two sisters who live here. They gave up on asking me to go places and do things with them. … So I'd ask them, why don't you come over to my place, and we'll sit in the pool and we'll visit and I'll fix lunch and I'll do all of this. It was not because I wanted to do all the cooking and entertaining; it was because I was conditioned that I could at least see them and he is not going to get nervous. … I was constantly trying to figure out, how can I have a little joy?***
>
> -Annie

Isolation is a form of abuse often closely connected to controlling behaviors. It is not an isolated behavior, but the outcome of many kinds of abusive behaviors. By keeping the victim from seeing who she wants to see, doing what she wants to do, setting and meeting her own goals, and controlling how she thinks and feels, a batterer can effectively isolate the victim from the resources (personal and public) that may enable her to leave the relationship. By keeping the victim socially isolated, the batterer keeps her from contact with the society that may not reinforce his perceptions and beliefs. Isolation often begins as an expression of love with statements like "if you really loved me you would want to spend time with me, not your family." As it progresses, isolation expands, limiting or excluding a victim's contact with anyone but the batterer. Eventually, she is left totally alone and without the internal and external resources needed for her to escape the relationship.

Some victims isolate themselves from existing resources and support systems because of the shame they feel about bruises and other injuries. They may also be concerned about their batterer's behavior in public, or his treatment of friends and family. Self-isolation may also develop from fear of public humiliation or from fear of harm to herself or others. The victim may also feel guilty for the abuser's behavior, the condition of the relationship, or a myriad of other reasons, depending on the messages received from the abuser.

(This section contains material taken from the Women's Center and Shelter of Greater Pittsburgh Volunteer Training Manual; from AMEND; and from the ACADV Safeplan manual.)

DYNAMICS OF POWER AND CONTROL

Many authors have described the phenomenon of power and control demonstrated in abusive relationship. It is based on the cultural belief in the appropriateness of male dominance in relationships. This imbalance of power puts the abuser in a superior position while maintaining the victim's subservience. It leaves her feeling powerless, dehumanized, and incapable of independent thought or decision-making.

The Domestic Abuse Intervention Project in Duluth, Minnesota developed a graphic entitled the Power and Control Wheel, which describes the components of power and control. The core is power and control, surrounded by emotional abuse, economic abuse, sexual abuse, misuse of children, threats, use of male privilege, intimidation, and isolation. Physical abuse completes the wheel.

Power and control can only be seen in cultural context by looking at how social institutions – schools, religious organizations, human services providers, doctors and hospitals, police, courts, media, government, etc – all work together to approve his behavior.

- Until social institutions take a strong stand against abusive behavior, *they will continue to subtly condone and accept it.*

- Until social institutions take a strong stand against abusive behavior, *they will continue to empower batterers and disempower battered women.*

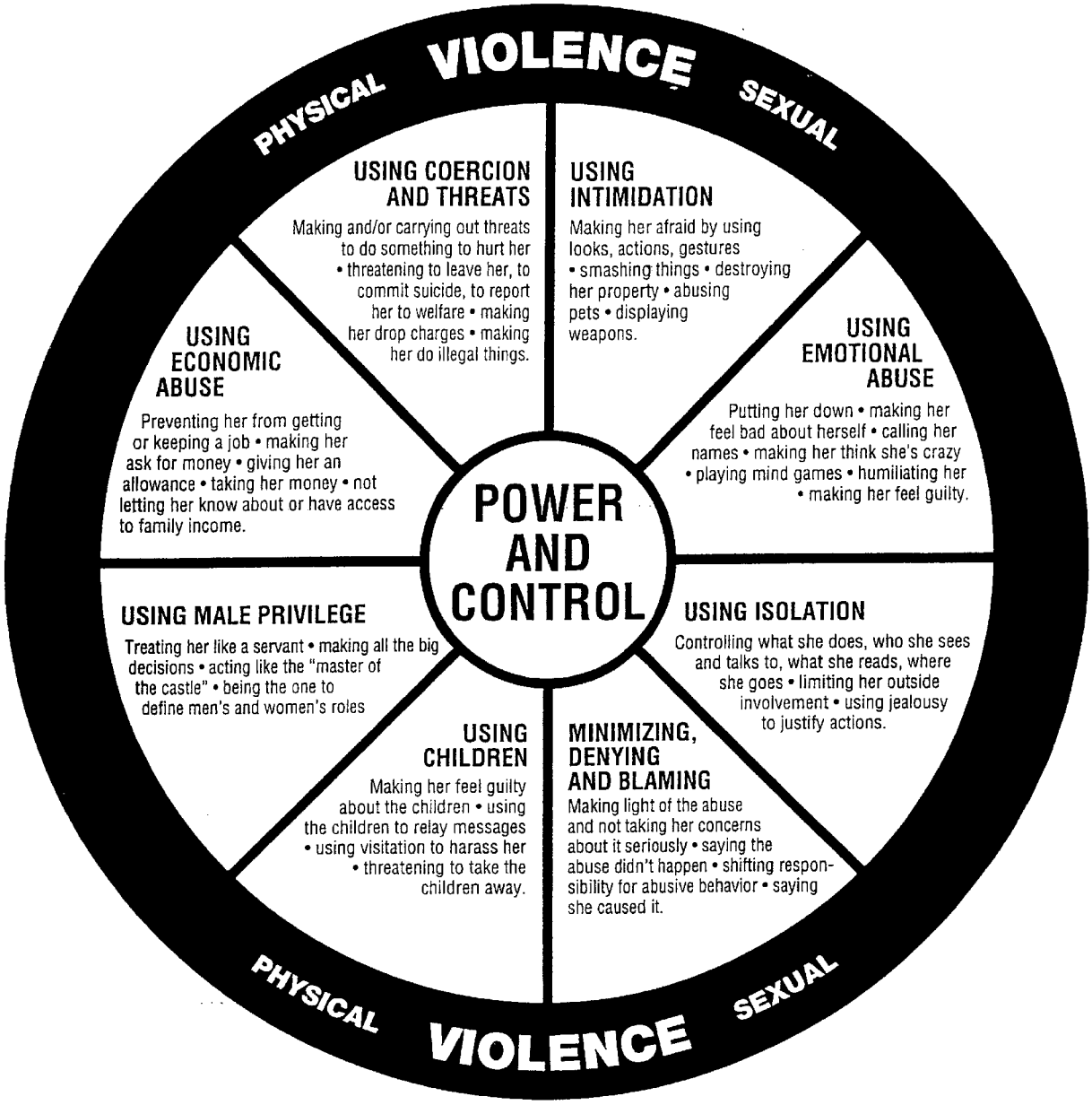
- Until social institutions take a strong stand against abusive behavior, they will continue to support the unequal distribution of power in society.

- Until social institutions take a strong stand against abusive behavior, victims of domestic violence will continue to feel they cannot turn to social supports for assistance.

- Until social institutions take a strong stand against abusive behavior, *society will continue to blame the victim for her victimization.*

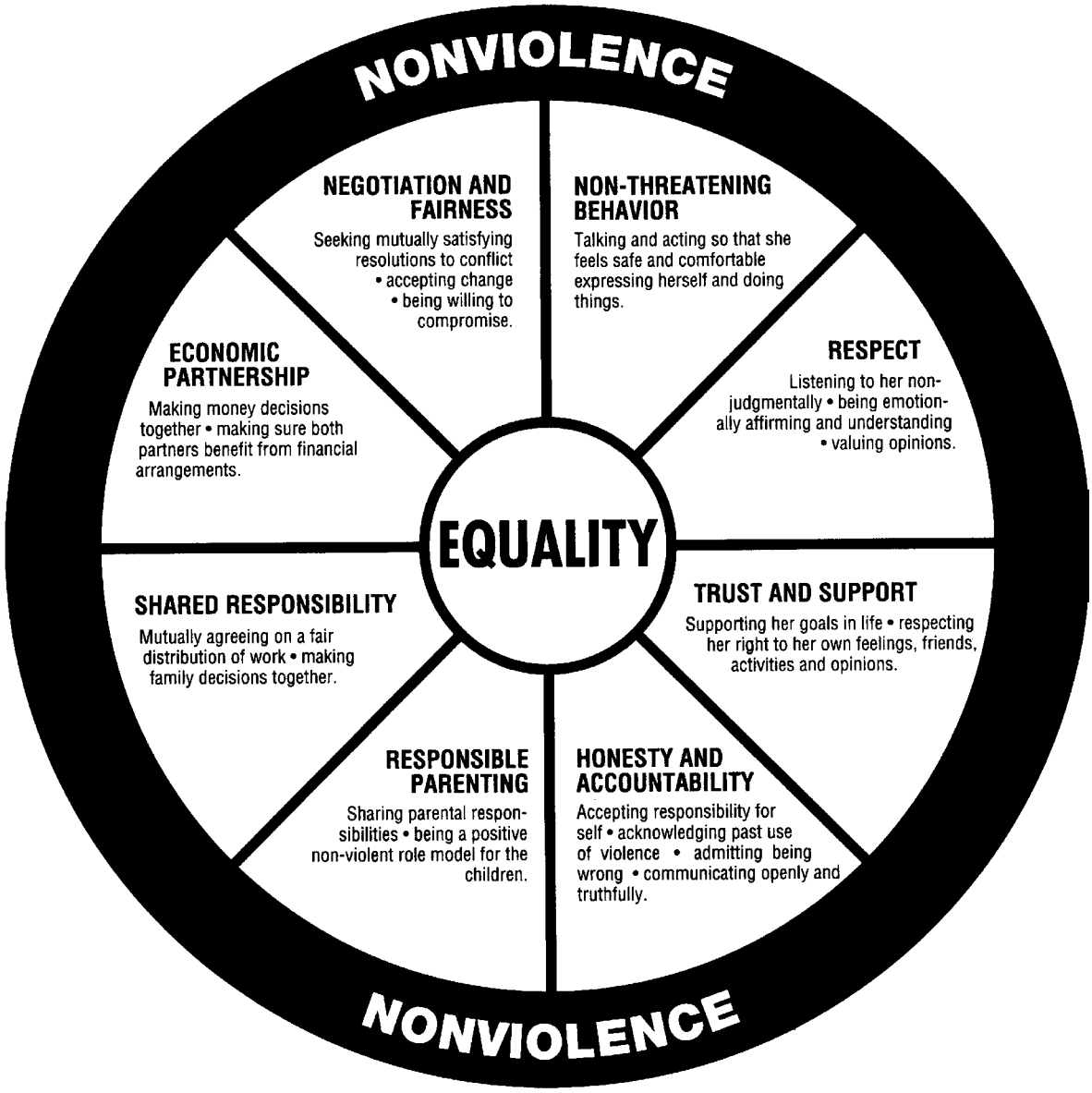
- Until social institutions take a strong stand against abusive behavior, the batterer will be given silent permission and entitlement to continue his abusive behavior.

POWER AND CONTROL WHEEL



DOMESTIC ABUSE INTERVENTION PROJECT
206 West Fourth Street
Duluth, Minnesota 55806
218-722-4134

EQUALITY WHEEL



DOMESTIC ABUSE INTERVENTION PROJEC
202 East Superior Street
Duluth, Minnesota 55802
218-722-2781

BIDERMAN'S CHART OF COERCION

General Method	*Effects (Purposes)*	*Variants*
1. Isolation	Deprives victim of all social supports ability to resist. Develops an intense concern with self. Makes victim dependent upon interrogator.	Complete solitary confinement. Complete isolation. Semi-isolation. Group isolation.
2. Monopolization of Perception	Fixes attention upon immediate predicament; fosters introspection. Eliminates stimuli competing with those controlled by captor. Frustrates all actions not consistent with compliance.	Physical isolation. Darkness or bright light. Barren environment. Restricted movement. Monotonous food.
3. Induced Debility; Exhaustion	Weakens mental and physical ability to resist.	Semi-starvation. Exposure. Exploitation of wounds. Induced illness. Sleep deprivation. Prolonged constraint. Prolonged interrogation. Forced writing. Overexertion.
4. Threats	Cultivates anxiety and despair.	Threats of death. Threats of non-return. Threats of endless interrogation and isolation. Threats against family. Vague threats. Mysterious changes of treatment.
5. Demonstrating "Omnipotence"	Provides positive motivation for compliance. Hinders adjustment to deprivation.	Occasional favors. Fluctuations of interrogation attitudes. Promises. Rewards for partial compliance. Tantalizing.
6. Occasional Indulgences	Suggests futility of resistance.	Conformation. Pretending cooperation taken for granted. Demonstrating complete control over victim's fate.
7. Degradation	Makes cost of resistance appear more damaging to self-esteem than capitulation. Reduces prisoners to "animal level" concerns.	Personal hygiene prevented. Filthy, infested surroundings. Demeaning punishments. Insults and taunts. Denial of privacy.
8. Enforcing Trivial Demands	Develops habit of compliance.	Forced writing. Enforcement of minute rules.

** New Studies on the Left, Volt XIV, Nos. 1 & 2 (1989), Saxifrage Publications Group, Boulder, CO

General Method	*Effects (Purposes)*	*Variants*
1. Isolation	Deprives victim of all social support for the ability to resist. Develops an intense concern with self. Makes victim dependent upon interrogator.	He moved me away from my friends. He didn't want me to go anywhere unless he was with me. He would eavesdrop.
2. Monopolization of Perception	Fixes attention upon immediate predicament; fosters introspection. Eliminates stimuli competing with those controlled by captor. Frustrates all actions not consistent with compliance.	I was always scared he'd blow up. I had to dress up for him. Give him sex whenever he wanted. I had to control the children so they wouldn't bother him. It was like walking on eggshells.
3. Induced Debility; Exhaustion	Weakens mental and physical ability to resist.	He wouldn't let me sleep. He started fights at night. He wouldn't let me see a doctor.
4. Threats	Cultivates anxiety and despair.	He threatened to kill the cat. He said he'd take the kids. He said he'd have me committed. He said he'd burn down the house. He said he'd find me if I left.
5. Occasional Indulgences	Provides positive motivation for compliance.	He took me on vacation. He bought me jewelry. He allowed me sex only when we "made up" Once in awhile he really listened to me and seemed to care.
6. Demonstrating "Omnipotence"	Suggests futility of resistance.	He beat me up. He had me followed. He called me deluded. He told me I'm too fat. He'd call me names and touch me inappropriately in public. He put me down intellectually and sexually and said I was ugly.
7. Degradation	Makes cost of resistance appear more damaging to self-esteem than capitulation. Reduces prisoners to "animal level" concerns.	The bacon had to be cooked to a particular doneness. I couldn't leave a cup on the bathroom basin.
8. Enforcing Trivial Demands	Develops habit of compliance.	

Source: Amnesty International, *Report on Torture* (1973), as adapted by the women's shelter of Northampton, Massachusetts.

Who Are Batterers?

As noted earlier, National Institute of Justice statistics indicate that around 95% of batterers are male. Most abusive partners are between the ages of 26 and 35 years of age. The second largest group is between 36 and 50 years of age. Ninety percent do not have criminal records and fifty percent of men who beat their wives also beat their children. Batterers come from all groups and backgrounds and conform to all types of personality profiles.

Having said that, what follows are some factors and predictors that are related to domestic violence:

- Abuse Before Marriage: Physical abuse during courtship is a guarantee of later abuse. Once violence becomes part of the couple's dynamics, there is a tendency for this behavior to increase in frequency and severity.
- Alcoholism and Drug Addiction: Drinking is an excuse for the violent behavior, not the cause; however, his behavior often worsens when drugs or alcohol are used. Research has shown that between 40 and 90 percent of physical violence between couples involves drinking.
- Bad Temper: An inability to handle frustration is a warning sign that indicates potential physical abuse. If relatively minor incidents cause someone to seriously overreact, that person will probably not be able to handle many of the normal frustrations of an intimate relationship.
- Closed-Mindedness: His way is the only way. He claims to listen to her opinions, but when the decision is to be made, it is his decision.
- Cruelty to Animals: Cruelty to animals (savagely beating a dog or another pet) is a strong indication of a potential abuser. Many men kill for sport and this in itself should not be minimized.
- Extreme Possessiveness: Perpetrators of domestic violence will go to extreme lengths to isolate and control their partners.
- Extreme Jealousy: Men who batter almost routinely accuse their partners of having other sexual relationships. Batterers also tend to be jealous of other personal relationships, such as with friends and family members, and not just of relationships with other men. Jealous behavior includes keeping tabs on the victim, wanting to know where she is at all times, or always wanting the victim to be with him. Such intense, irrational jealousy may arise from the man's own insecurities and projection.
- Minimizes His Violence: Often the abuser will minimize and deny his violence both to himself and to others. In the strictest sense, he is not lying; he is deluding himself. "I didn't hit her" or "I just pushed her a little bit" are almost universally uttered denials. Sometimes, awareness of his own behavior is so totally repressed that he will notice his partner's injury that he inflicted the night before and ask, "What happened to you?"
- Traditional ideas: An abuser might have traditional ideas about what a man should be and what a woman should be. For example, that the woman should stay at home, take care of her husband, and follow his wishes and orders.
- Unpredictable Behavior: The victim frequently cannot predict what will bring on a beating. The batterer may go through extreme highs and lows, almost as if he is two

different people, he may be extremely kind one moment and extremely cruel a few minutes later.

- Use of Force or violence to problem solve: A young man who has a criminal record for violence, who gets into fights, or who likes to act tough is likely to act the same way with his wife and children. Behaviors such as demonstrating a quick temper, overreaction to little problems and frustration, punching walls, or throwing things when he is upset may be a sign of a person who will work out bad feelings with violence.
- Verbal Abuse: Barrages of derogatory labels are heaped upon the victim and mind games are rampant. Some verbal abuse is less obvious to the abused party and can be so subtle that the woman is unable to identify the intent of the words.
- Violent Family of Origin: 80% of abusive partners have been abused as children or have witnessed the abuse of their mothers. Violent environments breed wife beaters. Children who experience or witness abuse may think of abuse as normal behavior.
- Weapons: Having access to guns, knives, or other lethal instruments, combined with talk of using them against people, or threatening to use them to get even may be an indication of a man who will batter.

Why Does He Abuse?

> **As long as we as a culture accept the principle and privilege of male dominance, men will continue to be abusive. As long as we as a culture accept and tolerate violence against women, men will continue to be abusive.**

According to Barbara Hart in *Safety for Women: Monitoring Batterers' Programs*:

> **All men benefit from the violence of batterers. There is no man who has not enjoyed the male privilege resulting from male domination reinforced by the use of physical violence. ... All women suffer as a consequence of men's violence. Battering by individual men keeps all women in line. While not every woman has experienced violence, there is no woman in this society who has not feared it, restricting her activities and her freedom to avoid it. Women are always watchful knowing that they may be the arbitrary victims of male violence. Only the elimination of sexism, the end of cultural supports for violence, and the adoption of a system of beliefs and values embracing equality and mutuality in intimate relationships will end men's violence against women.** (Published by Pennsylvania Coalition against Domestic Violence, 1988).

Domestic violence is about power and control. A feminist analysis of woman battering rejects theories that attribute the causes of violence to inadequate communications skills, women's provocation, stress, chemical dependency, lack of spiritual relationship to a deity, family dysfunction, economic hardship, class practices, racial/ethnic tolerance, or other factors. These issues may be associated with battering of women, but they do not cause it. Removing these factors will not end men's violence against women.

Batterers behave abusively to control their partner's behavior, thereby achieving and maintaining power over their partners and getting their own needs and desires met quickly and completely.

There are also many secondary benefits of violence to the batterer. A batterer may choose to be violent because he finds it fun to terrorize his partner, because there is a release of tension in the act of assault, because it demonstrates manhood, or because violence is erotic for him. Violence is a learned behavior and batterers choose to use violence. The victim is not part of the problem. The victim may accept responsibility for "causing" the batterer to "lose his temper," but the truth is that the abuser must be held accountable for his behavior.

Four widespread cultural conditions allow and encourage men to abuse women:

- Objectification of women and the belief that women exist for the "satisfaction of men's personal, sexual, emotional and physical needs."
- An entitlement to male authority with a right and obligation to control, coerce, and/or punish her independence.
- That the use of physical force is acceptable, appropriate, and effective.
- Societal support for his dominance and for his controlling and assaultive behavior. By failing to intervene aggressively against the abuse, the culture condones the violence.

By failing to intervene aggressively against the abuse, the culture condones the violence.

Who Are Battered Women?

While there may be some commonly shared reactions to being battered, there is no particular background or personality that makes you more likely to be battered. The best predictor of whether you will be battered is whether you were born female, although sometimes men are battered too.

Battered women are:

- Any race/ethnicity, religion, education, socio-economic group.
- Married, divorced, single.
- Heterosexual, bisexual, lesbian.
- Young or old, 14 or 94.
- May or may not have children.
- May or may not have seen violence in her home as a child.
- May be of any size or strength.
- May or may not have mental or physical disabilities.
- May be from a rural area, a town, or a big city.
- May be passive or aggressive or assertive.
- May have great self-esteem or low self-esteem.
- May be isolated or may have an active community life.
- May be economically dependent or may have a good job and income.
- May be alcoholic, drug addicted or sober.

(Excerpts from *A CURRENT ANALYSIS OF THE BATTERED WOMEN'S MOVEMENT* by the NCADV: Battered Women/Formerly Battered Women Task Force.)

There is no typical woman who will be battered!

It is often not possible to know in the early stages of a relationship whether a particular partner will be a batterer. Some studies indicate that about a third of all men admit to having physically assaulted a female intimate partner. Many women date, love, live with, and marry more than one male. The chances that we will have an intimate relationship with at least one male batterer are high. We are just beginning to find out what percent of lesbians batter. Early studies show the numbers of battered lesbians coming forward make it clear that abuse in relationships between women is more common than we like:

- Of LGBT domestic violence reported to the NCAVP in 2001, 43 percent of victims identified themselves as female and 49 percent as male. An additional four percent identified as transgender (the vast majority male to female), while the gender identity of four percent was reported "unknown."

(National Coalition of Anti-Violence Programs, Lesbian, Gay, Bisexual, and Transgender Domestic Violence in 2001, 2002, p. 21)

- While same-sex battering mirrors heterosexual battering both in type and prevalence, its victims receive fewer protections.

(Barnes, 'It's Just a Quarrel', American Bar Association Journal, February 1998, p. 24).

- Prevalence of domestic violence among gay and lesbian couples is approximately 25-33 percent. (Roughly the same percentage is estimated for heterosexual couples.)

(Barnes, 'It's Just a Quarrel', American Bar Association Journal, February 1998, p. 24)

The single best determinant of whether someone will be abused or be an abuser is gender. Women are more likely to be abused; men are more likely to be abusers. In fact, statistics from the National Institute of Justice (NIJ) indicate that around 95% of batterers are male. There is no single psychopathology that leads one to either be abused or an abuser. Batterers and battered women cover the spectrum of age, race, class, education, religion, and any other demographic characteristic imaginable. Family violence is truly an equal opportunity experience.

> **Every woman lives with the reality that she can be battered, and it is in our best interest to understand this reality. Women have been battered in the past; and/or they may be battered in the future; and/or women we care about may be battered. None of us are exempt from the risk.**

Having said that, there are some characteristics of both batterers and battered women that may be seen as a result of the abuse, but never the cause of the abuse. It is always important to remember that the cause of the abuse is cultural--*we as a society accept and allow male domination of women*.

> ***Especially with the legal system, I think it's a total joke. ... I just think the legal system out here stinks. It's definitely not for women.***
>
> -Tanya

When observing court cases in which domestic violence may be an issue, it is important to consider how the coping mechanisms of battered women may manifest themselves. For instance, McGregor and Hopkins (1991) note that women who are continuously beaten and terrorized are likely to encounter difficulty appearing calm and rational during restraining order hearings.

Battered women who are struggling to make sense out of their situations may appear forgetful, confused or indecisive during court hearings. According to Ptacek (1995) many battered women that he observed felt embarrassed about having to speak about the abuse to strangers and found the court system intimidating. The following is a list of coping mechanisms that may be displayed in the courtroom environment and can be attributed to the long-term abuse the individual has experienced:

- Low self-esteem; damaged self-concept.
- Fearfulness resulting from continued threat of and actual incidents of abuse.
- Financial instability.
- Lack of social support from friends, family, and social institutions resulting from a combination of isolation and thwarted attempts to ask for help.
- Blames self for the abuse; feels responsible.
- Feeling powerless.
- Loss of identity and sense of self.
- May experience psychological difficulties (situational depression predominantly) or somatization (physical complaints like tension, headaches, dizziness, or chronic health problems).

Why Does She Stay?

There are as many reasons that women stay in abusive relationships as there are battered women. Battered women stay in their relationships for all the same reasons anyone stays in a relationship. The relationship, both good and bad aspects, is complicated by many complex factors.

Some of those factors may include:

- Fear: He may have threatened to hurt or kill her, the children, family members, friends, or others if she leaves him. He may have also threatened suicide or to commit a murder-suicide. Because there has been a history of physical violence, she believes him capable of following through on these threats.
- Isolation: Often she will have limited contact with the outside world because of his isolating abuse. Embarrassment over bruises or threats from him keeps her from connecting with friends and family.
- Lack of social and institutional support systems: Often when battered women do seek help from family, friends, clergy, medical and mental health professionals, the response they get is not helpful. They may be discouraged from leaving, disbelieved, or be encouraged to leave the relationship before they are ready. They may "burn out" their support system in the leaving process. For whatever reason, they are left feeling alone, fearful and isolated.
- Dependency: She may be financially, emotionally, or socially dependent on him. Her social status and sense of self may depend on continuing the relationship. His income producing capabilities may exceed hers. Even if it does not appear to be the case, she believes she will not be able to exist without him.
- Love: Despite his abuse, he may be very loving at times. She also loves him or did at one time. The emotional connection this creates complicates her leaving him.

- Low self-esteem or self-concept: One of the impacts of repeated insults, blame, and physical assault is the destruction of self-concept. Despite her attempts to "be better," his abuse continues. She begins to believe that she is incapable of caring for herself. Isolation, lack of job skills, and the responsibility of small children may contribute to this problem.
- Secrecy: Because the abuse most often occurs in the privacy of the home, it remains a secret to the outside world. By leaving, she is revealing the shameful secret to the world.
- Traditional views of marriage and the role of women: Often the physical abuse does not start until after marriage. For women with traditional attitudes about the sanctity of marriage, leaving the relationship violates deeply held religious and cultural beliefs. She may believe or have been told that were she a better wife, he would not be abusive. When children are involved, their need for a father and fears of the burden of single parenthood may keep her in the relationship when it is no longer safe for her or the children.

Facts On Why She Stays

- Women who leave their batterers are at an increased risk of being killed at the time of leaving than those who stay, according to the National Institute of Justice (NIJ).
- Up to 50% of all homeless women and children in this country are fleeing domestic violence, according to Elizabeth Schneider in *Legal Reform Efforts for Battered Women.*
- After being sheltered, 31% of abused women in New York City returned to their batterers, primarily because they could not locate longer-term housing, according to Dwyer and Tully, 1989.
- 39% of divorced women with children under 18 live in poverty, according to the U.S. Bureau of the Census, Poverty in the United States, 1992.

Domestic Violence Is Not A Mental Health Issue

- Domestic violence is not a mental health issue. It is an example of the power and control that men hold and can use at will in our culture (Dobash & Dobash, 1979; Schechter, 1982).
- Domestic violence is not a family problem that can be fixed through family or marital counseling. It is a socially reinforced, learned behavior that allows and encourages men to dominate and control women (Ferraro, 1997).
- Domestic violence victims do not invite abuse and are not helpless, weak, incapable, incompetent, or crazy. Violent actions are the responsibility of the batterer who chooses to act violently (Bowker, 1993).
- Domestic violence victims aren't from only low income, minority families. Any woman may become a victim of domestic violence (Hotaling & Sugarman, 1990).
- Domestic violence will not resolve on it its own without some kind of intervention. The abuse continues to escalate over time (Browne, 1997).
- Domestic violence is not caused by drug or alcohol use (Browne, 1997; Gelles, 1993). According to one study, 1/3 of abusive men are abusive whether they are drunk or sober, and 1/3 do not drink at all (Women's Center and Shelter of Greater Pittsburgh Volunteer Training manual).

- Domestic violence is not caused by unemployment or underemployment. The incidence of abusive behavior may increase during stressful times, but stress is not the cause of the abuse (Browne, 1997).

No matter what, domestic violence is not a mental health issue. It is a crime.

A Guide To Staying Safe

When assisting a woman to plan to stay safe, advocates must take into consideration available identifying information and the ways in which a perpetrator may find it. The two most common ways are the Internet and change of address forms.

On the Internet there are four types of identifying information which can be used to locate an individual: 1) Name; 2) Social Security number; 3) Telephone number; and 4) Address.

Information available on the Internet includes:

- Name, including a woman's maiden name.
- Address, even confidential ones.
- Phone number, even non-published.
- Social Security number, including where and when you obtained it.
- Criminal record.
- Motor vehicle record.
- Workers compensation records.
- Credit report.
- Public records.
- Names, addresses, phone numbers, and length of residency of your neighbors.
- Professional license.
- Education.
- Military.
- Employment.
- Personal references.

Information gets on the Internet by:

- Entering information on web sites (i.e. to obtain credit, to order purchases on-line, etc).
- Businesses selling customer information to other businesses.

Some effective ways of remaining safe include:
Relocate to a safe location if you have any concerns for your safety or that the abuser may learn of your plan to change your name. Do not assume that if the abuser is in another city/state that you are automatically safe.

- Do not stay with family or friends, as this is the first place an abuser will look. It also places them in danger.
- If you do relocate, inform law enforcement of why you are leaving, that you are leaving of your own free will, and that you are safe.

- Do not tell them where you are going.
- If you hear of anyone asking questions or contacting you directly, again notify law enforcement and move immediately.
- Once you are in a safe place, get into counseling. Not only are you dealing with the abuse, its effects, and your feelings, but you also are dealing with the stress and emotion of saying goodbye to your old life and identity, and creating a new one.

Do not file a change of address card. These can be traced by writing to the old address.

- Do not file a forward or address correction notice. Addresses are one piece of information businesses will sell to other businesses.
- Write or call the people you trust and whom you want to have your address.
- Ask them not to give it out.
- Post office boxes are generally safe and less easy to trace.

Do not use checks or credit cards. They are traceable. Additionally they contain information that businesses will sell.

- Cash transactions only.

Use a non-published phone number.

- This differs from non-listed. Non-listed means your number is not in the phone book or directory assistance.
- Non-published means that unless you give out your number, no one can get it. Again, this is a piece of information that businesses will sell.
- Only give your number to people you trust.

If at all possible, sell or trade your car.

- Get a new license plate.
- Have someone the abuser does not know put the car in his or her name, or use public transportation.
- Check into record confidentiality of motor vehicle records or a non-disclosure statement.

Change your appearance including length, color, and style of hair.

- Wear your hair up or down, wear a wig, wear a hat or no hat.
- Wear glasses or contacts.
- Change eye color.
- Change style of clothes etc.
- Most importantly, do everything differently.

(Adapted from *Identity change: A guide to Remaining Safe and Accessing the System,* prepared by Billie Jean Samuels, Livingston, Mt., 2001.)

Postal Service

The Postal Service issued a final rule 65 FR 3857-3859 (effective: Feb. 24, 2000) (codified as 39 CFR Part 265). The rule applies to Application for Post Office Box, PS Form 1093, or Caller Service and Application for Delivery of Mail through Agent, PS Form 1583. In response to concerns for the safety of battered individuals and their children, stalking victims, and other person who consider themselves at risk of harm if their physical location is not kept private, the

Postal Service has provided for the submission of protective court orders to block access for the general public to personal information contained on the above mentioned forms. This means that with a copy of a protective order, the postal service will not release the name, address, or telephone number of the holder of the post office box. Even for criminal investigation, law enforcement and other governmental agencies must get a court order, a subpoena, by itself is not sufficient.

After you put in a change-of-address order, to check it's accuracy, the Postal Service will send a post card to the previous address to ask if the change of address is accurate. This is extremely dangerous for a battered woman who has left her abuser. To prevent a confirmation letter from being sent to the old address, the woman should go to the Post Office with a letter from a domestic violence shelter, an order of protection, or with an advocate. She should ask to speak to a supervisor or the Post Master and request a change of address without a confirmation letter. Check www.usps.com/moversnet or call 800-275-8777 for more information.

SECTION TWO: ADVOCACY

What Is Advocacy?

Broadly defined, advocacy consists of any effort or action aimed at social change on behalf of oneself, another person, or a cause. Any person who speaks out about or takes action in the name of ending violence against women is an advocate for battered women. There are various types of advocacy, many of which fall into one or more of the following categories:

Self-Advocacy

-- Is the act of representing one's own rights and interests with the goal of finding a reasonable solution to a problem. Another word for self-advocacy is empowerment, which is the goal of all other forms of advocacy.

Individual Advocacy

-- The act of speaking or acting on behalf of another individual with the goal of changing the practices of people or institutions that prohibit justice for that individual. Individual advocacy involves active or passive intervention into an unjust situation or system on behalf of a person who requests such assistance.

Systems or Group Advocacy

-- The act of influencing social and political systems to bring about changes for groups of people. Often this type of advocacy takes place within a coalition of people, united around a social problem. The group works to change laws to address the problem, alter social conditions that prohibit recognition of the problem, and establish needed services for the people directly impacted by the problem.

Legal or Representative Advocacy

-- The act of litigating and legislating to establish and maintain the legal rights of a person or group of people impacted by a social problem. This form of advocacy may occur in various social situations and legal arenas.

Advocacy may involve aspects of each area described above. For example, offering individual assistance to a battered woman through active listening and facilitation of problem solving may be used along with research targeting social action, community outreach, and public education on the issue of violence against women.

Although most of the programs discussed in this manual are focused on providing direct services, the goal of providing legal advocacy is to provide information and to empower someone who is, or may want to be, involved with the legal system. Legal advocacy can be a program unaffiliated with another domestic violence program such as a hotline and/or a walk-in service. It may be provided on a crisis line, or be a part of staff support for participants in other programs (e.g., case management staff in a shelter program). Regardless of how legal advocacy is provided, its purpose is to guide an individual through the legal system (including criminal,

civil domestic relations, state, tribal, federal and military) and help that individual understand the legal process.

The following are different types of legal advocates who provide services:

Lay Legal Advocate:
A person who provides information and explains options and rights within all aspects of the legal system, but cannot provide legal advice. This person is usually employed by a non-governmental agency and provides services to individuals who may or may not already be involved in the legal system. A lay legal advocate usually provides information and resources for all legal systems, not just criminal.

Crime Victim Advocate/Victim Witness:
According to A.R.S. § 4401, number 5, a "*Crime victim advocate* means a person who is employed or authorized by a public entity or a private entity that receives public funding primarily to provide counseling, treatment or other supportive assistance to crime victims." A person who usually is employed within a governmental agency (e.g., the prosecutor or county attorney's office) who is part of the legal system. Crime victim advocates also provide information and explain options and rights within the legal system. They usually do not provide services unless the "victim" is already part of the criminal justice system and has a case being prosecuted.

Attorney/Legal Representation:
A legal agent who can act for a person in a legal proceeding. The action of one person standing for another so as to have the legal rights and obligations of the person represented. An attorney can be the city or county prosecutor or a defense attorney who provides legal services as part of a legal aid or human services program, or a private attorney.

In order to educate participants about the legal system, staff will need to explore the pros and cons of each individual's situation and explain how the legal system may and should respond to her situation. Part of the explanation may include distinctions between criminal and civil matters, as well as a discussion about relevant laws and victims' rights. If staff is available, participants may also need support filing court papers or attending hearings on their cases. Although it is dependent on how an agency provides legal advocacy services, it is not likely staff will need to schedule a separate intake or have case files specific for this service for each participant.

> Legal advocacy should focus on providing information and resources in order to empower someone to navigate the legal system. The primary job of a legal advocate is to act as an interpreter between the participant and the legal system.

Unauthorized Practice of Law

On January 15, 2003, the Arizona Supreme Court instituted new rules regarding the regulation of the practice of law, which will become effective on July 1, 2003. These new rules could have a

devastating effect on the assistance provided by the legal advocates. Rule 31(a)(2)(A) defines "practice of law" to mean "providing legal advice or services to or for another" by:

- preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;
- preparing or expressing legal opinions;
- representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration or mediation;
- preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
- negotiating legal rights or responsibilities for a specific person or entity

Rule 31(a)(2)(B) goes on to describe "unauthorized practice of law" as:

- engaging in the "practice of law," as defined above, without being an active member of the state bar; or
- using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law, the use of which is reasonably likely to induce others to believe that the person is authorized to engage in practice of law in this state

The new rule does not prevent a lay legal advocate from representing a victim in limited circumstances, e.g. proceedings in front of DES, AHCCCS OR DHS, so long as the advocate is not charging a fee.

AzCADV suggested several changes to this definition, as the current meaning of practicing law would include helping someone fill out a form, to be filed in court. Additionally, AzCADV has suggested an exception for victims of domestic violence or advocates helping victims. None of the changes were adopted. New suggestions are being submitted in August, 2003. AzCADV has now submitted a letter to the ULP board to clarify what a legal advocate may do when s/he is helping a victim of violence. We have been repeatedly assured that helping someone fill out an order of protection, divorce or child support worksheet does not violate the rule.

The now limited role of the lay legal advocate

As of July 1, 2003, a lay legal advocate will be able to do the following:

- tell someone how to get an Order of Protection and where to get the forms
- give information about court procedures, or
- go to court with someone
- appear as an agent in proceedings before DES, DHS, or AHCCCS
- tell someone how and where to get divorce forms.

Giving information is allowed. Advocates can assist women in providing them with information about the law and court procedures; in facilitating their critical thinking about safety planning and legal options; and in empowering them to speak and advocate for themselves in various legal proceedings in which they seek relief. Advocates do not make decisions for, act on behalf of, speak for, or represent the women.

After July 1, 2003, a lay legal advocate may not do the following:

- prepare any document to affect or secure legal rights
- negotiate on behalf of the woman
- prepare any legal document for filing in court or administrative agency

The question here, is what does "prepare" mean? Does it mean simply helping fill out an order of protection or divorce papers. AzCADV has been told verbally that such behavior is fine. We are seeking it in writing.

To avoid giving legal advice, do not answer the "should" questions, e.g., Should I ask for sole custody of my children? Will the judge put my kids on the Order of Protection? Should I call my 13-year-old son as a witness? Giving advice is not allowed.

Violation and Sanctions

Arizona Supreme Court Rule 75(a) gives the court jurisdiction over any person engaged in the unauthorized practice of law, as defined by Rule 31(a) discussed above. The following sanctions may be imposed on someone found to be in violation of Rule 31, i.e. an act found to constitute the unauthorized practice of law:

- **Agreement to Cease and Desist:** prior to formal proceeding, respondent, or person charged with violating the rule, agrees to stop engaging in acts found to be the unauthorized practice of law, to refund fees collected, to pay costs and expenses, and to make any other restitution.
- **Cease and Desist Order:** the superior court may enter an order for respondent to immediately cease and desist from conduct that constitutes engaging in the unauthorized practice of law.
- **Injunction:** the superior court, at any stage in an unauthorized practice of law proceeding, may enjoin a respondent from engaging in the unauthorized practice of law and order a respondent immediately to cease and desist such conduct. This order may be issued without proof of actual damages to any person.
- **Civil Contempt:** the superior court may issue a civil contempt citation and determine if the respondent is guilty of contempt and, by order, prescribe the sanction, including assessment of costs, expenses, and reasonable attorney fees.
- **Restitution:** If actual damages are shown, restitution may be ordered to any individual for money, property, or other items of value received by a respondent.
- **Costs and expenses:** Costs, expenses, and attorney's fees relating to the proceedings shall be assessed against every respondent upon whom another sanction is imposed.

The sanctions are very limited especially when the behavior is first detected. Since the rule is brand new, there will be many questions on its meaning. Thus advocates should not be afraid to do their work. If there is a question, the first sanction is simply to tell you to stop.

The Immediate Role of the Advocate

Initial Contact

As with other programs, the first contact with someone requesting legal advocacy may occur over the telephone. During initial contact, staff should assess the caller's situation as they would when answering a crisis call or a request for shelter. Staff should confirm that the person is safe and able to talk about her situation. Simply saying, "I'm safe" is not enough. Staff should ask her the caller to describe safety measures she has in place because she may not recognize the danger. A good source of printable safety planning is http://www.ncadv.org, under the "getting help" section.

Staff should ask the person specifically what she needs, what she would like the program to provide her, and how she would like to have the situation resolved. Staff should also ask, "who else have you contacted" because if she has already tried an avenue of resolution with no success or that avenue is in process, it is pointless to give her referrals to places she already knows about or that didn't work. It is important for staff to listen carefully to what the caller identifies as the primary issue(s) to be resolved and to explain what services the program is able to provide. This discussion is important because callers need to be educated about the strengths and limitations of the program as well as what they can expect from the program. If the staff or program cannot provide the services needed, then program staff should assist callers to find additional services. For example, if a program can only provide telephone support, and a caller would like an advocate to escort her to a court hearing, then staff should provide the caller with resources and agencies able to provide a court advocate.

Once initial contact is made, it is important for staff to be clear about what the caller needs and determine if legal advocacy is her primary or only need. If she has other issues in addition to the legal issue that take priority over her need for legal advocacy, staff should be sure to refer the caller to the appropriate available services. For example, someone may call to talk about calling the police because her ex-husband has just physically abused her. During a discussion about the incident, staff determines that the caller needs medical attention for her injuries. Staff should prioritize the medical need over the need for legal advocacy and provide resources for services. Staff should also explain that the staff at the medical facility could assist her with contacting the police. In such a situation, it is very helpful for staff to know the community resources available in order to refer the caller to a medical facility that will screen for domestic violence and assist her with filing a police report.

Once the caller's issues are understood and prioritized, staff should focus on how legal advocacy can be helpful or applied to the caller's situation. Many times individuals do not understand the criminal justice system, so it is the staff's job to explain the options, limitations, and possibilities available through the legal system. When providing information staff should be honest and realistic about what may or may not occur in the caller's case. Also, staff should inquire about what actions or steps the caller has already taken and whether or not she has any other agency working on her case. It is not staff's responsibility to solve the caller's problem; however, it is staff's responsibility to help the caller by empowering her to take the next step (defined by the caller) to help herself.

For referral purposes, if an advocate is going to refer the client to the Family Advocacy Center in Phoenix, be aware that they will do a criminal record check. If the woman has a warrant out for her, she will be arrested.

Program

The first step in providing legal advocacy for any agency is to determine how the service will be provided. Questions and issues to consider include:

- Will this be a service provided separate from shelter services, either through a hotline, a walk-in service or both?
- Will staff members providing crisis support, case management, or outreach services also provide legal advocacy services?
- Because legal advocacy is information and resource intensive, it is a service best provided by a staff member who only focuses on legal advocacy, and can keep educated on the many legal changes and resources.

In addition to understanding the dynamics of domestic violence, **a legal advocate should know and understand:**

- The legal system (criminal, civil, and domestic relations).
- Safety planning.
- Confidentiality issues (see Confidentiality for Domestic Violence Service Providers in Arizona under Federal and State Law).
- Local, state, federal and tribal laws.
- Local, state, federal and tribal resources.
- Policies and procedures in the legal and social service systems.

The primary responsibility of a legal advocate is to explain the legal system for the participant to help her understand it. This understanding can help to reduce her anxiety about an intimidating system, and can also provide options for her as a participant of the system.

In addition to understanding the legal system, it is also important that advocates know the community resources available to assist participants with legal matters. Many times participants will need or are already working with an advocate, attorney/prosecutor, paralegal, expert witness, or victim witness advocate. It is important to know about the services these resources provide, their limitations, and how they can be accessed. Knowledge about available resources allows an advocate to be realistic about what a participant can expect from these agencies and services.

When providing legal advocacy information, it is important for an advocate to be knowledgeable about legal terms in order to adequately explain the legal process to a participant. Legal advocates should not provide simplistic information about the legal process. Instead, advocates should provide thorough, honest information to participants so that they will be prepared for and understand what is happening in court. Knowledge of the terminology used in court is very important in order to understand the legal process and know what to expect from the system.

Based on each participant's priorities and her unique circumstances and needs, legal advocates should be prepared to provide accurate information about the "pros and cons" of working within the legal system. This information should include an extensive list of options, alternatives, consideration of potential companion issues, as well as assistance in developing both short-term and long-term goals within the context of the legal system. The more accurate and thorough the information provided, the more comfortable the woman may be with her decisions and choices. Equally important, her expectations may be more realistic. Also, accurate, thorough information about the legal process enables a woman to more fully participate in that legal process, advocating on her own behalf. For example, a participant might find information about the difference between plea-bargaining a criminal case rather than going to trial helpful. A participant may want to know that if her case goes to trial, the participant, and possibly her children, family or friends, could have to testify in court. Also, the abuser may choose to plea bargain to a lesser charge, possibly not a domestic violence crime. The participant should understand the implications of such a situation. It is important for a participant to understand fully the potential consequences of involving the legal system in order to make an informed decision about participating in or taking legal action in a case.

When a legal advocate is working on a case with someone, the advocate should check regularly to be certain that the participant understands the information provided and the potential next steps. It is important to be clear about the limitations of the services a participant can receive from the legal system and also from the program. Legal advocates should provide participants with resources when they are needed and appropriated. Overall, it is important that staff provide examples of when the system has worked for battered women, and also advocate to hold the system accountable.

> Provide participants with a list of legal terms and their definitions. Also give participants a flow chart of the legal system and information on how to follow their cases.

Termination/Follow-up

Since there may not be an intake process for legal advocacy services, there may not be a specified termination process. If an advocate is providing services over the phone, and potentially during a single phone call, the advocate should verify the caller's overall understanding of the discussion. This should include a review of the resources and information provided to the caller before hanging-up. The advocate should ask callers if services were helpful to them and let them know they can call back for additional information or support, if appropriate. If the caller is a repeat caller, ask if her prior call was helpful and did the provided system, resource, or information work for her situation (i.e., did the Order of Protection work? What happened if it was violated?). Also, advocates should find out if callers have any suggestions for improvement or feedback about the resources they contacted.

If a program has a walk-in based service, advocates should ask participants if the agency can follow-up with them—assuming staff time allows for this task. If they agree to follow-up, staff should determine a safe way to carry that out. For some callers the only way to follow-up may be to have them call the program, and in some instances, programs may need to provide participants

with the same information during follow-up. Often there is a lot of information to understand and remember while a caller is in crisis and/or dealing with the legal system.

> Legal advocates should be realistic and informative about possibilities and available services and resources for each case.

Data Collection/Record Keeping

As with other programs the type and depth of information collected and maintained in program files will depend on funding, contract and program requirements. If legal advocacy is provided as part of another program, then related information may or may not need to be documented in the individual's file. The agency and staff need to determine, beyond any requirements, how to maintain records for the program and what type of information to collect from participants. A few elements to consider are confidentiality of the participant balanced against compiling statistics about the services provided. One important issue is documenting any identifying information about a participant. Also, programs should consider whether or not staff should obtain the first and last names of participants if it is not required or already recorded as part of another program or file. In some instances recording names could be helpful for the participant (i.e., if a woman calls back, staff would be able to access information from the first call) or it may also be harmful. Maintaining files with names on them could be harmful to the caller if an attorney determines the woman sought legal information from the program and then subpoenas information or records for the case. Further, the subpoena may be helpful or harmful to a participant depending on what is documented in the file and how it is used in the case. In any event, no records should be turned over based on a subpoena. In some cases the records are immune; in other cases, at least a court order is required after a hearing. Be sure to talk to your attorney.

When obtaining information try:

- To only get necessary details and not require someone to repeat their story over and over again.
- To only document pertinent information to each case and requests for services from the program. Keeping a brief narrative of the case may be helpful for staff providing follow-up or continued services, especially if the participant has worked with more than one staff member.
- To provide a means to measure and document a participant's satisfaction with the agency and services. Participant satisfaction does not need to be limited to direct agency services, but can be related to general services from the legal system. For example, a caller might provide information about an incident during which 911 was called. She might then provide valuable information about the response of law enforcement such as the officer's ability to determine the primary aggressor and appropriately arrest the abuser. This type of information not only helps in documenting statistics but also can be helpful in developing suggested agency policy changes or legislative recommendations by the program.

It is important, regardless of the scope of the documentation maintained by the program, that each program develops policies and procedures addressing the issue of responding to a legal summons or subpoena. When anyone subpoenas an individual's file, a program must respond to that subpoena. No shelter or program should comply with the subpoena, but it does need to respond. A court order is at minimum what is required. Program policies and procedures should include provisions describing the steps to be taken by staff when information is subpoenaed, and, most importantly, that a consultation with a program's staff attorney should proceed any and all responses (S*ee Confidentiality for Domestic Violence Service Providers in Arizona under Federal and State Law, AzCADV*).

> **One of the greatest challenges to programs providing legal advocacy is to develop policies and procedures that simultaneously protect any participant's file from being subpoenaed; satisfy data-gathering requirements; and exclude any information that identifies or links that information to a specific individual. For telephone-based services, and as long as an intake is not conducted and/or there is no identifying information gathered, confidentiality should not be an issue. Files with no identifying information are not subject to subpoena.**

However, for walk-in programs, confidentiality and legal advocacy services often present a dilemma. For many participants their need for officially documented information is often in direct conflict with their need for confidentiality and safety. Whenever possible, participants' immediate and long-term safety and emotional well-being must take precedence over satisfying data collection and record-keeping criteria.

For example, if a program wants to know the frequency with which police were called due to domestic violence, there is less opportunity for re-victimization if the legal advocate relies on self-reports (information that the participant provides without staff asking), rather than asking whether she ever called the police on her abuser. If she never called law enforcement, she could be inadvertently and unintentionally re-victimized if she is asked whether or not she called the police and feels ashamed for not calling for help. More importantly, whether she did or did not call the police may not be relevant to her immediate situation, priorities, or needs. The legal advocate's role is to provide her with assistance, support, information, and resources enabling her to more fully understand and participate in the legal process. The advocate should also explain the potential short and long-term consequences of her decisions.

Confidentiality and Individual Rights

(See Confidentiality for Domestic Violence Service Providers in Arizona Under Federal and State Law, AzCADV.)

Advocates should explain to each participant her individual rights in respect to the program and the legal system. If the program decides to document identifying information, then staff should first obtain a verbal waiver by the participant. The program, however, should not refuse services to someone who will not provide identifying information. Although confidentiality is always important, programs should remember that when providing services in a small community (either a rural area with few residents or a tight knit cultural community), confidentiality might have more significance. Because many people know one another in small communities, it may be especially important for advocates to discuss and adhere to policies related to confidentiality. For this reason it is important to only get information when it meets the participant's needs and to

inform the participant what is and could be done with the information they provide. In cases when it does meet the participant's needs to divulge information, the program should consider developing policies related to destroying the identifying information when it is no longer needed. For example, a woman calling into a program could request to have information sent to her through the mail. The advocate could write her name and address on the envelope and then shred the paper on which she originally wrote the information.

When working on a case that involves other agencies or parties, be sure to only provide information to the participant seeking services. If the participant agrees to have the staff member discuss her case with others, that staff member must be sure to have a release-of-information form signed. In some programs an automatic contract may exist that allows programs to share information about cases. If such a contract exists, the contract terms should be explained to all participants so they understand how information is shared. Before a release of information is signed, or the participant shares information, staff should spend time educating the participant about the pros and cons of doing so. Participants may not understand the full implications of sharing information between agencies or individuals.

Community Resources

As previously stated, community resources are very important to providing legal advocacy services. It is important for advocates to know who can provide advocacy, pro-bono services (attorneys), or other legal services that are specific to domestic violence. Many times battered women lose their court cases because they do not have representation or their representative does not understand the dynamics of domestic violence. Community resources can be obtained by staff networking with available services to determine if they are appropriate and from the feedback given by participants. Agencies should try to get feedback from participants about the quality, usefulness and value of services provided by community resources to determine their appropriateness and usefulness. Staff should always be on the look out for new resources and evaluate the ones currently being used.

In the process of gathering resources, it is especially important that legal advocates be aware of and familiar with the resources and referrals they are using. When gathering information from a participant, advocates should ask her which resources she has called and what services she has already obtained (or attempted to access). The compilation and verification of resources is an integral part of building an effective legal advocacy program. When available, volunteers and interns can be recruited to develop and update a resource list.

Participant feedback is invaluable to compiling a reliable, credible and useful list of resources and referrals. Tracking complaints about service providers and programs provides a legal advocacy program with a priceless tool, enabling the program to track trends, patterns, and problem areas in their community's service delivery system. Each program would then have the option of following up with complaints. To do so, advocates may want to verify reported problems and, when appropriate, remove those resources that have been deemed unacceptable from the referral and resource list. When verifying complaints, advocates should be careful not to disclose any identifying information about participants to those agencies about which they have reported problems to avoid breeching confidentiality. Often, even details about a case could

make a participant identifiable to an agency and consequently vulnerable to retribution or embarrassment.

An additional task in gathering resources is to include those that describe avenues of recourse for complaints. For example, the legal advocate must be aware of and familiar with mechanisms for filing formal complaints. Equally important, the advocate must be able to present this information to the participants as an option. This includes describing the process, any qualifying criteria for filing complaints (what the entity has authority over, types of issues that the entity will investigate, etc.), and the pros and cons of filing any complaints. For instance, filing a complaint against a judge or commissioner before her case is finished could bias the judge or commissioner against her.

Legal advocacy programs should be sure to pass on community resource information to the program participants. See RESOURCES section. It is important that participants understand the limitations and expectations of these resources.

Advocates should never give the participant false hope about the process or the capability of an agency. The following are suggestions of where or how to research referrals:

- Go to your local and county criminal justice agencies (e.g., court, law enforcement, probation, etc.) and inquire about their process and resources for domestic violence cases.
- Introduce your program or services to any legal aid or pro-bono legal services in your area. Inquire how to utilize their services and if they receive training on domestic violence.

Staff or participants can download information and forms off the Arizona Judicial Department's Internet site: http://www.supreme.state.az.us/selfserv/forms.htm. They also have a Domestic Violence Information Page: http://www.supreme.state.az.us/dr/dv/dv.htm.

Staff should be trained about what caller ID is and how it works. If the agency phone number is blocked, staff should be aware. As part of the safety planning process, staff should know how to instruct phone participants to delete calls on a caller ID box and to reset the redial number on a phone after dialing a new number. Also, staff should be aware that caller ID may not work with toll free 800 numbers, 900 toll numbers, 911, long distance, or if the phone has been programmed not to receive blocked calls. Therefore calling such numbers might be safe for participants. In addition, once a phone line is blocked, people using that phone cannot use *69 (star 69) to verify the phone number of the last caller. Callers can block a line by dialing *67 before making a call if they do not already have their phone blocked by the phone company.

The Role Of The Advocate In Order Of Protection Proceedings

Functions Of A Legal Advocate

(Excerpted from *Domestic Violence: Sharing the Knowledge*, a manual prepared by the Arizona Coalition Against Domestic Violence.)

Advocates are specialized individuals who assist victims of abuse by helping them through various processes:

- Designing a personalized safety plan.
- Risk assessment.
- Filing for protective orders.
- Accessing the fullest protection provided under the law.
- Overview of the law, the family law system, the criminal system, and what legal protections exist.
- Discussion of issues regarding custody, parenting, mediation, and confidentiality.
- Discussions of timing for possible actions.
- Determining appropriate community and legal resources.
- Preparing the woman to speak her truth.
- Providing court accompaniment for court hearings.
- Assistance with implementing any order, foreign judgments, and full faith and credit issues.
- Providing women with information and tools for screening and selecting an attorney.
- Encouraging and assisting a woman to prepare before going to see a lawyer; how to talk to a lawyer; how to convey dangerousness of the abuser; and how to convince the lawyer of the necessity of certain outcomes.
- Personal and emotional support.

Although every attempt has been made to make protection under Arizona laws available to all who need it, many cases of domestic abuse are complicated and confusing. Specialized domestic violence civil court advocates are necessary to assist victims because they are often confused about their rights. Additionally, victims of domestic abuse often have ambivalent feelings about much of the protective order process. For many reasons they may want to save relationships with abusers. They may be confused as to whether their experiences should even be called abuse.

An advocate's primary mandate is to inform victims of domestic violence and to help them plan for their safety. Informing means providing sufficient facts for the victim to make individually appropriate decisions. The advocate then supports the victim as she implements that course of action. The process of informing and supporting is termed "Empowerment."

A victim arriving at the courthouse for the first time to file a petition for an Order of Protection may be making her first public declaration as a victim. It is crucial that she be responded to with sensitivity. Since victims often minimize or deny the abuse, it is critical that the first person in whom they confide:

- Understands those tendencies.

- Questions them appropriately to discover the truth.
- Provides appropriate information for safety planning.

The victim must always be listened to and encouraged to maintain control of her situation. It is important that advocates not make choices for victims or display judgmental attitudes in words or actions. Words such as "best course of action," "good choice," "bad choice," or "right decision," should not be used. Victims may interpret actions such as rolling of eyeballs, sighing, crossing arms across the chest, or pulling back physically as the advocate's passing of judgment. Some victims may choose to petition for a protective order because they see it as the safest option. Others may consider a protective order unwise or unsafe. Whatever the case, each victim must be listened to and supported in her decision. She is the one with the best information on the abuser.

Court Accompaniment

A victim of domestic violence who has decided to petition for an Order of Protection can benefit from an advocate's input and feedback in helping her through the process. The first step is preparation. The stories of victims may sound disjointed; they may "forget" to include what others consider the most relevant issues; and dwell on seemingly "insignificant" points. They may minimize the extent or effect of their abuse. To counteract this, an advocate is often able to help victims focus their thoughts for a sequential and relevant presentation before the judge. The advocate also can offer a "safe place" for victims to vent their confusion, anger and other emotions.

These functions allow the victim to make a more calm and rational presentation in court. Judges and other court personnel, as well as the victims themselves, usually feel more comfortable with a calmly made presentation of facts. The advocate plays a vital role in helping this process take place without minimizing or ignoring the victim's emotional needs.

Once a woman has obtained an Order of Protection, the legal advocate's job is not over. The woman may have questions or problems regarding serving the Order on the defendant, or she may have problems getting the police to make a report on a violation of the Order. An advocate's continuing support can be a valuable resource. Finally, throughout this process, the advocate's role of providing support and assistance does not mean doing everything *for* the woman. The goal of the advocate is to help the battered woman develop the necessary tools to advocate on her own behalf.

Some suggestions:

- Assist her with practical considerations. For example, inform her that she should obtain childcare, because there may be a long wait to see a judge and judges do not want children in the courtroom.
- Listen to the woman's story, and then help her to focus on the facts most relevant to the petition for Order of Protection such as: significant instances of abuse; abuse that has occurred within the past year; and instances of abuse that may be documented by police or medical reports.

- Help her to decide what level of protection she should request in the petition. For instance, if a divorce is in progress it may be wise to allow contact in writing. Or if the abuser has enlisted family members or friends to intimidate her, she might request no contact by third parties.
- Assist her in "covering all the bases." Has she remembered to include her place of employment and the children's school on the petition?
- Help her in assembling evidence and obtaining subpoenas, etc.
- Assist her with having the Order served.
- Help her to prepare for the hearing. She may want to make notes of points to make or questions to ask of the judge. For a hearing on a contested OOP, she may want to think of questions to ask of the defendant.
- Accompany her to court. Whether it is to obtain the initial OOP, or to attend a hearing where the OOP is being contested, an advocate can be of great assistance to a victim just by being there.
- Provide moral support and help her to remain calm.
- Escort her to and from the courtroom and, if safety calls for it, obtain a bailiff to act as an escort.
- In the courtroom place yourself between the victim and her abuser so he cannot "stare her down," etc.
- If asked to identify yourself, do so, and state which agency you are with, if any.
- Depending on the judge, you may be allowed to sit next to the woman at the counsel table, or the judge may even allow you to advocate on her behalf. Other judges may not want an advocate to be present in the courtroom at all. If your presence is challenged, respectfully explain that you are a legal advocate, and ask to be allowed to stay. As a rule, be respectful of the judge's wishes.

The Role of the Advocate in Domestic Relations Proceedings

The following are various ways an advocate can assist a victim who is going through the divorce process:

- Referral to appropriate service providers.
- Accompaniment to store, self-help center, paralegal, attorney, or court.
- Assistance in filling out papers.
- Explanation of the process and time lines.
- Help in gathering information and evidence, e.g. police reports, medical reports, photos of broken furniture, and financial information.
- Assistance in keeping track of her court dates.
- Explanation of why mediation is not appropriate and what she can do about it, including the option of filing a standardized motion objecting to mediation or conciliation.
- Discussion of the pros and cons of using court evaluators, guardian ad litems and other experts.
- Help in investigating the various evaluators and experts.
- Help in making a budget.
- Support in the form of listening.
- Help in safety planning.

SECTION THREE: LEGAL PROCESSES

Legislative History

Following is a history of changes in the legal system in Arizona in response to advocacy by victims and supporters.

1974
- The Faith House and Rainbow Retreat are the first shelters to open for battered women and children.

1980
- ARS 13-3601 is enacted to define domestic violence and ensure it is treated as a crime.
- ARS 13-3602 is adopted to provide orders of protection for victims of domestic violence.
- The Arizona Coalition Against Domestic Violence is formed.

1982
- Legislation is passed to establish the shelter fund to be distributed to programs through the Arizona Department of Health Services (ADHS).

1985
- DeColores opens a shelter that primarily serves Hispanic victims of domestic violence.

1986
- Domestic relations statutes are modified to require judges to consider domestic violence when making custody and visitation decisions.

1987
- ARS 13-3601 is changed to mandate arrest in cases of domestic violence involving physical injury or the use of a deadly weapon.

1988
- Arizona adopts a bill to increase marriage and divorce fees to fund domestic violence shelters.
- A bill is passed to create a crime of sexual assault against a spouse.

1988-1989
- In Arizona, 10,000 women and children are turned away from domestic violence shelters due to a lack of space.

1989
- The Arizona Coalition Against Domestic Violence, which was solely run by volunteers, is now able to pay a staff member.

1990
- Legislation is passed to protect the confidential location of shelter programs.

1991
- ARS 13-3602 is amended to expand the eligibility for orders of protection to include pregnant women and unmarried couples.
- Governor's Commission develops task force on domestic violence.
- Victims' rights legislation is passed.

1992
- ARS 13-415 is passed requiring that if the victim of domestic violence is charged with assault, the jury must view the reasonableness of her actions from the perspective of a person who has been the victim of those past acts of violence.

1994
- Brewster Center begins domestic violence services both in Santa Cruz and Nogales.
- Legislation is passed to transfer the shelter fund from ADHS to the Arizona Department of Economic Security (DES).

1994-1995
- In Arizona, 1,472 women and 1,759 children utilize shelter services, and 20,194 women and children are turned away from shelters due to lack of beds.

1995
- Arizona adopts laws regarding stalking.
- Twenty-five women are murdered as a result of domestic violence.

1996
- Arizona adopts The Relief for Battered Women Bill, which is similar to clemency laws in other states.
- A bill is passed to prevent providers of life, health, and disability insurance from discriminating against victims of domestic violence.

1997
- Through the efforts of the Arizona Coalition Against Domestic Violence and community collaboration, court fees collected to provide shelter to domestic violence victims are increased by $400, 000.
- Legislation is passed requiring judges to order those convicted of a misdemeanor domestic violence offense to complete a domestic violence offender program.
- The confidential addresses of domestic violence victims registered to vote are protected.
- Domestic violence is established as a good cause exemption for participation with child support enforcement and work requirements for Temporary Assistance for Needy Families (TANF) cash assistance benefits.

1998
- Legislation is passed to add an income tax check box to increase revenue for shelters.
- Orders of Protection are granted full faith and credit, making them valid across all jurisdictional boundaries.

- Legislation is passed to allow judges to order supervised probation and convict a person for aggravated domestic violence, a class 5 felony, upon a third domestic violence offense.
- The crime of aggravated harassment, a class 5 felony, is created.

1999

- The Arizona Department of Economic Security (DES) receives a state general fund appropriation of $800,000 for domestic violence emergency residential programs.

2000

- Legislation is passed allowing victims of domestic violence in same sex relationships to be protected under the domestic violence statutes.
- A bill is passed creating a rebuttable presumption that it is not in the best interests of a child to be placed in the custody of a parent who has committed domestic violence.
- DES receives a $3 million TANF appropriation for domestic violence shelter and legal advocacy programs.
- Legislation is passed to create a domestic violence and sexual assault state plan task force.
- A sentence enhancement is created for defendants who knowingly commit domestic violence against a pregnant victim.
- Insurance companies providing property and casualty insurance are prohibited from discriminating against victims of domestic violence.

2001

- A bill is passed to increase funding for domestic violence services by $500,000.
- Fees for Orders of Protection are eliminated.
- Crime victims are protected from workplace discrimination to tend to the criminal case and its aftermath.

2002

- A bill is passed to eliminate service of process fees for Orders of Protection and Injunctions against Harassment in dating situations only.

2003

- A bill is passed establishing privileged communication for domestic violence victim advocates in civil actions and outlines the training requirements for advocates.
- A bill is passed making it easier and faster to get fingerprint cards for staff and volunteers.
- SB 1352 was passed. The bill increases the number of persons with a duty to report when there is a reasonable belief that abuse or neglect of a minor has occurred, and establishes a reporting exemption for Christian Science Practitioners. The bill clarifies and expands *reportable offenses*, and establishes that prescribed person who fail to report *reportable offenses* are guilty of a Class 6 felony, punishable by 1 year or $150,000.
- A bill passed that allows victims of domestic violence, persons with orders of protection or injunctions against harassment, to have their voter registration records sealed. Victims without an order of protection or injunction will have the same procedure as judges, prosecutors and defense attorneys, i.e., through an affidavit in front of a judge.
- The statute of limitations for any civil action brought by the victim of a crime against the perpetrator runs from the latter of the final disposition of the criminal prosecution or the last

incident of criminal conduct. This bill also exempts insurance policies and employers or former employers from the extended statute of limitations.

- A bill passed restricting the use of social security numbers for general public, ID cards, over the internet, or in the mail.

Overview of the Legal System in Arizona

The legal system is divided into two distinct parts: the civil system and the criminal system. The figure below presents a summary of the differences in the two systems.

Basic differences between civil and criminal procedures:

	Civil	Criminal
Purpose of the Action	To resolve disputes between individual and to compensate for injuries	To punish acts that are disruptive of social order and to deter similar acts
Burden of Proof Required	"Greater Weight of Evidence" – it must be shown to be more likely than not that the act in question occurred	"Beyond a Reasonable Doubt" – this is a higher standard of evidence than in a civil case
Remedies or Penalties	Remedies: Money damages or injunctive relief, ordering a defendant to do or refrain from doing something	Penalties: Incarceration, fines, restitution, probation during which certain conduct may be required or prohibited by a prosecuting attorney. The defendant retains a private attorney or public defender or may represent himself.

The Civil System

In the civil system, one person brings an action against another person. Actions are brought for damages, usually money, or for injunctive relief (an order that requires someone to do something or refrain from doing something). Where money damages are involved, the lawsuit may be filed in small claims court (for damages under $2,500); justice court (for damages under $10,000); or in superior court (for damages in excess of $10,000). In small claims court the parties involved cannot utilize the assistance of a lawyer. In justice court and superior court the parties may represent themselves (sometimes called *pro per* or *pro se*) or may be represented by an attorney. In a civil action the people involved in the action can dismiss their case; can agree to a settlement; or can ask the court to decide the issue in the case. Civil proceedings that battered women commonly use include:

- Order of Protection proceedings (ARS 13-3601 et seq.).
- Divorce proceedings (ARS Chapter 25).
- Custody proceedings including juvenile court actions (ARS Chapters 25 and 8).
- Paternity actions (ARS 12-841 et seq.).
- Actions against the abuser for money damages in tort (for personal injury).

The advocate can play a major role in assisting a woman through the civil legal system. This includes help in assessing her legal needs and in obtaining protective orders, custody and visitation orders, and support orders.

The Criminal System

In the criminal system the party bringing the action is the State of Arizona. Generally, if the crime is a misdemeanor, the party is represented by a city attorney; or, if in a rural area, the county attorney; or, if a felony, by the county attorney. The other party—the person charged with committing the crime—is the defendant. The defendant has the right to legal counsel if the offense is one punishable by incarceration for more than six months. The victim does not have an appointed attorney. As a witness for the State, she is not a client. Therefore, the attorney-client privilege does not apply and the woman must be aware that her statements to the county attorney can be used against her in the current or in another action, e.g. welfare fraud.

In the criminal process the role of the crime victim is that of a witness. The testimony or words of the victim, as well as her physical injuries, are evidence in the case. The county attorney, also known as the prosecuting attorney, and not the victim, makes the decision to initiate or dismiss a criminal proceeding. The legislature has given crime victims the right to be notified of the status of criminal proceedings and to have a certain amount of input into the proceedings. However the battered woman has much less input into criminal proceedings than into civil proceedings. In a civil proceeding the woman is a party to the lawsuit and therefore has more control over what happens in the case.

Advocates can be of great assistance in the criminal system. Prosecutors vary in their willingness to inform or involve battered women as crime victims in preparation for hearings, in sentencing recommendations, and in other areas. Judges vary in what they will agree to hear. The advocate will need to support the woman in her dealings with the criminal process, and help her get information, deal with the police, with other law enforcement personnel, with the prosecuting attorney, and with defense counsel. The advocate helps present her needs to the prosecuting attorney and the court.

Multiple Proceedings

There can be more than one legal proceeding involving the same set of circumstances. These proceedings can be initiated by the woman, by the abuser, or by the State. After an incident of abuse the woman may start a proceeding to obtain an Order of Protection pursuant to ARS 13-3601 et seq. At the same time, she may file an action for dissolution of marriage (ARS 25-301 et seq.) and include claims for spousal support, custody and child support. She also may start a suit for money damages against her abuser. After an incident of abuse, the abuser may also start an action to obtain an Order of Protection against the woman or file charges of assault. If the abuser and victim are married, the abuser may also start an action for dissolution of marriage. If

unmarried he may start a paternity action regarding the children. The State may also file a child protective action in juvenile court on the theory that the abuse of the mother creates a need for intervention on behalf of the child. Thus, it is not uncommon that there be two or more legal proceedings occurring at the same time.

Where there is more than one proceeding, each needs to be treated separately. There are often different attorneys involved, and different judges hearing each proceeding. Special care needs to be given when there is more than one proceeding so that confusion does not occur and the maximum result can be obtained in each one.

Tax Remedies

Many married taxpayers choose to file a joint tax return because of certain benefits this filing status allows. One drawback to a joint return is that both taxpayers are personally and individually responsible for the tax and any interest or penalty due on the joint return even if they later divorce. This is true even if a divorce decree states that a former spouse will be responsible for any amounts due on previously filed joint returns. One spouse may be held responsible for all the tax due even if the other spouse earned all the income.

In 1998, the Internal Revenue Service (IRS) enacted regulations designed to create an exception to the rule for people whose spouses did something wrong on their tax returns. If the IRS seeks payment of unpaid tax, interest, or penalties, the qualifying spouse must complete and file IRS Form 8857. Three types of relief are available to such a spouse: (1) Innocent Spouse Relief; (2) Separation of Liability; or (3) Equitable Relief. Each type of relief is explained below.

Innocent Spouse Relief

Internal Revenue Code § 6015 provides three methods for obtaining innocent spouse relief from federal income tax.

Subparagraph (b) of § 6012 provides the narrowest form of relief as it only applies to married taxpayers who have filed a joint return. To be considered an innocent spouse, all of the following must be true:

- You filed a joint return that has an understatement of tax due to erroneous items (such as unreported income or improper deductions) of your spouse.
- You are able to establish that at the time you signed the joint return you did not know, and had no reason to know, that there was an understatement of tax.
- Taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement of tax.
- You must file the request for innocent spouse relief within two years of the first time the IRS tries to collect the tax from you.

Subparagraph (c) provides the second ground for innocent spouse tax relief. This provision applies to divorced, widowed or separated taxpayers who filed jointly. There are three important differences between paragraph (c) and paragraph (b):

- The IRS has the burden to prove that the spouse actually knew of the understated income or other errors in the joint return. Simply having reason to know is not enough.
- The innocent spouse can prorate the liability based on the spouse's income. Community property rules do not apply and the innocent spouse is treated as if a separate return was filed using only that spouse's income.
- The prorated approach essentially replaces the "inequitable" test of paragraph (b), so there is no issue of fairness to address.

The third, and broadest, form of innocent spouse relief is the "equitable relief" provided in subparagraph (f). Under this subparagraph, marital status does not matter and the return can be filed jointly or as married filing separate. This is a catchall provision under which the IRS has discretion to look to any number of factors, such as the terms of the divorce decree and how much of the deficiency is attributable to the other spouse.

By requesting innocent spouse relief, a person can be relieved of responsibility for paying tax, interest and penalties if your spouse did something wrong on your tax return. The tax, interest and penalties that qualify for relief can only be collected from your spouse. However you are jointly and individually responsible for any tax, interest and penalties that do not qualify for relief. The IRS can collect these amounts from either you or your spouse.

See regulations issued in August 2002, IRS Publication 971, and Internal Revenue Code § 6015, available online at http://www.irs.gov/ for further guidance.

Arizona law corresponds with § 6015, with two exceptions:
- Innocent spouse relief is never available to taxpayers who filed separately.
- A refund (rather than simply eliminating a liability) can never be obtained through innocent spouse relief.

Separation of Liability

Under this type of relief you allocate (divide) the understatement of tax (plus interest and penalties) on your joint return between you and your spouse (or former spouse). The understatement of tax allocated to you is generally the amount for which you are responsible. To request relief by separation of liability you must have filed a joint return and meet *either* of the following requirements at the time you file Form 8857.

- You are no longer married to or are legally separated from the spouse with whom you filed the joint return for which you are requesting relief. (Under this rule, you are no longer married if you are widowed.)
- You were not a member of the same household as the spouse with whom you filed the joint return at any time during the 12-month period ending on the date you file Form 8857.

You have the burden of proof in establishing the basis for separating your liability. Even if you meet the requirements discussed previously, a request for separation of liability will *not* be granted in the following situations:

- The IRS proves that you and your spouse transferred assets as part of a fraudulent scheme.
- The IRS proves that at the time you signed your joint return, you had actual knowledge of any items giving rise to the deficiency that were allocable to your spouse.
- Your spouse (or former spouse) transferred property to you to avoid tax or the payment of tax.

In situations (2) and (3), a request will be denied only for the part of the deficiency due to the incorrect items about which you had actual knowledge, or to the extent of the value of the property transferred. If you establish that you signed your joint return under duress, then it is not a joint return, and you are not liable for amounts from that return. However, you may be required to file a separate return for that tax year.

Equitable Relief

If you do not qualify for innocent spouse relief or separation of liability, you may still be relieved of responsibility for tax, interest, and penalties through equitable relief. You may qualify for equitable relief if you meet *all* of the following conditions:

- You are not eligible for innocent spouse relief or relief by separation of liability.
- You and your spouse did not transfer assets to one another as a part of a fraudulent scheme.
- Your spouse did not transfer assets to you for the main purpose of avoiding tax or the payment of tax.
- You did not file your return with the intent to commit fraud.
- You did not pay the tax. However, you may be able to receive a refund of:
- Amounts paid after July 21, 1998, and before April 16, 1999, and
- Certain installment payments made after you file Form 8857.
- You establish that, taking into account all the facts and circumstances, it would be unfair to hold you liable for the understatement or underpayment of tax.

Arizona Law

Because Arizona is a community property state, the Innocent Spouse regulations apply somewhat differently. Married persons who filed separate returns in Arizona have two ways to get relief:

1. Relief from separate return liability for community income. You are not responsible for reporting an item of community income if all the following conditions exist:

    - You filed a separate return for the tax year.
    - You did not include an item of community income in gross income on your separate return.
    - You establish that you did not know of, and had no reason to know of, that community income.

- Under all facts and circumstances it would not be fair to include the item of community income in your gross income.

2. Equitable Relief. If you do not qualify for the relief described above and are now liable for an underpayment or understatement of tax you believe should be paid only by your spouse (or former spouse), you may request equitable relief in the manner described above.

If you request relief from separate return liability for community income by filing Form 8857, write "Innocent Spouse Relief Under IRC 66(c)" across the top of Form 8857. Fill in the name and address area and Parts I and IV. Leave Parts II and III blank. Attach a statement to the form explaining why you believe you qualify for relief. Mail the form to the address listed in the Form 8857 instructions.

Injured Spouse Claim

You are an injured spouse if you file a joint return and all or part *of your share of the refund* was, or will be, applied against *your spouse's* or *former spouse's* past-due Federal tax, child support, or Federal non-tax debt, i.e., student loan or State tax debt. If you are an injured spouse, you may be entitled to recoups your share of the refund.

You are considered to be an injured spouse if you:

- file a joint tax return,
- have received income (such as wages, interest, etc.)
- have made tax payments (such as withholding)
- report the income and tax payments on the joint return, and
- have a refund due, all or part of which was, or is expected to be, applied against your spouse's past-due amount.

If all of the above are true you can file Form 8379, *Injured Spouse Claim and Allocation*, with your joint return or after you have filed. If filed with your return, attach the form to the return in the order of the attachment sequence number and enter *"Injured Spouse"* in the upper left corner of the return. If you have already filed your return, you can file Form 8379 by sending it separately to the same IRS Service Center where you filed your return.

Conclusion

The IRS has taken additional steps to protect victims of domestic violence who apply for innocent spouse relief. When preparing a Form 8857, the IRS asks the applicant to write the term "POTENTIAL DOMESTIC ABUSE CASE" at the top of the Form. The IRS also asks the taxpayer to explain their concerns in a statement attached to the Form. The IRS will tell the spouse that you have applied for innocent spouse relief and he has an opportunity to argue against it. They do not release any locational information, or even the area of the country where the tax return was filed.

For additional information, including information on how to prepare and submit a Form 8857, visit www.irs.gov on the Internet. You can order forms by calling the IRS at 1-800-829-3676. The IRS will answer tax-related questions at 1-800-829-1040.

Interspousal Torts: An Option for Battered Women

Introduction

While prosecutors are prosecuting abuse under the criminal codes, sometimes they do so without the cooperation of the victim. Battered women are often fearful of the ramifications of sending their abuser to jail. Often battered women and their children are dependent on their abuser and his incarceration would punish her economically, which may include having an adverse effect on a military career. Other women fear what might happen when their abuser is released from jail. Some battered women simply do not want to see someone they care for go to jail.

However, personal injury actions in tort provide a civil option to women that can be very effective in fighting violence against them. These actions are brought for a private or civil wrong or injury, other than a breach of contract, and the court will provide a remedy in the form of damages.

A battered woman needs to give careful consideration to the timing of a personal injury suit. She needs to consider whether to bring this suit before, during, or after a divorce. A divorce settlement may waive all future claims and that could be interpreted as waiving a potential tort action. The woman should speak to an attorney about a possible tort action before finalizing the divorce or signing a settlement agreement.

A personal injury action is usually brought for assault and battery or for intentional infliction of emotional distress. A personal injury action should be considered where the abuser has money, property or an insurance policy that provides coverage for the damage. Personal injury actions in Arizona have been successful where there has been physical injury as a result of an assault or battery, where there has been intentional infliction of emotional distress, and where there has been property damage.

Only three courts have recognized a new tort of battered women's syndrome, and New Jersey has the highest court that has allowed such recovery. The tort allows an action to be brought for the result of extended battering. Arizona has not yet recognized this tort.

Other personal injury actions that a battered woman may want to consider include actions for interference with custody or interference with visitation. These actions for money damages are commonly brought against a parent or a person assisting a parent when there are proceedings in family court such as parental kidnapping or deprivation of parental rights. In Arizona damages have been collected from grandparents who helped in the kidnapping and from a school district that helped the mother.

A personal injury action may be brought regardless of whether the victim and abuser are married. However, as mentioned above, if they are married the woman should talk to an attorney about the timing of a personal injury lawsuit.

Even with the dissolution of the interspousal immunity doctrine, there remain procedural bars that limit the potential effectiveness of a tort action. These include joinder, statute of limitations, and *res judicata*. States have approached these procedural bars very differently. Some have lessened the burden for battered women. Others have made their actions more difficult. Some states have held that all matters between the couple have already been adjudicated in a divorce and that the woman may not bring an additional tort action. Because the Arizona Supreme Court has not addressed some of these procedural concerns, the following analysis draws in large part from other states, with the exception of the statute of limitations section.

Joinder

Arizona courts have addressed the issue of joinder of tort claims and divorce actions and have determined that tort actions may not be joined with divorce cases. The courts have several reasons for keeping the tort claims and the divorce claims separate. A jury trial is permitted in a civil case, while one is not permitted in a divorce action. The Domestic Relations Division handles divorce cases, while the Civil Division handles tort actions. Finally, fault is an issue in tort cases, while it is not an issue in divorce actions.

Res Judicata and Other Defenses

Another procedural hurdle must be overcome in states that recognize *res judicata* as a defense to a tort action between spouses. Claim preclusion prohibits a second action when an earlier action involved legal or factual issues that have been adjudicated in the earlier action. This is particularly a problem when the woman signs a settlement agreement in the divorce action that states that it settles all claims between the parties. Thus she should seek legal counsel before signing a settlement agreement.

Statute of Limitations

Today, the most difficult hurdle battered women face in attempting to gain compensation from a tort action is the limited period of time allowed for these actions. In Arizona, if the parties are getting or have a divorce, the courts have decided that the time will start running on the statute of limitations from the day of the divorce, not from the day of the occurrence. The woman will then have one year to bring the action. While no Arizona case has directly addressed the issue of bringing a tort action for abuse while in an on-going marriage, other tort actions have been allowed between married couples. This tort action should be no different.

A personal injury action is an attractive option for battered women. It may deter violence by giving poor women a financial incentive for seeking redress in a civil action, and it may better enable a battered woman to gain economic independence. It also helps her take back control of her own life and regain lost self-esteem. At the same time battered women should be aware of

the procedural hurdles that may bar a successful tort action and the difficulties of enforcing a judgment. The Never Again Foundation in Phoenix takes these kinds of cases (See Resources section).

On May 12, 2003, the Governor signed House Bill 2407, which amended A.R.S. § 12-511 to extend the statute of limitations for a civil claim brought by a victim against a defendant for criminal conduct against the victim. This bill should increase the chances of a victim recovering on a civil claim as she can now wait until the defendant has been criminally convicted and she can then present that evidence in the civil trial. Even if the defendant is not convicted the victim will not lose the opportunity to pursue a civil claim, as the statute of limitations is tolled while the criminal trial is ongoing. The specifics of the bill are as follows:

- If the defendant is convicted of criminal conduct against the victim, the statute of limitations starts running at the time of conviction and is extended for one year from the time the conviction becomes final.
- Additionally, regardless of whether the defendant is convicted of criminal conduct, this bill tolls the statute of limitations from the time of indictment or complaint dismissal or acquittal of criminal charges against the defendant. This means that the time between when the defendant is indicted and the complaint is dismissed or the defendant is acquitted does not count towards the statute of limitations time period.
- If the civil claim brought by the victim includes or arises out of more than one incident of criminal conduct, the statute of limitations shall run from the date of the last incident of criminal conduct or conviction.

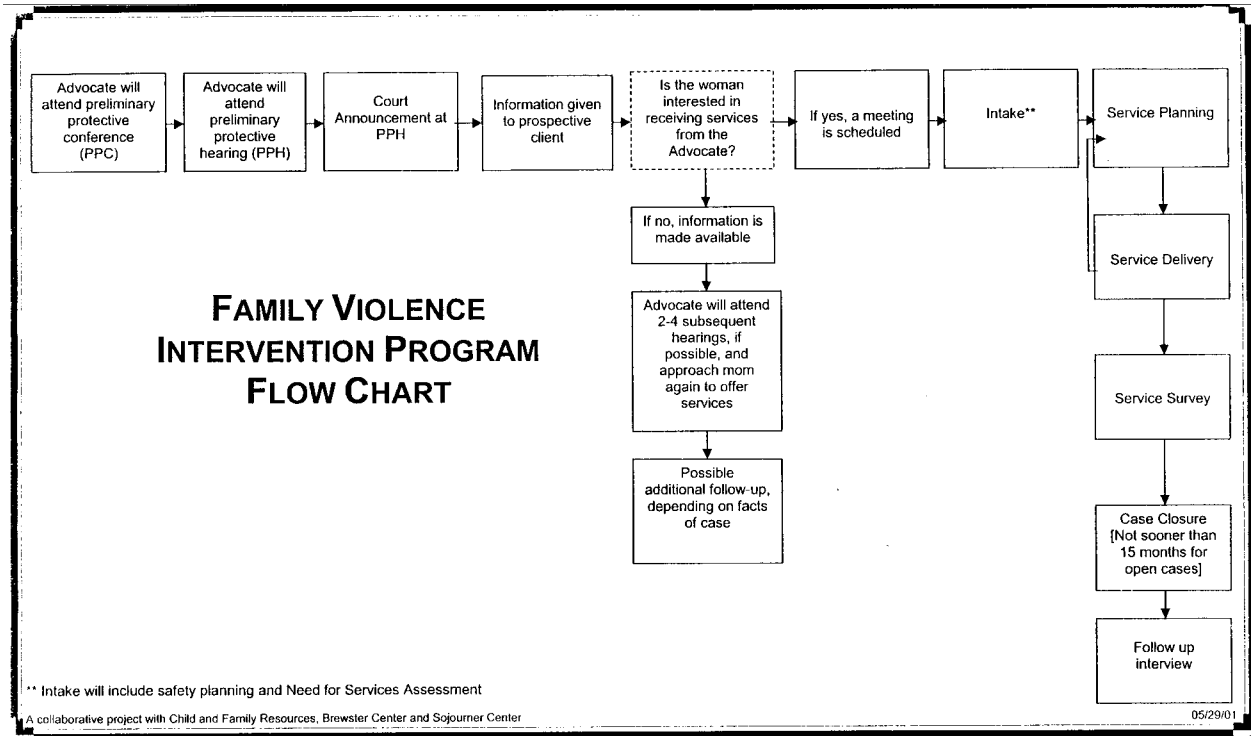
Juvenile Court

Studies show that in 30-60% of cases in the juvenile court dependency system, the children's mothers are also being battered. The need to protect the child and the need to protect the mother often clash, with the result that everyone is punished but the abuser.

A new Family Violence Intervention Program to deal with that issue started in Maricopa and Pima Counties about June 15, 2001. Initially it will be a pilot at Durango and the 20th Street CPS office in Phoenix, and in Pima County. The job of the advocate is to assist self-identified victims of domestic violence whose children have been removed from them due to child abuse or neglect. In certain cases the judge will read a statement that there is a person who helps women available in the courtroom and all dealings with her are confidential. The program is entirely voluntary.

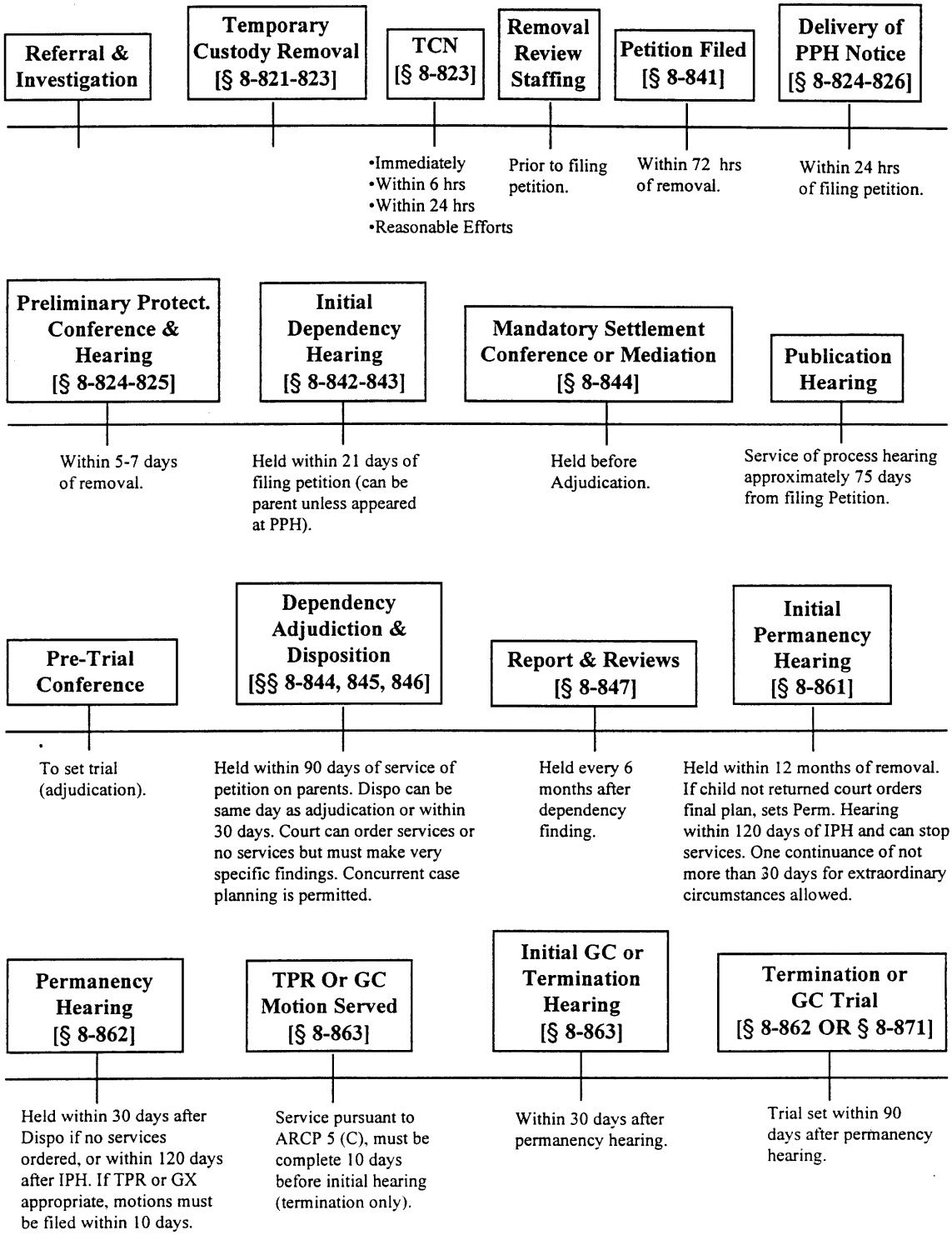
The domestic violence advocate has confidentiality except for the mandatory child abuse reporting statute, and is solely to work with the victim and help her prepare for the process, and live in safety. Advocates will have no right to speak in court but the court may ask them questions.

The following flow chart explains the process.


Advocate will attend preliminary protective conference (PPC)
Advocate will attend preliminary protective hearing (PPH)
Court Announcement at PPH
Information given to prospective client
Is the woman interested in receiving services from the Advocate?
If yes, a meeting is scheduled
Intake**
Service Planning
Service Delivery
Service Survey
Case Closure [Not sooner than 15 months for open cases]
Follow up interview
If no, information is made available
Advocate will attend 2-4 subsequent hearings, if possible, and approach mom again to offer services
Possible additional follow-up, depending on facts of case
FAMILY VIOLENCE INTERVENTION PROGRAM FLOW CHART
** Intake will include safety planning and Need for Services Assessment
A collaborative project with Child and Family Resources, Brewster Center and Sojourner Center
05/29/01

A model court hearings' timeline explains how the dependency process works.

MODEL COURT HEARINGS TIMELINE



For cases not in this pilot project, the advocate needs to be aware of several things. A child can become dependent if the parents cannot or will not provide the necessities of life; cannot or will not control the child; the child is a victim of abuse, neglect, cruelty or depravity by the parent, a guardian, or any other person having custody for the child; or the child is less than eight years old and has committed an act which would result in delinquency or incorrigibility for anyone older than eight. The safety and protection of the child, not the reunification of the family or the parent's rights, is the Juvenile Court's ultimate goal under the Adoption and Safe Families Protection Act.

SB 1304 was passed in the 2003 Legislative session, establishing an open juvenile proceedings pilot project. The project requires that at least 5%, but no more than 10% of the dependency, guardianship and termination of parental rights proceedings filed in the Maricopa County Superior Court Juvenile Division be open to the public. The goal is to see if having the proceedings open to the public will promote due process, while at the same time protecting privacy rights. At the beginning of any proceeding the court must ask the parties if there are any reasons the proceedings should be closed. Before opening the proceeding the court shall consider the following:

- Whether opening the proceeding is in the child's best interest.
- Whether doing so would endanger the child's physical or emotional well-being or the safety of any other person.
- The privacy rights of the child, the child's siblings, parents, guardians and caregivers and any other person whose privacy rights the court determines need protection.
- Whether all parties have agreed to allow the proceeding to be open.

If the child is at least 12 years old, and a party to the proceeding, he or she may request that the hearing remain closed. The court may close an open hearing at any time during the proceeding. DES, along with the Superior Court Juvenile Division in Maricopa County and the administrative office of the courts, shall evaluate the impact and effectiveness of the pilot program and shall submit a final written report of its findings to the Governor, the President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the Supreme Court, by October 15, 2004.

It is hard to predicate what the impact of an open dependency hearing might be for a victim of domestic violence. On one hand it could make DV issues public and thus let judges not ignore them or conversely, it could heap ridicule on the woman and blame her for "allowing " the abuser to abuse the kid or blame her for the abuse. Also, open proceedings could stigmatize the child by making his/her name public and all the kids in school would know about the abuse, or having the proceedings open could result in more care being given to the protection of the child if the courts know the public is watching. But, one thing we do know, the family courts are open and it hasn't worked there.

A law passed in the 2002 Legislative session changes somewhat the results of CPS findings when reports of child abuse are made. SB 1022 now makes it mandatory that after a complaint is made to CPS, "the department shall summarize the outcome of the investigation for the person who reported the suspected child abuse or neglect if that person is the child's parent, guardian or

custodian." It also requires that "The department shall provide the parent, guardian or custodian who is the subject of the investigation and the person who reported the suspected child abuse or neglect if that person is the child's parent, guardian or custodian with a copy of the outcome of the investigation …" when the report is unsubstantiated, after the time for hearing has lapsed, after a final administrative decision has been made. This law came about after a case in which CPS substantiated the abuse but never told the protecting parent. Thus, not knowing the abuse was substantiated, she left the child with the father and the child was harmed. She then was accused of child abuse for leaving the child with him though CPS never told her that the abuse was substantiated. It is not uncommon to see battered women put into a Catch 22 situation and them blamed for the result.

HB 2133, passed in 2003, authorizes DES to file unsubstantiated cases separately, depending on the circumstances, within the department's case management system. This bill also requires that if probable cause exists that abuse or neglect has occurred, the department shall record this finding, regardless of whether a specific person is identified as responsible for the abuse or neglect. Previously, if the perpetrator of the abuse could not be identified, then the report of abuse or neglect was unsubstantiated, even if probable cause of the abuse existed. When probable cause exists that abuse or neglect has occurred, but the perpetrator cannot be identified, the department shall provide the parent, guardian or custodian who is the subject of the investigation and the person who reported the suspected abuse or neglect if that person is the child's parent, guardian or custodian with a copy of the outcome of the investigation.

The duty to report statute was amended in the 2003 Legislative session by the passage of SB 1352. This bill increases the number of persons with a duty to report when there is a reasonable belief that abuse or neglect of a minor has occurred. Those persons required to report include:

- Any physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient.
- Any peace officer, member of the clergy, priest or Christian Science practitioner. However, an exception to this reporting requirement exists, a member of the clergy, Christian Science practitioner or priest, who has received a confidential communication or a confession, in their professional role, may withhold reporting of the communication or confession if the member of the clergy, Christian Science practitioner or priest determines that it is reasonable and necessary within the concepts of the religion. It is important to note that this exception only applies to communications and not to personal observations.
- The parent, stepparent or guardian of the minor.
- School personnel or domestic violence victim advocate who develop the reasonable belief in the course of their employment.
- Any other person who has responsibility for the care or treatment of the minor.

This bill also clarifies and expands *reportable offenses*, and establishes that prescribed persons who fail to report *reportable offenses* are guilty of a Class 6 felony, punishable by up to 1 year or $150,000. *Reportable offenses* include:

- Any offense listed in Chapters 14 and 35.1 of this title or § 13-3506.01.
- Surreptitious photographing, videotaping, filming or digitally recording of a minor pursuant to § 13-3019.
- Child prostitution pursuant to § 13-3212.
- Incest pursuant to § 13-3608.

If a child has been found to be dependent, it is the responsibility of DES to provide care for the child and services to the family so they may be reunited in safety as soon as possible. Services include parenting or domestic violence classes, counseling, drug and alcohol testing etc. A child should not be removed because the parents are homeless or financially unable to care for the child. It is the responsibility of CPS to find a way to provide those services so the child can be returned to its parent. Parents who are working with CPS should:

- Call the assigned caseworker every week.
- If unable to attend a scheduled appointment, notify the caseworker.
- Attend all scheduled parent-child visits. If unable, notify the caseworker as soon as possible.
- Keep a journal of all attempts to notify the caseworker.
- Ask her attorney about questions or concerns.
- Keep a journal of all attempts to contact the attorney.

If the case is sent to mediation and there has been violence in the family, request that a separate mediation be held with each parent rather than together, especially if an Order of Protection is in effect. Safety concerns regarding all court appointments should be communicated to the judge.

Problems arise from several different directions. Sometimes the caseworker wants to reunify the family, but the victim does not want to return to the batterer. That must be made clear to the caseworker, and the mother must not be punished. On the other hand, sometimes the caseworker insists that the mother leave the abuser before the child will be returned. Even if the mother wants to do this, leaving is the most dangerous time for her and the child. In addition getting a divorce might be difficult and time consuming, especially if she has no money. Advocates need to be aware that parents can and do have different positions and different attorneys. The child also may have two attorneys, one who is to represent what the child wants, and the other to represent the child's best interest independently of what the child wants.

Problems can arise in the criminal context as well. The mother may be criminally charged with child abuse or neglect for allegedly "failing to protect" the child from abuse. This is wholly unwarranted when she herself is a victim. She is being asked to do alone what the State with all its resources cannot do together, i.e. stop the violence. Sometimes she is the only one charged and the actual abuser escapes all responsibility.

Therefore she must be aware of that possibility and realize that the only person with whom she has client/attorney privilege is her own attorney. The attorney general is not her attorney. What she says to her/him can be used against her. Also the attorney(s) for the child is not her attorney, and she has no confidentiality with that person. She must be aware of "failure to protect" issues as well as other hazards. If she inadvertently indicates that she is working while receiving cash

assistance, she may be reported to DES for fraud. If she indicates she is driving to work although she doesn't have a driver's license, she may be reported. If she indicates she's living in an apartment with three other people when the occupancy is only for three, she may lose her place to live.

Sometimes three cases are proceeding at the same time, e.g. juvenile dependency, divorce, and a criminal action for child abuse. Testimony in all three cases will be on the record and so can be used against the witness if it is inconsistent. The perpetrator will not want to testify in any other case before the criminal one because his testimony can be used against him. Thus he will want to postpone the dependency case until the criminal case is resolved. If any testimony in the dependency or divorce case might result in criminal liability for the mother, she should also postpone or plead the 5th Amendment. She should definitely seek her attorney's advice.

Full Faith And Credit

Under the federal Violence Against Women Act (VAWA), jurisdictions must give full faith and credit to valid orders of protection issued by other jurisdictions. Simply put, courts in Arizona must honor orders from other states and jurisdictions including tribal courts.

The federal law does not require registration or filing of orders of protection in this state to make them valid. It may be of benefit to do it so that it will be more easily recognized and enforced by local police. To domesticate a foreign order, an authenticated copy must be filed in the superior court (ARS 12-1702). The clerk shall treat the judgment in the same manner as a judgment of the superior court of this state. Such a judgment has the same effect and is subject to the same procedures as an Arizona order and may be enforced likewise.

However if the court insists on giving notice of the registration to the abuser, it may be better not to register it. The registration is public record, which could enable the abuser to find the victim.

The federal law also does not require that the order be certified or authenticated. Arizona law does require authentication if the order is to be registered locally.

If the perpetrator has committed any of the following crimes, the case should be referred to the U.S. attorney's office for prosecution under VAWA:

- Interstate travel to commit domestic violence.
- Interstate stalking.
- Interstate violation of an Order of Protection.

Tribal Issues

The Indian Child Welfare Act (ICWA) requires that any deprivation of custody of an Indian child from its parents cannot occur without tribal approval. The case must be referred to the tribe to either accept and handle it itself or to reject it and allow the state courts to handle it. Thus if CPS is attempting to take a child away from its Indian parent, the advocate should ask the parent

or attorney if the ICWA has been invoked. The ICWA does not apply in divorce cases between parents.

Tribal police do not have authority to arrest non-Indians. Bureau of Indian Affairs officers, in conjunction with the FBI and U.S. attorneys office, do have criminal jurisdiction over non-Indians who commit offenses against Indians.

For more information concerning Indian tribes, contact Sacred Circle at 877-733-7623 or the American Indian Law Center at 505-277-5462.

Military Issues

The federal law, VAWA, does not explicitly cover Orders of Protection issued on military bases or installations. Most military orders will not meet the requirements for validity under VAWA since they are usually issued by a commanding officer without providing the respondent with an opportunity to be heard. However, the Armed Forces Domestic Security Act (P.L. 107-311) requires the enforcement of Civilian Protection Orders on military installations. The protocols have not been developed and implemented by the Secretary of Defense to date. However, some commanding officers on some bases have already begun directing military police to enforce civilian Orders of Protection issued against service members. For information about enforcement of Orders of Protection on military bases, contact the Battered Women's Justice Project (Criminal) at 800-903-0111 ext. 1 or the Miles Foundation at 203-270-7861 or Milesfdn@aol.com.

The Soldiers and Sailors Relief Act (50 U.S. Code Appendix, War and National Defense Act, Oct 17, l940, CH 888, 54 Stat. 11278) also gives various protections to members of the military on active duty. Service members involved in civil litigation can request a delay in proceedings if they can show their military responsibilities preclude their proper representation in court. Service members who are on extended deployment or stationed overseas most often invoke this provision. However an attorney can represent the service member in court. If they are stationed at a location where communication is easily available, and not in a war zone, they should be precluded from using the Act to prolong the divorce. Obviously those stationed in the U.S. should not be able to use the Act. An argument may need to be made to the court if the service member invokes the Act.

The military requires that the service member give his/her family reasonable support. There is no set amount of money to define "reasonable". If the service member is receiving an extra allotment for housing for the family, and the family has fled or is not living in that housing, the base commander should be notified so that the family allotment can be sent directly to the family. Otherwise the service member is receiving double income. The service member is also required to pay child support as ordered by the court. If s/he is not paying, contact the base commander.

Until the divorce is final the spouse and children are entitled to retain their identification cards and can use the PX and other military facilities.

The Uniformed Services Former Spouses' Protection Act was enacted in 1982 to enable state courts to divide disposable military retired pay, which is defined as the member's monthly retired pay minus qualified deductions, such as certain disability compensation. Since 1990, for divorces finalized after 3 February 1991, state and federal income taxes are not authorized deductions in arriving at disposable retired pay. The amount will be divided and then taxes deducted from each half so the payor and recipient are both paying taxes.

Courts must make an equitable division considering the length of marriage during which the member was in the service. The former spouse can receive the pay directly from the military pay center if they were married for at least ten years during which the military member performed retirement-creditable service. Direct payment is limited to fifty percent of the military member's disposable retired pay. The payment is not spousal maintenance, which could be ordered in addition. A certified copy of the court order is necessary.

Former spouses can use the commissary and exchange privileges if they meet the rule that they were married 20 years, the member performed 20 years of retirement-creditable service, and the marriage and service coincided for at least 20 years. Former spouses are eligible for space-available medical care if they remain unmarried, do not have medical coverage, and meet the 20/20/20 rule above.

If the spouse is to remain covered under the Survivor Benefit Program after divorce, a military member retiring after March 1, 1986 must submit a written, notarized document signed by both parties that should be incorporated into the divorce decree. This document must be submitted to the appropriate finance center within a year of the divorce.

In 2002, the Arizona legislature made changes to the state law regarding modification of child custody. A persons military deployment, if less than six months and with a family care plan filed, does not constitute a change of circumstances for modification of child custody.

STAMP: Survivors Take Action Against Abuse by Military Personnel at www.staaamp.org is a national advocacy group for victims of abuse committed by members of the military. The hotline is 866-879-2568 or 937-879-2568. The Miles Foundation is another resource working on issues of abuse by the military. The Miles Foundation is at 203.270.7861 or Milesfdn@aol.com or milesfd@yahoo.com.

Insurance Discrimination

An insurer that offers life, disability, property or liability insurance shall not deny a claim or deny, refuse, restrict, cancel, exclude or limit coverage or charge a different rate for the reason that a person has been a victim of domestic violence. (A.R.S. § 20-448). This law also applies to an entity or individual that provides counseling, shelter or other services to victims of domestic violence. Further, the law specifically states, "[t]he fact that an insured or proposed insured is or has been the victim of domestic violence is not a mental or physical condition." An insurer may however, refuse to issue a life insurance policy to a person who has been the victim of domestic violence if the perpetrator is the applicant, prospective owner of the policy or would be the beneficiary of the policy. For purposes of this statute, "domestic violence" is defined as:

- Any act that is a dangerous crime against children (§13-604.01)
- An offense defined in § 13-1201 through 13-1204
- 13-1302 through 13-1304
- 13-1502 through 13-1504
- 13-1602
- 13-2810
- 13-2904, subsection A, paragraph 1,2,3 or 6
- 13-2916 or 13-2921, 13-2921.01
- 13-2923 or 13-3623

The relationships that qualify as a "domestic" relation under this statute are:

- one of marriage or former marriage or of persons residing or having resided in the same household
- the victim and defendant have a child in common
- the victim or the defendant is pregnant by the other party
- related by blood or court order
- the victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or has resided in the same household as the defendant

The victim's remedy is an administrative complaint to the insurance commission (ARS 20-448).

SECTION FOUR: ORDERS OF PROTECTION

Orders Of Protection

An Order of Protection (OOP) is a court order issued by a municipal judge, justice of the peace, or superior court judge in a domestic violence proceeding to protect a person from violence. The OOP is a court order that prohibits or restricts the offender from contacting the victim. (The OOP specifies in what ways the offender's contact with the victim is restricted.)

> **A domestic violence proceeding is a civil action handled by a municipal judge, a justice of the peace or a superior court judge. If dissolution of marriage or another family law case is pending, a superior court judge must handle it.**

The OOP is a civil order. It has nothing to do with the police, the sheriff, the county attorney or the criminal court unless the order is broken. A violation of an OOP constitutes a class 1 misdemeanor (interfering with judicial proceedings) and possible contempt of court. Enforcement of the OOP is accomplished in criminal court.

The basic steps to obtaining an Order of Protection are as follows:

- The victim of domestic violence files a petition (request) for OOP in court.
- If granted, the judge signs the OOP.
- The OOP is valid when served on the offender.
- Once the OOP has been served, it is enforceable by law enforcement.

Who Can Get an Order of Protection?

To get relief, the victim must establish that the relationship with the offender is one of the following that qualifies under the domestic violence definition (A.R.S. § 13-3601):

- Relationship of victim and offender is one of marriage or former marriage or of persons residing or having resided in the same household.
- Victim and offender have a child in common.
- Victim or offender is pregnant by the other party.
- Victim is related to the offender or the offender's spouse by blood as a parent, grandparent, child, grandchild, brother or sister, or by marriage as a parent-in-law, grandparent-in-law, stepchild, step-grandchild, brother-in-law, or sister-in-law.
- Victim is a child who resides or has resided in the same household as the offender and is related by blood to a former spouse of the offender or to a person who resides or who has resided in the same household as the offender.

Simply put, this law applies to a woman's husband, her ex-husband, her live-in boyfriend or partner, her ex-live-in boyfriend or partner, her immediate family including parents, siblings and children, the father of her born or unborn child regardless of whether they ever lived together, and her in-laws. The domestic violence law (A.R.S. § 13-3601) was changed in the year 2000 to

eliminate the requirement that persons living together or having lived together be of "opposite sex," in order to receive domestic violence protection. Thus lesbians and gays can get such an order.

Dating relationships are not covered by Orders of Protection. These parties are eligible to apply for Injunctions Against Harassment that afford many of the same protections. The procedure for obtaining it is much the same (see *Injunctions Against Harassment*, below).

For minors, the parent, legal guardian or person who has legal custody of the minor is supposed to file the petition for OOP on the minor's behalf, unless the judge determines otherwise. Minors granted their own OOP tend to be in their late teens.

A third party can get an order of protection for the victim if the victim is temporarily or permanently unable to make the request themselves (A.R.S. § 12-1809(A)). For example, the victim is in the hospital, or unable to leave her home or workplace. The judge will determine if the third party is an appropriate requesting party for the victim. The victim's name will be listed as the plaintiff; the third party will be listed on the petition on the line beneath the name and date of birth of the plaintiff. The third party will sign the petition on behalf of the plaintiff.

Orders of Protection may be obtained at any municipal court, justice of the peace court, or superior court. The applicant may proceed *pro se* (without the assistance of an attorney) to get an Order of Protection. Most OOP's in Arizona are filed without an attorney. All courts have the appropriate standardized forms for filing.

There is no filing fee for an order of protection. Effective August 23, 2002, there is no service fee for law enforcement to serve the order. If the relationship between the victim and perpetrator is a dating relationship and the victim obtains an injunction against harassment, there is no service fee for that either. The new form will have a question at the very beginning to ascertain whether it is a dating relationship or not. If so, no service fee should be charged by law enforcement. Private process servers can still charge fees. (SB 1394)

What Is the Purpose of an Order of Protection?

An Order of Protection may be obtained to protect both adults and minor children who are in danger of injury from a person covered under the law. The OOP is a preventative measure to stop incidents of domestic violence.

What Are the Grounds for an Order of Protection?

A court is required to issue an Order of Protection if the court determines that there is reasonable cause to believe that:

- The offender (defendant) may commit an act of domestic violence.
- The offender has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.

In considering acts of domestic violence "within the past year," the law specifies that any time that the offender has been incarcerated or out of the State of Arizona will not count.

An "act of domestic violence" is any of the crimes listed in A.R.S. § 13-3601, where the relationship between the offender and the victim is one that qualifies under the domestic violence definition (see *Who Can Get an Order of Protection*, above). Those crimes include:

- Dangerous crimes against children.
- Endangerment.
- Threatening or Intimidating.
- Assault.
- Aggravated Assault.
- Custodial interference.
- Unlawful imprisonment.
- Kidnapping.
- Criminal trespass.
- Criminal damage.
- Interfering with judicial proceedings.
- Disorderly conduct.
- Using the telephone to terrify, intimidate, harass, threaten, annoy or offend another.
- Harassment.
- Aggravated harassment.
- Stalking.
- Child abuse or vulnerable adult abuse.

What Relief Is Available Under The Domestic Violence Statute?

The relief provided by an Order of Protection may include:

- Requiring the abuser to stop physical acts or threats of violence against the victim or other designated persons.
- Prohibiting the abuser from contacting the victim or other designated persons in person, by telephone, in writing, or by other means if specifically requested (such as contact through third parties).
- Giving the victim the right to remain in the residence, and prevent the abuser from living or visiting there. This is called exclusive use of the home.
- Ordering the abuser to leave the residence so the victim may return home.
- Requiring the abuser to stop harassing or interfering with the victim at home, work, school or other designated locations.
- Prohibiting the abuser from possessing or purchasing firearms.
- Requiring participation in a domestic violence counseling or other program deemed appropriate by the court.
- Awarding costs and attorney's fees to either party.

Limitations of an Order of Protection

An Order of Protection:

- Is not an absolute guarantee of protection; rather, when obtained, it is one step that may be included in a victim's personalized safety plan.
- Will not order a police officer to act as a personal bodyguard for the victim's safety.
- Is not a custody order regarding the children.
- Cannot determine division of property.
- Cannot order spousal support or child support.
- Cannot order one spouse to pay bills or debts.
- Cannot be obtained against more than one defendant. If there is more than one offender, a separate OOP must be obtained against each offender.

What Is the Duration of an Order of Protection?

An Order of Protection is in effect for one year after service of the order on the defendant. It can be served up to one year from the date that the judge signs the order.

Where Can You Get an Order of Protection?

A person residing in Arizona may apply for an Order of Protection by filing a Petition for Order of Protection in any municipal court, justice of the peace court, or superior court. If there are any pending family law issues (custody, divorce, separation, visitation, etc.), the Order of Protection must be filed in Superior Court. An OOP may be obtained in any jurisdiction, and an order obtained in any jurisdiction is to be enforced in every jurisdiction. Most orders are obtained without counsel, but if the victim has an attorney, most courts will want that attorney's signature on the petition.

The court clerks will have all the necessary forms for requesting an Order of Protection. The clerks will not give any legal advice, nor will they assist in filling out the necessary forms. Although the forms are not currently available on-line, they are available at the Self-Service Centers in the Superior Courts of Phoenix and Mesa.

What Are Order of Protection Forms?

In November 1997, all courts issuing Orders of Protection began using the same forms. This allows Arizona to come into compliance with the federal Violence Against Women Act (VAWA) and Full Faith and Credit. The only forms used in Arizona are the petition and order. All directions on the forms must be read carefully before filling out each form. The person filling out the forms is the plaintiff, and the person accused of abuse is the defendant. The most important section of the forms is the section asking what the defendant has done. All previous violence should be stated in as much detail as possible, including dates or approximate times. Any injuries, hospitalizations or police reports should be included. The victim does not have to put her current address on the forms. She will have to give an address to the court for future

notification, but she can use a P.0. Box, a friend or relative's address, or simply ask the court to keep the address confidential.

Petition for an Order of Protection

This form tells the judge the facts of the plaintiff's situation, including the names of the parties, the specific acts of violence alleged and the names of any children in the home. It also informs the judge what the plaintiff wants the judge to order.

Order

This form is the document the judge will sign. Although the plaintiff fills it out according to what she wants ordered, the judge could alter it.

Petition and affidavit for waiver of service fees
Remember, there is no longer a service fee for law enforcement to serve an OOP or an Injunction Against Harassment, if the victim and perpetrator are involved in a dating relationship. If the plaintiff hires a private process server, s/he will have to pay the fee.

What Is an Ex Parte Order of Protection?

Usually a judge will listen to both sides before making a decision. However in domestic violence cases the law allows the judge to sign an ex parte order. Ex parte means "from one side only." In other words, the Ex Parte Order of Protection is granted based on the plaintiff's statement of facts only; the defendant may not even know the plaintiff is petitioning for an OOP.

At any time while the Order of Protection is in effect, the defendant can ask for a hearing. It must be held within 10 days from date of request or five days if the plaintiff has been granted exclusive use of the residence. The notice of hearing will be mailed to the address provided by the plaintiff, or the court may telephone the plaintiff if there is not time enough to mail the notice. If the plaintiff does not show up for this hearing, the order will probably be dropped. That is why it is important for the plaintiff to give the court an address where she is certain to receive her mail, as well as a valid telephone number.

Getting an Ex Parte Order of Protection:
After the plaintiff completes the Order of Protection paperwork, she returns it to the Clerk of the Court. The hearing will be held as soon as the judge is free. It could be five minutes or several hours, but it must be the same day. Orders of Protection are emergency orders and are to be given priority. The hearing will be short and does not require the presence of any other witnesses. The plaintiff has to show that domestic violence has occurred within the past year, may occur, or other good cause exists for the Order to be issued. The victim may want others there for support or to bolster her testimony, especially if she requests the Order to cover the children. Since this is not a custody order, she will have to show that the children have been harmed. The plaintiff should be prepared to tell the judge why she believes she or her children are in danger and in need of immediate protection. If possible, the plaintiff should bring any evidence, such as medical reports, police reports, pictures, torn or dirty clothing (in paper bags

only), etc. to help convince the judge that immediate protection is necessary. She may also bring witnesses if she wants.

When the Order of Protection is granted, the plaintiff should always get two copies of the Order and carry them with her at all times. If the defendant is unable to be promptly located for service, this second copy can be used for service on the defendant should he come to where the plaintiff is.

If the Order of Protection was granted in the municipal or justice courts, and a dissolution of Marriage or other domestic relations action is subsequently filed, the plaintiff should notify the court where the OOP was obtained and they will transfer the file to Superior Court.

How Does the Defendant know About the Order of Protection?

Personal Service: The defendant must be served with a copy of the Petition for Order of Protection and the Order of Protection. These papers are normally given to him by the police if the order was obtained from a municipal judge, by the constable if the order was obtained from a justice of the peace, or by the sheriff if the order was obtained from a superior court judge. Service of the Order of Protection has priority over other service of process that does not involve an immediate threat to the safety of a person. Thus the police, constable or sheriff must deliver it promptly.

Another option for service is personal service by a Registered Process Server. Process servers can be found in the Yellow Pages of the telephone directory under "process servers." As they are private business people, their rates vary, with an average rate of around $40 to $60. Generally, service by a registered process server may be preferable when the defendant may be difficult to serve or who may avoid service.

Civil Standby: The sheriff or other law enforcement officers may accompany the plaintiff to reclaim possession of the house; to evict the defendant; or to reclaim clothing, a vehicle, or other property. Many police departments schedule appointments for civil standbys, and the policy of each department varies sometimes by shift.

What Happens With A Contested Order of Protection?

Any time during the effective period of the Order of Protection, the defendant is entitled to *one* hearing, upon written request. The hearing must be held within 10 days, or if he is contesting the exclusive use of the home, within five days. At this hearing the plaintiff must prove that the defendant has committed or may commit domestic violence. She must convince the judge that the protection asked for in the petition is needed.

The plaintiff should bring any witnesses who can attest to the abuse inflicted or injuries suffered by the plaintiff and children. She should also bring any evidence (i.e. medical reports, police reports, torn or bloody clothing (in a paper bag, not plastic), photos. etc.) that might help prove her case against the defendant. She should bring two copies of any documents. The plaintiff and any witnesses should expect to be questioned by the judge, the plaintiff's attorney if any, and the

defendant or his attorney if any. At this hearing the defendant will be allowed to tell his side of the story.

After hearing both sides and reviewing all the evidence, the judge will decide if the Order of Protection should be continued, canceled, or changed. The Order will say what protection or relief has been granted. Orders of Protection, whether or not modified at the hearing, are valid for one year from the date the order was originally issued. A copy of the Order should be given to each party and to the police and sheriff's department where the plaintiff and defendant reside.

What is the Procedure for an Order of Protection Hearing?

A basic point to keep in mind is that the judge controls the courtroom. He or she will decide how the hearing will proceed including when or if to receive evidence or hear witnesses. Some judges prefer to question the parties themselves, while others prefer to allow the parties to question one another.

Plaintiff's case:
The plaintiff will need to support each of her requests for relief through her testimony, the testimony of witnesses, police or sheriff's reports, medical reports, and other items the plaintiff has introduced into evidence. The plaintiff needs to know what orders she is requesting the court to enter, and what information she is going to present in support of each request. After reviewing the issues in the Order of Protection hearings above, it may be helpful for the plaintiff to prepare a checklist of the issues and the evidence she intends to present.

After the plaintiff has presented her evidence she should summarize for the judge what orders she is requesting and why the orders should be issued.

At the conclusion of the testimony of each witness the defendant or his attorney will be able to cross-examine the witness. It is important to remember that the cross-examination is limited to the areas that were brought up during the direct testimony. If the defendant starts asking questions on subjects that are not related to the issues in the case, the plaintiff should object and ask the judge whether the question needs to be answered.

Defendant's case:
When the plaintiff has called any witnesses she may have and has presented all her evidence, the defendant has a chance to do the same. The defendant can testify, call witnesses, and present physical evidence in the same manner as the plaintiff. After the defendant and each of the defendant's witnesses testify, the plaintiff will have the opportunity to cross-examine the witnesses.

If the defendant intimidates the plaintiff it will be very difficult for her to withstand his questioning or to question him herself. The judge is prohibited from helping her and thus hiring an attorney may become necessary. If that is impossible, ideally an advocate would at least be present with her in the courtroom for moral support. Some judges will allow the advocate to sit with her at the counsel table so long as the advocate is not acting like an attorney.

How Is Evidence Prepared And Presented?

Evidence:
Evidence is any statement, document, or object that tends to prove or disprove a particular fact. In Order of Protection hearings most evidence is in the form of testimony of the parties. Evidence may also be presented in testimony from others with direct knowledge of the facts or in the form of documents, photographs, police reports, medical records, or other items.

Testimony versus affidavits:
Evidentiary hearings are hearings at which witnesses testify in person. Evidence may only be submitted by written affidavit (or written statement) if there is agreement by the opposing party and/or the judge. Both sides should have their witnesses at the courthouse ready for the hearing. Either side can object to affidavits submitted by people not present at the hearing. Such affidavits or written statements are usually not admissible.

Police Reports:
Police reports can help bolster a victim's credibility by corroborating her version of events. Police reports may indicate observations of physical injury and may document assaults or threats made in the presence of the officer. Pursuant to A.R.S. § 39-121 police reports are public records and can be purchased for $5.00 per report, sometimes more if the report is long. (Some departments will allow the victim named in the report to receive a copy of the police report for free.) Ongoing investigative reports may not be available or may require a subpoena of the investigative officer at the time of the hearing.

The victim may want to request a copy of a police report, called a Departmental Report or DR, from the law enforcement agency that responded to the domestic abuse call. The victim should have the DR number on a 3 by 5-inch card or a victim/witness brochure given to her the night of the incident. Use this DR number to obtain the police report. The name and phone number of the investigating detective should also be on the card. Use it to get up-to-date information on the case. Police reports should be requested as early as possible, as it may take several days to obtain a copy of the report. If a review of the report reveals that it could be helpful to the case the issue becomes how to get the report and additional investigative information introduced as evidence at the hearing.

There are four ways to introduce the report:

1. Subpoena the police officer who wrote the report so that s/he can verify it. This method should be used if the police officer may have more helpful information than what appears in the report. This method allows the judge to consider both the police officer's testimony and the report.
2. Subpoena the "records custodian" at the police or sheriff's department. A record custodian is the person who keeps the records for the agency. Be sure and indicate on the subpoena what reports are to be brought to court (for example "all reports relating to police calls at 1200 Thomas Rd, Yuma, from January 1,1999 to present;" or "police report for incident that police responded to at 1200 Thomas Road, Yuma, on the evening of January 1,1999 involving Jane Doe as victim;" or "police report DR number 99 … (the

number of the victim's police report)." At court, the records custodian must testify as to how reports are kept and that the police or sheriff's report is a record customarily kept in their department. This method allows only the report to be considered by the judge, as the record custodian generally has no personal knowledge of the facts in the report.

3. Get the other side to agree that the report can be given to the judge without anyone coming from the police or sheriff's department. This method saves money and time, but *can only be used if the other side agrees.*
4. Argue that a certified copy of a police report is self-authenticating under Rules of Evidence 902(4). Since this is not a criminal case but a civil order of protection hearing, the same strict rules for criminal cases should not apply. Judges have been known to allow *pro se* parties (parties not represented by an attorney) to introduce police reports that would ordinarily be considered "inadmissible." However, do not depend on a judge allowing this to happen.

Medical and child protective services reports

Medical reports
Because these documents are privileged and confidential only the subject of the report can obtain them by agreement or by a court order. They cannot be obtained by subpoena. Thus if the report concerns someone other than the victim a motion must be made to the judge, with a copy to the opposing side and to the medical care provider

Child Protective Services (CPS) reports
Because reports of child abuse are confidential and anonymous by law, these documents can only be obtained by court order. They cannot be obtained by a subpoena. Thus a motion must be made to the judge, with a copy to the opposing side and the State Attorney General's office that represents CPS.

Cautions on the Use of Reports
There are some practical distinctions between the reports made by the police or sheriff's office and medical and CPS reports:

- Medical records should be used cautiously if the victim has something negative in her medical file that she does not want the court or the other side to know about (for example, suicide attempts, drug use, rapes or sexual molestations, etc). Once the medical file is in the courtroom it is easier for the other side to gain access to the entire file. Once part of the file is used the entire file is open to inspection by the other side. This information can also be used to hurt the victim in a later child custody case.
- CPS files should be carefully considered before being requested for use as evidence as they routinely include things such as anonymous "tips" that may be negative toward the victim and may in fact have been made by the abuser. A better course may simply be to call the worker from CPS who has been involved with the family to testify.

Records of Conviction

Prior convictions of the abuser can be introduced to show why the victim is afraid. Non-domestic violence convictions that show only that the abuser is a "bad person" may not be helpful. The time period of the offense may reduce the relevance of the conviction.

Examples of prior convictions that could be used are:

- Twenty-year old felony murder conviction can be introduced to show why the victim is afraid.
- One-year old misdemeanor domestic violence conviction can be introduced to show a history of violence and why the victim is afraid.
- Nine-year old swindling conviction can be introduced because it involved dishonesty and can be used to show the defendant is lying when he denies the abuse.

An example of a prior conviction that may not be admissible is a recent misdemeanor conviction for drug use because it does not involve dishonesty and may be seen as irrelevant.

Copies of criminal records of conviction can be obtained from the records department of the court where the conviction occurred. If *certified* copies are obtained the documents can be received in evidence without any testimony. Particularly useful are pre-sentence reports that often contain a lengthy history of all previous arrests as well as convictions.

Photographs and Videotapes

Photographs of the victim taken while the injuries were still visible are the most graphic evidence available. Photographs can be received as evidence if:

- The person who took them testifies to the circumstances under which they were taken.
- The victim or someone with knowledge testifies that the photographs accurately depict her appearance on a particular date.

If injuries are visible and law enforcement or medical personnel did not take photographs, the advocate should consider taking them. If appropriate, a Polaroid-type camera can be useful in producing an immediate record and a record of the injury's appearance over time. Bruises and scratches can be tricky to photograph but sometimes get more obvious as the days go by. If possible take pictures on the third day, which is the time bruises are most colorful.

Physical evidence

Just about any object can be used as evidence if it is relevant. For example a knife that was used to threaten or a piece of wood used to paddle a child can be introduced into evidence.

Before the judge can receive physical evidence the victim or another witness will have to describe the object, identify this particular item as the one involved in the assault, and describe how it was used.

Any physical evidence with body fluids on it such as blood, semen, or sweat, should be first air dried and then kept in a paper bag. Condensation will build up in a plastic bag and destroy what may be valuable evidence.

How are Subpoenas Used?

A subpoena is a document that orders a person to testify in court. A subpoena can also be used to compel a person to bring records or other documents with them to court. This is called a "subpoena *duces tecum*."

Obtaining subpoenas:
Blank subpoena forms can be obtained from any law forms store and most chain bookstores. Generally, the information needed on a subpoena is the name and number of the case, the name and address of the witness being subpoenaed, the date, place and time of the hearing, whether the witness is being called by the plaintiff or the defendant, who the witness should contact if s/he has any questions, and whether the witness needs to bring any documents to court. There is a small fee for the court to issue each subpoena that can be waived if the person requesting the subpoena files an affidavit requesting that court costs be waived. The waiver requires filling out forms at the clerk's office regarding income and expenses.

The steps are as follows:

- Complete the subpoena form.
- Take it to the court clerk to have it "issued" (where it is stamped by the court clerk).
- Serve it on the witness.
- Then file the proof of service with the court.

Serving subpoenas:
A subpoena may be served by any person who is not a party to the action and who is eighteen years of age or older. A police officer, constable, sheriff or private process server may also serve the subpoena. Service is completed when a copy of the subpoena is handed to the witness and the sheriff's (or other process server's) return is noted.

Once service is accomplished the person who served the subpoena completes a written statement to be filed with the court. The statement includes the date of service, manner of service, name of the person served, and the notarized signature of the person who served the subpoena. The original subpoena and certificate of service is then filed with the clerk of court.

Subpoenas can be served any time so long as the witness has reasonable notice of the hearing. As a practical matter, subpoenas should be served as soon as possible after learning of the date of any hearing.

Enforcing subpoenas:
If a witness fails to appear after being properly subpoenaed, the judge can issue a bench warrant to have the witness brought before the court.

Evidentiary objections:

In a court hearing, rules of evidence govern what evidence can be presented and what cannot be presented. In an Order of Protection hearing, the court is usually liberal in what information can be presented and how it is presented, especially if there are no attorneys. However, in the event the defendant is represented by an attorney, s/he can make objections that can be quite distracting and unsettling to a plaintiff. In some instances a judge may agree with the attorney's objections and make it difficult for the plaintiff to tell her story because she is not following the rules of evidence. In that situation, it may be helpful if the advocate has warned the plaintiff, in advance, to request a short recess. During this time the advocate can talk with the plaintiff about why her testimony is not being allowed and help her re-frame the manner in which she is telling her story.

It is also helpful for the plaintiff and advocate to have an idea of what evidence is proper so that the plaintiff can have some control over the defendant's questions and answers. When the plaintiff or advocate thinks a question should be allowed or that an answer is improper or that an exhibit should not be allowed into evidence, the plaintiff should object. The advocate should not take on a speaking role in the proceeding nor should she give advice because that is the role of the attorney. If the judge thinks she is practicing law without a license, s/he can have the advocate removed.

Some of the more common objections are:

Relevance
Relevant evidence is evidence that has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence (i.e., does the evidence tend to prove or disprove an important fact).

Materiality
Material evidence is evidence that has some logical bearing on an issue in the case (i.e., does the evidence relate to something important in the case).

Argumentative
A question is argumentative that does not request information but states a conclusion and asks the witness to agree with it (e.g., "You were the one who hit him first, weren't you?").

Hearsay
A statement made by someone other than the person testifying and offered to prove the truth of the matter asserted is hearsay (e.g., "The neighbor told me he saw John hit her.") There are exceptions to the hearsay rule.

Leading
A leading question suggests the desired answer to the witness. It is usually not allowed in a direct examination.

Repetitive
Concerns questions or answers that are asked or answered more than once.

Misstates evidence
When the defendant or his attorney misquote earlier testimony or repeat a witness' answer but change it slightly.

Speculation
A question that requires the witness to guess or speculate, such as "Is it possible that..."

Unresponsive
Answers that do not respond to the questions asked (e.g., the witness rambles on about something else).

After each objection, the judge will make a ruling on whether a proper objection has been made, i.e., whether the presented evidence can come into consideration. If the judge rules "sustained," the party who objected to the evidence "wins" and the evidence is not allowed to be considered by the judge or jury in making a decision. If the judge rules "overruled," the party presenting the evidence "wins" and the evidence is allowed to come into consideration.

Ruling:
At the end of the hearing the judge will make a decision on whether to grant the Order of Protection. The judge should address all the requests of the plaintiff and tell the parties what is being ordered. If the Order of Protection remains in effect it may be given to both the plaintiff and defendant immediately following the hearing, or it may be mailed to them later. The court will send a copy to the sheriff's office.

If the Order of Protection is overturned the plaintiff should contact an attorney. The attorney may be able to appeal and use the evidence to construct a clear case that will enable the plaintiff to be awarded an Order of Protection.

What Can the Judge Order?

S/he can:

- Require the abuser to stop physical acts or threats of violence against the victim or other designated persons.
- Prohibit the abuser from contacting the victim or other designated persons in person, by telephone, in writing, or by other means if specifically requested (such as contact through third parties).
- Give the victim the right to remain in the residence and prevent the abuser from living or visiting there. This is called exclusive use of the home.
- Order the abuser to leave the residence so the victim may return home.
- Require the abuser to stop harassing or interfering with the victim at home, work, school or other designated locations.
- Prohibit the abuser from possessing or purchasing firearms.

- Require participation in a domestic violence counseling or other program deemed appropriate by the court.
- Award costs and attorney's fees to either party.

Is there anything the Judge Cannot Order?

The municipal and justice court can make no orders regarding custody, visitation, spousal or child support, or division or community property or debts. If the judge makes such an order, s/he is exceeding statutory authority. If a Dissolution of Marriage has been filed, a superior court judge has authority to make such orders but will no doubt combine them with the regular dissolution proceedings. If no Dissolution of Marriage has been filed, superior court judges may still have jurisdiction to make orders regarding custody, visitation, support, and property.

The court has authority to order "relief necessary for the protection of the alleged victim and other specifically designated persons." Some courts interpret that to mean they can order the plaintiff to counseling, family mediation, or even to file a divorce. Such an interpretation is highly suspect, and the victim should seek the advice of an attorney. This is clearly victim blaming and outside the scope of the law.

The judge cannot order a "Mutual Order of Protection." If the defendant seeks an Order of Protection, he has to file his own verified petition and go through the same process the plaintiff did.

What Are the Steps to Obtain an Emergency Order of Protection?

The Role of Law Enforcement:
Any time law enforcement officers respond to a report of domestic violence, they are required by law to give the victim an information card about Orders of Protection and available domestic violence shelters and support groups.

In the more populous counties of Arizona, the presiding judge of Superior Court will make court personnel available to issue Emergency Orders of Protection by telephone. In the smaller counties, this is optional. The emergency order is available nights, weekends and holidays when the court is not regularly in session.

To get an emergency order, the officer at the scene of the violence should call the sheriff who will connect the officer to the judge who is on call that day. The judge can give an oral order based on probable cause as stated by the officer. The officer then writes up the order and gives a copy to both the victim and the perpetrator. The emergency order and certificate of service shall be promptly filed by the officer. Unless continued by the court, an Emergency Order of Protection expires at the end of the next business day, the next day the courts are open to get a regular order. This is to allow a victim time enough to appear in court to petition for an ordinary Order of Protection. (A.R.S. § 13-3624).

Unless continued by the court, an Emergency Order of Protection expires at the end of the business day, the day after the Order is issued. (This is to allow a victim time enough to appear in court to petition for an ordinary Order of Protection.)

If the defendant is arrested, the court must register a copy of the release order with the sheriff of the county, within 24 hours, so that the release conditions, which should include staying away from the victim, can easily be verified (A.R.S. § 13-3624).

How Is The Order Of Protection Enforced?

When the Order of Protection is granted the court shall see that a certified copy is delivered to the sheriff within twenty-four hours. If the order is not delivered or if the sheriff's office does not have the order on its computer the Order of Protection is still valid. The plaintiff will have to show law enforcement a copy of the OOP, and they must treat it as a valid, enforceable order. (The copy of the OOP does not have to be a certified copy.)

The Order of Protection remains in effect until it expires in one year or a hearing is held and the court dismisses the order. The order is a judicial ruling. Neither the actions of the plaintiff nor the defendant can invalidate the order. The police are obligated to enforce it regardless of the actions or allegations of either party. If either party wants the order dropped s/he must return to court to do so.

The plaintiff *cannot* violate her own Order of Protection. The OOP involves the court ordering the defendant not to commit certain acts, etc. It does not order the plaintiff to do or not do certain acts. However this is a point on which some law enforcement personnel, prosecutors, and judges give out misinformation. Also certain jurisdictions have charged the plaintiff with "inviting" or "enticing" the defendant to violate the order. (Inform yourself about the specific practices in your jurisdiction by contacting city and county prosecutors, and police and sheriff's departments or contact AzCADV.) If the plaintiff is arrested or charged with violating her own order contact an attorney and AzCADV immediately. We have two extensive legal memos regarding the legislative history of the order of protection statute and the legal impossibility of arresting the victim.

As a practical matter, while neither party can invalidate the OOP, except through the court process, the plaintiff's actions may impact the enthusiasm with which law enforcement enforces the order. Consistency in enforcement is the best approach. Inconsistency, such as allowing the defendant back into the home after he has been excluded by the OOP, can affect the responsiveness of law enforcement, as well as the prosecutor's ability to win a criminal conviction.

What happens if the Order is violated?

If the Order of Protection is violated the victim must file a police report. While any contact with the victim is technically a violation of the order, it may be difficult to get police action on violations of orders of protection. The victim should insist that a police report be made even if the defendant is no longer present and arrest is unlikely. Any corroborating evidence that there

has been a violation of the order can help the police officer make the report and arrest. This includes audio or videotaping, photographs, and/or witnesses.

Motion for Contempt
While the statute provides that the defendant may be found in contempt, this method of enforcement is rarely used. But given the refusal of law enforcement to arrest, prosecutors to prosecute, and judges to hold batterers accountable, the victim may have to take this step, which has proven successful in some cases. AzCADV has a form for civil contempt, which can be used by the victim to file with the court that granted the original order.

For any violation the plaintiff is required to notify the law enforcement agency and not the judge who issued the order (unless a civil contempt is filed). The municipal or justice court shall not adjudicate a criminal violation of an Order of Protection unless a complaint has been filed or the prosecutor has requested other legal process.

Arrest for Violations of Orders of Protection
If the Order of Protection is violated, a law enforcement officer may arrest and take a person into custody without a warrant if the officer has probable cause to believe the person has violated the Order of Protection, (A.R.S. § 13-2810) by disobeying or resisting an order issued in any jurisdiction pursuant to the domestic violence section of the statutes, or that domestic violence has been committed. The officer shall arrest if there was infliction of physical injury or the discharge, use or threatening use of a deadly weapon or dangerous instrument. The person arrested is charged with a criminal offense and has all the rights of the criminal defendant. When the violation is of an existing Order of Protection, the law enforcement agency shall request that the prosecutor file appropriate charges.

The charge of interfering with judicial proceedings, a class 1 misdemeanor (A.R.S. § 13-2810), should be brought against the defendant along with any additional charges due to the underlying acts. Interfering with judicial proceedings means that the defendant has disobeyed or resisted a lawful order of a court. If he violates the Order of Protection he has disobeyed an order of the court. The defendant could also be charged with influencing a witness by threatening the victim with the intent to convince the person not to appear in court (A.R.S. § 13-2802). This is a class five felony. He also could be charged with tampering with a witness (i.e. the victim) for knowingly inducing a victim to withhold her testimony, to testify falsely, or to fail to show up (A.R.S. § 13-2804). This is a class six felony. These charges are rarely used so an advocate should encourage this with the prosecutor if the facts justify it.

Unfortunately, several law enforcement agencies and judicial officers around the state are misinterpreting A.R.S. § 13-2810 and are arresting the victim rather than the perpetrator. This is absolutely illegal. The Order of Protection is not effective against the plaintiff, only the defendant. If this happens, please contact AzCADV.

A person arrested for violation of an Order of Protection may be released in accordance with the rules of criminal procedure, but the order for release shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated

persons and may provide for additional conditions the court deems appropriate, including participation in counseling programs.

In order to arrest both parties in a domestic violence situation, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence. An act of self-defense is not deemed to be an act of domestic violence. Arizona has a very high rate of dual arrest and victim arrest. Dual arrests should be no more than 3% and female arrests no more than 10%. Statewide, Arizona's rates top 20%. One thing advocates can do is require law enforcement to write two separate reports. In order to arrest both parties, law enforcement has to find that both parties committed an independent act of domestic violence. If they find that, then there should be no problem of writing two reports. The two cases may not go forward in the system in tandem so they cannot just write one report and submit for both. So insist that they write two. That doubling of work will quickly stop the nonsense of arresting the victim. Of course that could mean they'll arrest the victim alone and not the perpetrator at all which does occasionally happen.

A private person can also arrest another person if that person committed a misdemeanor, which is a breach of the peace or a felony offense.

The remedies provided in the domestic violence statute are in addition to any other civil or criminal remedies available.

Bonds and Pretrial Release

A.R.S. § 13-3601 regarding domestic violence provides that:

- A person arrested under the domestic violence provisions may be released from custody in accordance with the rules of criminal procedure or other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions necessary to provide for the protection of the alleged victim and other specifically designated persons. The conditions for release may include any constraints the court deems appropriate, including participation in any counseling and batterers or "anger management" programs available to the defendant.
- The release procedures available under A.R.S. § 13-3883 (4) and A.R.S. § 13-3903 that allow the police to issue a citation to the offender, give him a later court date, and then release him are not applicable to arrests made pursuant to the domestic violence statute. In spite of the law, some law enforcement departments are doing "cite and release" of defendants arrested for domestic violence. If this occurs contact an attorney and AzCADV immediately.
- If the victim receives an Emergency Order of Protection under A.R.S. § 13-3624, the court shall register a certified copy of the release order with the sheriff's office within 24 hours of release of the defendant.

What is a Modified or Amended Order of Protection?

It is important to note that only the court can modify or amend the order. The parties cannot. If the parties decide they no longer want the order or want to change some provisions, they cannot

do it by agreement. They must return to court to have it changed. The order is an official court document and cannot be changed without court approval.

Unfortunately, some law enforcement personnel are arguing that if the victim contacts the defendant, that makes the order no longer valid. That is completely untrue. First, the order does not apply to the victim. Secondly, the order is a Court Order. A private party cannot change a court order. It states that in plain language on the order itself in the Warning to Defendant. The behavior of the victim cannot change the order. One or both parties must return to court to have the order changed. If your law enforcement are doing this, please let AzCADV know.

Either the plaintiff or the defendant may ask the court to change one or more provisions in an existing Order of Protection. This can be done at any time that the terms of the order are in effect. (The defendant is only entitled to one hearing on the order whether he chooses to contest the OOP in its entirety or request only a modification.) It is important that the party requesting the modification understand that the court may modify the order, but there are no guarantees the court will agree with the request. The opposing party will have an opportunity to reply to the request for modification and request relief too. The court may modify the order in a way the plaintiff does not want.

Procedure to modify an Order of Protection:
There is no specific procedure for modifying or amending the Order of Protection except to request a hearing as stated above. Any needed changes can be requested at such a hearing. At the hearing on modification of the existing order, the same evidentiary issues as previously discussed should be considered. Police reports, medical reports, witnesses, and other evidence that may provide helpful information should be available at the hearing.

The judge will usually issue an order at the end of the hearing. It may be given immediately to the plaintiff or defendant or mailed. The court will mail or deliver the order to the sheriff's office. It is important that the plaintiff keep a copy of the new order.

A modified OOP is effective when served on the defendant, and it expires one year from the date that the *original* order was served.

How do You Get an Extension of the Order of Protection?
There is no specific provision for extending the current order. If the plaintiff continues to fear physical harm from the defendant she may want to obtain another Order of Protection. The process is the same as that previously described except that the plaintiff should specifically state why she needs continuing protection (i.e., has he violated the Order of Protection in the last year, is he still in the area, is he due to be released from jail or return from a military assignment soon, etc.). She need not repeat the allegations of the previous order but can simply attach it as an exhibit.

Some judges think the request should be made before the existing order expires and keep the same number. Other judges think that the old order must expire and the victim has to re-apply as in the original procedure and a new number will be issued. In your jurisdiction, either ask the judge or go before it expires.

Injunctions Against Harassment

An Injunction Against Harassment (IAH) is similar to an Order of Protection. However the grounds for obtaining an IAH differ from those for an OOP, as do the types of relief available. In general, an Injunction Against Harassment could be considered as an option for victims of abuse who do not qualify for Orders of Protection, including people in dating relationships. Injunctions Against Harassment are governed by A.R.S. § 13-3602.

An Injunction Against Harassment is like an Order of Protection in that:

- The IAH can be issued in a justice court, municipal court or superior court.
- The IAH can be issued in an ex parte hearing. If the court does not find cause to issue the IAH ex parte, then the court may schedule a further hearing with notice to the defendant.
- A third party may request an IAH on behalf of the victim, if the victim is unable to make the request herself.
- The IAH is in effect for one year after service on the defendant, and the injunction must be served within one year from the date that the judge signs the injunction.
- An IAH can only be issued against one defendant. If there are multiple offenders the plaintiff will have to obtain a separate injunction against each offender.
- During the period that an IAH is in effect the defendant may petition once for a hearing to contest the IAH. The defendant may request that the injunction be dismissed or modified.
- During the period that an IAH is in effect the plaintiff may have the injunction dismissed or modified.
- Primarily, law enforcement officers enforce injunctions against harassment. Violation of an IAH constitutes a class 1 misdemeanor (interfering with judicial proceedings) and possible contempt of court.

An Injunction Against Harassment is different from an Order of Protection:

- No "relationship test": No specific relationship needs to exist between the plaintiff and defendant for the plaintiff to be able to obtain an Injunction Against Harassment.
- The filing fee for an IAH is $5.
- There is a service fee except for dating relationships.
- Grounds: For purposes of an Injunction Against Harassment, "harassment" is defined as "a series of acts over any period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose."
- Relief: A court may do any of the following:
- Prohibit the defendant from committing harassment.
- Restrain the defendant from contacting the plaintiff or other designated persons.
- Restrain the defendant from coming near plaintiff's residence, place of employment, school, and other specifically designated location.
- Grant other relief necessary to protect the plaintiff and other designated persons.

Injunctions Against Workplace Harassment

Injunctions against workplace harassment are a new option for employers to utilize to protect the workplace and employees from the actions of an offender. Like an Order of Protection, an Injunction Against Workplace Harassment (IAWH) is a civil court order that prohibits or restrains the offender from having contact with the employer or employees or from coming near the employer's property or place of business. In cases of domestic violence, the IAWH enables the victim's employer to obtain the employer's own injunction against the offender.

An Injunction Against Workplace Harassment is like an Order of Protection in that:

- The IAWH can be issued in a justice court, municipal court or superior court.
- The IAWH can be issued in an ex parte hearing. If the court does not find cause to issue the IAWH ex parte, then the court may schedule a further hearing with notice to the defendant.
- The IAWH is in effect for one year after service on the defendant, and the injunction must be served within one year from the date that the judge signs the injunction.
- An IAWH can only be issued against one defendant. If there are multiple offenders, the employer will have to obtain a separate injunction against each offender.
- During the period that an IAWH is in effect the defendant may petition once for a hearing to contest the IAH. The defendant may request that the injunction be dismissed or modified.
- During the period that an IAWH is in effect the employer may have the injunction dismissed or modified.
- Primarily, law enforcement officers enforce injunctions against workplace harassment. Violation of an IAWH constitutes a class 1 misdemeanor (interfering with judicial proceedings) and possible contempt of court.

An Injunction Against Workplace Harassment is different from an Order of Protection:

- The plaintiff who obtains an IAWH is the employer or an authorized agent of the employer, not the victim of domestic violence (unless the victim is also the employer or authorized agent).
- This fact benefits the employer by enabling the employer to petition for protection for the victim, fellow employees, and the employer's property, without the victim having to take action.
- The victim may also benefit from the fact that the employer, rather than the victim, is the plaintiff in an IAWH. Retaliation by the offender against the victim may be lessened since she had no hand in obtaining the injunction.
- The fact that the victim's cooperation is not necessary can also be detrimental to the victim, since the employer may obtain an IAWH without the victim's knowledge – and perhaps against her wishes. The statute governing IAWHs (A.R.S. § 12-1810) provides

that, if the employer knows that a specific person is the target of the harassment, the employer must make a good faith attempt to notify that person that the employer intends to petition for an IAWH. However this does not mean that the victim will always be notified, or that she has to agree, before an employer may obtain an IAWH.
- The filing fee is $5.00.
- There is a service fee.

The grounds for obtaining an IAWH and the specific relief available differ from grounds and relief for OOPs.

- Grounds: "harassment" is defined under the statute as "a single threat or act of physical harm or damage or a series of acts over any period of time that would cause a reasonable person to be seriously alarmed or annoyed."
- Relief: a court may do any of the following:
  - Restrain the defendant from coming near the employer's property or place of business.
  - Restrain the defendant from contacting the employer or other person while that person is on or at the employer's property or place of business or while that person is performing official work duties.
  - Grant any other relief necessary for the protection of the employer, workplace, employees, any other person who is on or at the employer's property or place of business, or any person who is performing official work duties.

SECTION FIVE: CRIMINAL LAW SYSTEM

Introduction

Familiarity with the definitions of criminal acts will assist the battered woman in advocating for criminal prosecution of her abuser. It is not uncommon for the prosecutor to limit the charges brought against abusers. Prosecutors often call domestic abuse a misdemeanor when the conduct that has occurred constitutes a felony assault or other felony crime. This minimizes and denies its seriousness. Therefore it is important for the battered woman and advocate to know what factual basis is needed for specific crimes. This will enable them to work with the clerk, police, and prosecutor in obtaining a charge that reflects the seriousness of the abuse. In some situations, because of a lack of evidence or other problems related to the criminal case, the abuser will be charged with a crime that will be more easily proven even though the actual conduct may fit a more serious crime.

Crimes

The following is a list of conduct on the part of the abuser that may be the basis of a criminal proceeding. **Those with an asterisk are defined as domestic violence under A.R.S. § 13-3601.** Statutes can be accessed on the Internet at http://www.azleg.state.az.us or http://www.stirlinglaw.com/laws.htm.

Sexual Assault of a Spouse
A person commits sexual assault of a spouse by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with a spouse without consent and brought about by the immediate or threatened use of force against the spouse or another. The first offense is a class 6 felony and the second offense is a class 2 felony (A.R.S. § 13-1406.01).

Criminal Damage
A person commits criminal damage by recklessly defacing, damaging, or tampering with the property of another. This can either be a felony or a misdemeanor depending on the amount of damage (A.R.S. § 13-1602). *

Disorderly Conduct
A person commits disorderly conduct if, with the intent to disturb the peace or quiet of a neighborhood, family or person, or with knowledge of doing so, such person fights, makes unreasonable noise, uses language likely to evoke immediate physical retaliation, or recklessly handles, displays, or discharges a deadly weapon or dangerous instrument. Use of a deadly weapon is a class 6 felony. All other provisions of this statute are a class 1 misdemeanor (A.R.S. § 13-2904). *

Sexual Abuse
A person commits sexual abuse by engaging in sexual contact with a person 15 or older without consent or with a child under 15 if the contact is with the female breast. It is a class 5 felony unless the victim is under 15, and then it is a class 3 felony (A.R.S. § 13-1404). *

Sexual Conduct with a Minor
A person commits sexual conduct with a minor by engaging in sexual intercourse or oral sexual contact with any person under 18. It is a class 2 felony if the victim is under 15 and a class 6 felony if the victim is over 15 (A.R.S. § 13-1405). *

Sexual Assault
A person commits sexual assault by having sexual intercourse or oral sexual contact with any person without consent. It is a class 2 felony unless the person used a weapon or inflicted serious physical injury, or is a repeat offender. In the latter case, the person shall be sentenced to life imprisonment and is not eligible for any suspension of sentence, probation, pardon or release until after 25 years (A.R.S. § 13-1406). *

Endangerment
A person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury. If there is a substantial risk of imminent death it is a class 6 felony; otherwise, it is a class 1 misdemeanor (A.R.S. § 13-1201). *

Threatening or Intimidating
A person commits the crime of threatening or intimidating if such person threatens to cause physical injury or serious property damage, serious public inconvenience, or harm to another person. It can be a class 1 misdemeanor or a class 4 felony depending on the circumstances (A.R.S. § 13-1202). *

Assault
Assault is intentionally, knowingly or recklessly causing any physical injury to another; intentionally placing another in reasonable apprehension of imminent physical injury; or knowingly touching another person with the intent to injure, insult or provoke. It is a class 1 misdemeanor to a class 3 misdemeanor depending on the circumstances (A.R.S. § 13-1203). *

Aggravated Assault
A person commits aggravated assault if such person causes serious physical injury; uses a deadly weapon; enters a private home to commit the assault; if the assault is on a minor under 15, a peace officer, teacher, law enforcement personnel, upon an incapacitated person, a firefighter or paramedic; or if the assault results in temporary but substantial disfigurement or loss of any body organ or part or a fracture. The penalty can range from a class 2 to a class 6 felony (A.R.S. § 13-1204). *

Custodial Interference
A person commits custodial interference by taking, without legal right, a child under 18. It is a class 1 misdemeanor if the perpetrator is a parent or custodian of the child and the child is returned without physical injury prior to arrest or the issuance of an arrest warrant. This offense can be a class 3 misdemeanor to a class 6 felony (A.R.S. § 13-1302). *

Unlawful Imprisonment
A person commits unlawful imprisonment by knowingly restraining another person. This is a class 6 felony unless the person is released safely prior to arrest, in which case it is a class 1 misdemeanor (A.R.S. § 13-1303). *

Kidnapping
A person commits kidnapping by knowingly restraining a person with the intent to hold the person for ransom, involuntarily servitude, to inflict death or injury on them or to commit a felony, or to place them in reasonable apprehension of imminent physical injury. It is a class 2 felony unless the person is released safely. In that event, it is a class 4 felony (A.R.S. § 13-1304).*

Criminal Trespass in the Third Degree
A person commits criminal trespass by knowingly entering or remaining on the real property of another after a reasonable request to leave. It is a class 3 misdemeanor (A.R.S. § 13-1502). *

Criminal Trespass in the Second Degree
A person commits this offense by entering a nonresidential structure or a fenced commercial yard. It is a class 2 misdemeanor (A.R.S. § 13-1503). *

Criminal Trespass in the First Degree
A person commits this offense by entering a residential structure, by entering a fenced commercial yard, by looking into the structure (peeping tom), by attempting to work another's mining claim, or by defacing a religious symbol. This trespass is a class 6 felony or class 1 misdemeanor (A.R.S. § 13-1504). *

Molestation of a Child
A person commits molestation of a child by engaging in sexual contact, except with the female breast, with a child under 15. It is a class 2 felony (A.R.S. § 13-1410). *

Continuous Sexual Abuse of a Child
A person commits continuous sexual abuse of a child if that person, over a period of three months or more duration, engages in three or more acts with a child under 14. It is class 2 felony (A.R.S. § 13-1417). *

Incest
Persons who are 18 or older and whose marriages are declared by law to be incestuous because of their degrees of consanguinity and who knowingly marry, commit fornication, or adultery are guilty of a class 4 felony (A.R.S. § 13-3608).

Commercial Sexual Exploitation of a Minor
A person commits commercial sexual exploitation of a minor by using minors in the production of any pornography or visual or print medium for financial gain. It is a class 2 felony (A.R.S. § 13-3552). *

Sexual Exploitation of a Minor
A person commits sexual exploitation of a minor by using a minor in any sexual conduct that is reproduced in any visual or print medium, with or without financial gain or distribution or possession of any such image of a child. It is a class 2 felony (A.R.S. § 13-3553). *

Portraying an Adult as a Minor
It is unlawful for an adult to portray a minor in sexual conduct in any visual or print medium or live act and it is unlawful for a person to hire such an actor. A violation of this section is a class 1 misdemeanor (A.R.S. § 13-3554).

Child or Vulnerable Adult Abuse
Any person who causes a child or vulnerable adult (a person over 18 who is unable to protect her/him self due to a mental or physical impairment) to suffer physical injury commits a class 2, 3 or 4 felony depending on the circumstances. Or a person who has responsibility for a child or vulnerable adult and allows them to be in a position of danger also violates the statute. If the injury is unlikely to cause death or serious injury the punishment is a class 4, 5 or 6 felony (A.R.S. § 13-3623). *

Permitting Life, Health or Morals of a Minor to be Imperiled
A person who has custody of a minor under 16 and who causes the child to be endangered or injured or its moral welfare to be imperiled by neglect, abuse or immoral associations, commits a class 1 misdemeanor (A.R.S. § 13-3619).

Dangerous Crimes Against Children
Dangerous crimes against children range from second-degree murder to aggravated assault; from sexual assault to continuous sexual abuse and prostitution (all the sexual crimes); and from child abuse and kidnapping. The class of felony or misdemeanor depends on the specific underlying crime charged. If convicted sentences can range from 20 to 30 years if the person has a prior felony or as little as 5 years. If convicted under certain statutes they are not eligible for probation, pardon or suspension of sentence and must serve a set period of time (A.R.S. § 13-604.01). *

Harassment
A person commits harassment if the person -- with the intent and knowledge to harass another person -- communicates with (by verbal, electronic, written, telephonic, or mechanical means), follows or behaves in a way directed at a specific person which would cause a reasonable person to be seriously alarmed, annoyed or harassed, and does in fact cause that specific person to feel that way for no legitimate purpose. It is a class 1 misdemeanor (A.R.S. § 13-2921). *

Telephone Harassment
A person commits telephone harassment if the person – with the intent to terrify, intimidate, threaten, harass, annoy or offend – uses a telephone to communicate obscene, lewd or profane language, or to suggest an lewd or lascivious act, or to threaten to inflict harm to the person or their property. It is also a crime to disturb by repeated anonymous telephone calls the peace, quiet or right or privacy of any person at the place where the telephone calls were received. This is a class 1 misdemeanor. (A.R.S. § 13-2916). *

Aggravated Harassment
A person commits aggravated harassment if that person commits harassment as defined above and a valid Order of Protection exists (this is a class 6 felony for the first violation, a class 5 felony for the second violation); if the person has been previously convicted of aggravated domestic violence as defined in A.R.S. § 13-3601 (this is a class 5 felony); and the victim is the same as in the previous offense or in the Order of Protection (A.R.S. § 13-2921.01). *

Stalking
A person commits stalking if a person intentionally or knowingly engages in a course of conduct which would cause a reasonable person to fear for their personal or family's safety, physical injury or imminent death and does in fact cause a specific person such fear. The course of conduct is visual or physical proximity or verbal or written threats to a specific person on two or more occasions over a period of time, however short. It does not include constitutionally protected activity. It is a class 3 to a class 5 felony, depending on the circumstances (A.R.S. § 13-2923). *

Robbery
A person commits robbery if in the course of taking any property of another from his/her person or immediate presence and against his/her will, such person threatens or uses force against any person with intent either to coerce surrender of the property or to prevent resistance to such person taking or retaining property. It is a class 4 felony (A.R.S. § 13-1902).

Aggravated Robbery
A person commits aggravated robbery if in the course of a robbery such person is aided by one or more accomplices who are actually present. It is a class 3 felony (A.R.S. § 13-1903).

Armed Robbery
A person commits armed robbery if in the course of a robbery the person is armed with a deadly or simulated deadly weapon or uses or threatens to use a deadly or simulated deadly weapon or dangerous instrument. It is a class 2 felony. (A.R.S. § 13-1904).

Aggravated Domestic Violence
A person is guilty of aggravated domestic violence if the person re-offends within 60 months. On a third conviction he is not eligible for probation, pardon, commutation or suspension of sentence, or release until he has served at least 4 months in jail. On a 4th conviction, he has to serve 8 months. This is a class 5 felony. (A.R.S. § 13-3601.02).

Interfering with judicial proceedings
A person commits interfering with judicial proceedings if s/he knowingly engages in disorderly, disrespectful or insolent behavior during the session of a court or disobeys a lawful order, including violation of an order of protection. It is a class 1 misdemeanor. (A.R.S. § 13-2810)*

Criminal Procedure

The criminal system works differently than the civil system in that a criminal case is the state prosecuting the defendant for an alleged crime, while a civil case is between two private individuals. The following section details the procedure for a criminal action from beginning to end. The procedures that must be followed in a criminal proceeding are governed by the Arizona Rules of Criminal Procedure. You can access these rules on the Arizona Rules of Court website at http://www.supreme.state.az.us/rules/, once you have loaded this site, click on Current Rules and then click on Arizona Rules of Criminal Procedure.

Arrest:

The first step in a criminal action is for the defendant to be arrested. Arrest is defined as actual restraint or submission to custody and may be done any time of the day or night (A.R.S. § 13-3881; and A.R.S. § 13-3882). To make a lawful arrest, the police must have probable cause to believe that an offense was committed and that the person arrested committed the offense. An arrest may be made with or without a warrant (see requirements below).

The domestic violence law specifically states that a police officer may arrest with or without a warrant and regardless of whether the offense was committed in the officer's presence. The officer shall arrest if there is physical injury or use of a dangerous weapon. In order to arrest both parties, the peace officer shall have probable cause to believe that **both** parties **independently** have committed an act of domestic violence. An act of self-defense is not deemed to be an act of domestic violence. (A.R.S. § 13-3601(B)). Additionally, if the victim of violence kills or injures her abuser, her defense attorney should be aware of A.R.S. § 13-415 which states that if there have been past acts of domestic violence against her, then the jury must determine the reasonableness of her behavior from the perspective of someone who has been a victim of those past acts of domestic violence.

Arrest without a Warrant

An officer may arrest a person, without a warrant, if he has probable cause to believe that a felony has been committed and that the person to be arrested committed it. An officer may also make an arrest when a misdemeanor is committed in the officer's presence; when the person to be arrested has been involved in a traffic accident and the person to be arrested has committed another criminal violation immediately before or after the accident; or on a misdemeanor or a petty offense if the officer has probable cause to believe the person arrested committed the offense. (A.R.S. § 13-3883). Such person is eligible for release by citation except for domestic violence offenses. If the defendant is being arrested for a domestic violence offense, the release procedures available under A.R.S. § 13-3883(A)(4) and § 13-3903, i.e., citation and release, are not applicable. (A.R.S. § 13-3601(B)). Also if the defendant is being arrested for a domestic violence misdemeanor offense, it does not have to have occurred in the officer's presence.

Arrest with a Warrant

Any judicial officer may issue a warrant for arrest that is valid throughout the state. With a warrant the officer may arrest the person named at any time and at any place within the officer's jurisdiction. When making an arrest by virtue of a warrant the officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued for his arrest,

except when he flees or forcibly resists before the officer has an opportunity to inform him, or when the giving of such information will imperil the arrest. It is interesting to note that the police officer does not need to have the warrant with him at the time of the arrest, but if after the arrest, the person arrested so requires, the warrant shall be shown to him as soon as possible. (A.R.S. § 13-3887).

Citizen's Detention of Offenders
An alternative to an arrest made by a police officer, is that a private citizen may arrest an offender if a person commits a misdemeanor amounting to a breach of the peace in the presence of the arresting citizen or a felony and the arresting citizen has reasonable cause to believe the person arrested committed the felony (A.R.S. § 13-3884).

Method of Arrest
An officer or a private person shall notify the person to be arrested of their authority and the cause of arrest unless the person is in the act of committing the offense, flees, or attempts to escape. Both officers and private citizens can break into or out of a building to make an arrest or liberate a person. An officer with or without a warrant shall take the person arrested without delay to a magistrate. A private person who has made an arrest can take the person to the police or a magistrate (A.R.S. § 13-3888 and A.R.S. § 13-3889).

Initial Appearance:

The initial appearance is the first appearance before a court by a defendant for the purpose of advising the defendant of the charge or charges which have been or will be filed, advising the defendant of rights and determining conditions of release (AZ RCPR 1.4(b)). The defendant must appear before the court within 24 hours, or he or she shall be released immediately (AZ RCPR 4.1(a)). Most initial appearances are held within six hours.

Specifically, the magistrate shall do the following at the initial appearance, in accordance with AZ RCPR 4.2(a):

- Ascertain the defendant's true name and address; amend the formal charges to reflect correct name and address, if necessary;
- Inform the defendant of the charges against him or her;
- Inform the defendant of his or her rights to counsel and to remain silent;
- Determine whether probable cause exists; if no probable cause is found, the defendant shall be released from custody immediately;
- Appoint counsel, if the defendant so requests and is eligible;
- Consider any views and comments offered by the victim concerning the issue of release. The magistrate may allow the victim to do so with written testimony, instead of oral testimony;
- Determine the condition of release in accordance with Rule 7.2; and
- For defendants charged with a domestic violence offense the court shall order the defendant be fingerprinted if the court reasonably believes that the defendant has not previously been fingerprinted.

Bail:

A.R.S. § 13-3961 was passed in the 2002 legislative session, making certain offenses not bailable. If the person is already in custody, proof is evident or the presumption great that the person is guilty and the offense charged is one of the following, upon a request by a prosecutor, bail shall be denied in cases of:

- Sexual assault
- Sexual conduct with a minor who is under 15 years of age
- Molestation of a child who is under 15 years of age

The law also clarifies that the purpose of bail and conditions of release are to include:

- Assuring the appearance of the accused
- Protecting against the intimidation of witnesses
- Protecting the safety of the victim, any other person or the community

Advocates for battered women can use this to protect the victim. Often the offender will engage in much intimidation of the witness i.e. the victim in order to force her to recant or change her story. For many abusers, the only way to secure the safety of the victim or children is to keep him locked up. The repetitive nature and lethality of domestic violence must be explained to the judicial officer. This requires the advocate to have a good relationship with the prosecutor or go to the bail hearing with the victim and ask to testify. Fortunately, the law also requires the judicial officer to take the victim's views into account. Further, it requires that the judicial officer must provide notice to the victim if they are going to release a person on their own recognizance or on bail. If the person is charged with a felony sexual offense or obscenity, the court shall impose electronic monitoring where available and prohibit the accused from having any contact with the victim.

Preliminary Hearing/Grand Jury:

When the defendant has been arrested other than by a grand jury indictment, a justice of the peace, must determine whether there is probable cause to believe that a crime was committed, and that the person arrested committed the crime. If the justice of the peace cannot find probable cause the person must be released. If the justice of the peace finds probable cause s/he binds the case over to Superior Court for trial. If the justice of the peace finds no probable cause and charges are dismissed, they can be re-filed when more evidence is gathered. If the person has been indicted by a grand jury, there is no preliminary hearing. If the offense charged is a misdemeanor, there is also no preliminary hearing. (AZ RCRP 2.4).

Arraignment:

An arraignment is the court appearance for the purpose of advising the defendant of the charge or charges that have been filed, accepting a plea and setting additional court dates as necessary (AZ RCPR 1.4(c)).

Pleading

At the arraignment the defendant can make one of several pleas:

- A plea of not guilty will cause a trial date to be set. If the person is in custody a trial date must be set within 150 days from arraignment. If the person was in custody and then released, the trial must be set within 180 days of the arraignment.. In complex cases, a trial date must be set within 270 days from arraignment.
- A plea of guilty will cause a sentencing date to be set for a felony or could result in immediate sentence if a misdemeanor. A person can also enter an Alford plea, or plea of no contest, in which there is an admission that the state has enough evidence to successfully prosecute but in which guilt is denied. A guilty plea has the same effect as a conviction. Before the court can accept a guilty plea, there must be a showing that the plea is voluntary and that the defendant understands the charge and the procedural rights the defendant has in the criminal proceeding.
- The person can remain silent and have a not guilty plea entered for him.
- The person may also plead not guilty by reason of insanity and request a competency hearing.

Plea Bargaining
In a negotiated plea the accused pleads guilty with the understanding that there will be a reduction of the charge or an agreed upon sentence. The plea bargain may include a provision for the defendant to make restitution to an injured party for damage or loss. While A.R.S. § 13-3981 allows compromise of misdemeanor and petty offenses in which a victim can get a remedy by civil means and the criminal case will be dropped, domestic violence can only be compromised with the recommendation of the prosecuting attorney. (Ariz St RCRP 17.4).

Trial
If a plea is not reached, the matter will go to trial. The order of a jury trial is as follows:

- The jury must be sworn, selected, and impaneled in accordance with A.R.S. § 21-102 and Ariz St. RCRP 18.
- The indictment, information or complaint is read and the plea of the defendant stated (RCPR 19.1(a)(1)).
- Each party must be given the opportunity to make a brief opening statement, but the defendant may reserve opening statement. The prosecutor goes first (RCPR 19.1(a)(2)(3)).
- The State must offer evidence in support of the charge (RCPR 19.1(a)(4).
- The defendant may offer evidence and, if he has reserved his opening statement, may precede his evidence with that statement (RCPR 19.1(a)(5).
- The State may then offer rebuttal evidence (RCPR 19.1(a)(6).
- At the conclusion of the evidence the parties may make closing arguments to the jury, again the prosecutor goes first (RCPR 19.1(a)(7)).
- The judge must deliver instructions to the jury in accordance with the provisions of the RCPR 21 (RCPR 19.1(a)(8).
- The jury must retire to deliberate, and alternative jurors who have not been seated must be excused. The jury may respond with guilty, not guilty, or guilty except insane. In some cases the jury may be unable to render a verdict. (RCPR 19.4, 22, and 23).

Disposition
The following are possible outcomes of a criminal trial:

- If the defendant is acquitted, he is entitled to an unconditional discharge.
- If the defendant is found guilty, pre-sentencing and sentencing follow. The court shall set a date for sentencing and the sentence shall be given not less than 15 days nor more than 30 days after the determination of guilt (RCPR 26.3(a)(1). However, if a pre-sentencing hearing is requested in accordance with RCPR 26.7, sentencing may be delayed, no more than 60 days (RCPR 26.3(b)).
- If the jury is unable to render a verdict the case may be tried again.
- If the defendant is found guilty but insane, he shall be committed to a secure mental health evaluation or treatment agency until eligible for release (A.R.S. § 13-3994).

Pre-sentence Investigation
Prior to sentencing, the court may order a pre-sentence investigation. A probation officer prepares the pre-sentence investigation report. The pre-sentence investigation report includes information on the defendant's social and criminal history and includes recommendations to the court to assist in sentencing RCPR 26.4). The court may on its own initiative, or at the request of either party, hold a pre-sentencing hearing, at which evidence may be presented to aid the court in sentencing.

Sentencing
Sentencing in Arizona is extensively defined in the mandatory sentencing scheme and in the "truth in sentencing" rules. The ultimate sentence depends on the statutory minimum, presumptive and maximum; the age of the person; and whether they are repeat offenders. An offender's sentence starts at the presumptive sentence. It can be lowered to the minimum if there are mitigating circumstances, e.g. the person was very young, is very sorry, it was an accident, etc. Or the sentence can be increased to the maximum if the facts are aggravated, e.g. the offender was particularly brutal or cruel, still refuses to admit guilt, etc. An extensive mandatory sentencing scheme for dangerous and repetitive offenders is laid out in A.R.S. § 13-604. This statute gives those offenders much stiffer sentences. A person convicted of any felony offense committed when released on bail or his own recognizance shall be sentenced to an additional two years of imprisonment. Such person is not eligible for suspension of sentence, probation, parole or release until the two years are served. The following sentences are available:

Probation
Probation may occur when the court is not mandated to impose a prison sentence. The probation may be supervised or unsupervised, and any person placed on probation may elect to serve his suspended sentence of imprisonment instead of probation. The defendant is placed on probation for a set period of time. Conditions are often placed on the probation, such as the offender shall not commit similar violation, shall abstain from drugs or alcohol, shall pay restitution, shall perform voluntary community service, or shall undergo chemical dependency treatment.

In a domestic violence case the judge must include conditions on any release order that will protect the victim. Such conditions can and often do include attendance at a domestic violence program or "anger management" classes, at the defendant's cost. Advocates should discourage

referral to "anger management" classes since these have not proven effective because anger is not the core of the problem. If the defendant is referred to a program or classes, there should be a mechanism to ensure that he attends or his absence is reported to the judge and action is taken.

If the defendant violates any of the conditions of probation he will be brought back to court for sentencing. In domestic violence cases, on the first offense only, the court may, without entering a judgment of guilt, defer further proceedings and place the defendant on probation with conditions to protect the victim. When the terms and conditions of probation are fulfilled, the court shall discharge the defendant and dismiss the proceedings, leaving the defendant with no criminal record. If the defendant fails to fulfill the conditions of probation, probation may be terminated and the finding of guilt may be automatically entered against him.

Suspended Sentencing
A suspended sentence occurs when the court imposes a sentence of imprisonment, a fine, or both, but the defendant does not have to serve the time or pay the fine. The defendant is placed on probation with conditions such as those outlined above. If the defendant violates any of the conditions, he will need to serve the previously imposed sentence.

Work Release
The department of corrections may authorize work release privileges to any inmate who is serving time within the state prison system and who is eligible. If the offender violates any of the conditions of work release privileges, then those privileges will be withdrawn, and the offender will be returned to the general prison population to serve out the rest of his sentence.

Diversion
One problem in criminal cases is the repeated diversion of abusers into batterer treatment programs. In fact, A.R.S. § 13-3601.01 says that even though a perpetrator has already been through a program, the court shall order him to another one. However, A.R.S. § 9-500.22 states that "[d]iversion shall not be available to persons accused of a crime involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument." Advocates should argue this section prohibits abusers who have used weapons from being sent to diversion and into batterer treatment programs rather than to jail.

Jail
The defendant can be sentenced to jail for a given period of time less than 365 days. This can be part of and included with all the other options.

Prison
If the offense is a felony, the defendant can be sentenced to prison for more than one year.

Victim's Rights in the Criminal System

Victim's rights in the criminal system are outlined in two places under Arizona law. In 1990, Arizona voters passed Proposition 104, a ballot initiative that amended the State Constitution, providing for a Victim's Bill of Rights. In 1991, the Arizona Legislature passed statutes to define and implement the rights accorded to victims of crime under Article II, Section 2.1 of the

Arizona Constitution. These rights impact the victim at every stage of the criminal justice process -- from the initial report to the parole process. A victim's exercise of any right shall not be grounds for dismissing any criminal proceeding. The victim can decide whether to make her statement orally, in writing, or by audio or videotape (A.R.S. § 13-4428).

In the Constitution (Article 2.1) it says a victim has a right to:

- To be treated with fairness, respect and dignity and to be free from intimidation, harassment or abuse.
- To be informed, upon request, when the accused or convicted person is released or has escaped.
- To be present at and, upon request, to be informed of all criminal proceedings.
- To be heard at a post-arrest release, negotiated plea, and sentencing.
- To refuse an interview or discovery request.
- To confer with prosecution.
- To read pre-sentence reports.
- To receive prompt restitution.
- To be heard at any proceeding when any post-conviction release is considered.
- To a speedy trial or disposition.
- To have all rules protect victims rights.
- To be informed of victims' constitutional rights.

The legislature also has given victims of crimes rights implementing the constitutional values. The law enforcement agency must inform the victim of the rights available. The rights are invoked by the victim, who must maintain an updated address with the relevant agency in order for the rights to apply (A.R.S. § 13-4417).

Notice of Initial appearance
The victim has the right to be notified of the date, time and place of the initial appearance either by law enforcement or the prosecutor (A.R.S. § 13-4406). The victim has a right to be heard at that initial appearance (A.R.S. § 13-4421).

Notice of terms and conditions of release
Upon request of the victim the custodial agency or the prosecutor shall give the victim notice of the terms and conditions of release of the accused (A.R.S. § 13-4407). The victim has the right to be heard at any post-arrest custody decisions (A.R.S. § 13-4422).

Pretrial notice
Within seven days of charging, the prosecutor shall give the victim notice of her rights as a victim, the charge(s), the procedural steps, what the victim must do, and provide her with a contact person. If the prosecutor decides to drop the case, s/he must notify the victim and tell her why. The victim can request to confer with the prosecutor prior to dismissing the charges (A.R.S. § 13-4408). If there is plea bargaining, upon request, the victim has a right to be present and heard when it is presented to the court (A.R.S. § 13-4423).

Notice of criminal proceedings
The prosecutor shall pass on notice of proceedings as received from the court (A.R.S. § 13-4409). The victim has the right to be present at all criminal proceedings in which the defendant has the right to be present (A.R.S. § 13-4420).

Notice of conviction, acquittal or dismissal and impact statement
Within 15 days of the decision the prosecutor shall notify the victim. If the defendant is convicted, the prosecutor shall notify the victim of the right to submit an impact statement and what it should contain among other things (A.R.S. § 13-4410 and A.R.S. § 13-4424). The victim can look at the pre-sentence report (A.R.S. § 13-4425). The victim can be present at sentencing and present evidence, information and opinions (A.R.S. § 13-4426).

Notice of post-conviction review and appellate proceedings
Within 15 days the prosecutor shall notify the victim of the sentence and give them a form to request release information. Any change in sentence due to post-conviction proceedings or appellate review must be passed onto the victim (A.R.S. § 13-4411).

Notice of right to request not to receive inmate mail
Within 15 days of commitment the prosecutor shall notify the victim of the right not to receive inmate mail (A.R.S. § 13-4411.01).

Notice of release on bond or escape
If requested by the victim, the custodial agency shall notify the victim of release or escape and recapture (A.R.S. § 13-4412).

Notice of prisoner's status
The custodial agency shall notify the victim of the release date at least 15 days prior to release (A.R.S. § 13-4413).

Notice of post-conviction release
The victim has a right to be notified at least 15 days before and heard at any meeting of the board of pardons and paroles concerning the defendant (A.R.S. § 13-4414).

Notice of probation modification
The victim has a right to be notified of any probation revocation hearing (A.R.S. § 13-4415) and to be present and heard (A.R.S. § 13-4427).

Notice of release, discharge, or escape from a mental health treatment agency
A mental health agency must give the victim 10 days notice of the release or immediate notice of the escape of a patient (A.R.S. § 213-4416).

Victim conference with prosecuting attorney
On request, the prosecuting attorney shall confer with the victim about disposition. This does not mean the victim can direct the prosecution of the case (A.R.S. § 13-4419).

Return of victim's property; release of evidence
On request and after consultation with the prosecutor, the law enforcement agency shall return victim's property as soon as possible (A.R.S. § 13-4429).

Consultation between crime victim's advocate and victim
A crime victim advocate shall not disclose confidential communications (A.R.S. § 13-4430).
(For more information see AzCADV's Confidentiality for Domestic Violence Service Providers in Arizona under Federal and State Law.)

Minimizing victim's contacts
Before, during and immediately after any court proceeding, the court shall provide safeguards to minimize contact between the victim, her family, and witnesses and the other side (A.R.S. § 13-4431).

Motion to revoke bond or personal recognizance
The victim can ask the court to revoke the bond of the defendant based on harassment, threats, physical violence, or intimidation against the victim or victim's immediate family by or on behalf of the defendant (A.R.S. § 13-4432).

Victim's right to refuse an interview
The victim shall not be forced to submit to an interview by the defendant, his attorney or his agent. If the victim consents, she can stop it at any time and the prosecutor can protect her rights (A.R.S. § 13-4433).

Victim's right to privacy
The victim need not testify regarding her address, telephone number, place of employment, or other locating information (A.R.S. § 13-4434).

Speedy Trial
If there is a continuance the victim can voice her views and her right to a speedy trial. If a continuance is granted the court shall state on the record the reason for the continuance (A.R.S. § 13-4435).

Effect of failure to comply
Failure to comply by State actors is not a reason to seek to set aside a conviction or sentence. Prior to discharge from a sentence, failure of a State actor to comply regarding a post-conviction release is a ground for the victim to seek to set aside the post-conviction release until the victim is given the opportunity to be heard (A.R.S. § 13-4436).

Standing to invoke rights; damages
The victim can bring a legal action if a right is denied. The victim must pay for her own attorney but can recover damages from the governmental entity responsible for the intentional, knowing, or grossly negligent violation of the victim's rights (A.R.S. § 13-4437).

Victim Compensation

Eligibility for victim compensation

If a person has been a victim or a secondary victim of a crime or an act of international terrorism, s/he may apply for financial help if s/he has:

- Suffered physical injury or mental distress and experienced economic loss as a direct result of the crime or act of international terrorism.
- Been victimized in Arizona, or is an Arizona resident who has been a victim of international terrorism.
- Reported the crime or act of international terrorism to a police agency within 72 hours unless good cause is shown to justify a delay.
- Willingly and fully cooperated with the appropriate law enforcement agencies.
- Submitted an application within one year from the discovery of the crime or act of international terrorism unless good cause is shown to justify a delay.
- Victims should apply for victim compensation through their county attorneys offices.

Allowable/Unallowable Expenses:

A victim may be eligible to receive money for crime-related:

- Medical expenses.
- Mental health counseling expenses.
- Loss of wages.
- Funeral expenses.

The Compensation Board Cannot Consider Claims For:

- Property loss and damage.
- Pain and suffering.
- Expenses that would benefit an offender.
- A person serving a sentence of imprisonment in a detention facility or who has escaped imprisonment in a detention facility, home arrest, or work furlough program.

(Information for this section was adapted from the Arizona Department of Public Safety, www.dps.state.az.us/azvictims and from work completed by Rita Anita Linger).

Restitution

In criminal law, restitution is sometimes ordered as a condition of a probationary sentence. A victim can request that the defendant pay restitution to her for property loss, economic loss or for other damage that have been incurred as a result of the crime. The court may order the defendant to pay restitution to the victim as a part of the defendant's sentencing. Restitution and Victim's Compensation are not one and the same. For more information, see A.R.S. 13-804: Restitution for offense causing economic loss; fine for reimbursement of public monies.

If the defendant does not pay it, it is a violation of the court order and the defendant, if on probation or parole, can be incarcerated. But the court does not collect the money. The victim

will have to collect the money herself by standard debt collection means. (See the child support enforcement section.)

> The Arizona Attorney General's Office of Victim Services produces a maroon booklet entitled: *Arizona's Victims' Rights Laws*. You can call and request this document at 602-542-4911 (Phoenix); 520-628-6455 (Tucson); or 800-458-4911. Information about victims rights can also be found on their website -- (www.attorney_general.state.az.us or DPS's victim services website -- www.azvictim.com. For federal information about Violence Against Women and Full Faith and Credit, log-on to the Department of Justice, Office of Justice Programs' Online Resources at www.vaw.umn.edu/index.asp.

VACATING JUDGMENT OF GUILT, DISMISSING CHARGES AND RESTORATION OF CIVIL RIGHTS

Individuals convicted of a felony lose their civil rights, including their right to vote or possess or carry a firearm. If you were convicted of a misdemeanor, you have not lost any of your civil rights. Rule 4.14, Arizona Rules of Court describes the local rules of practice for Superior Court, Criminal Cases. Relevant Arizona statutes, available at http://www.azleg.state.az.us/ include:

- A.R.S. § 13-905: Restoration of civil rights; persons completing probation

(A) A person who has been convicted of two or more felonies and whose period of probation has been completed may have any civil rights which were lost or suspended by his felony conviction restored by the judge who discharges him at the end of the term of probation.

(C) If the person was convicted of a dangerous (emphasis added) offense under section 13-604, the person may not file for the restoration of his right to possess or carry a gun or firearm. If the person was convicted of a serious (emphasis added) offense as defined in section 13-604, the person may not file for the restoration of his right to possess or carry a gun or firearm for ten years from the date of his discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of his right to possess or carry a gun of firearm for two years from the date of discharge from probation.

- A.R.S. § 13-906: Applications by persons discharged from prison

(A) A person who has been convicted of two or more felonies and who has received an absolute discharge from imprisonment may have any civil rights which were suspended by his conviction restored by the judge by whom the person was sentenced.

(B) A person who qualifies under subsection (A) may file, no sooner than two years from the date of his discharge, an application for restoration of civil rights. The application must be accompanied by a certificate of absolute discharge, from the director of the state department of corrections.

(C) Same requirements as A.R.S. § 13-905(C) above, with the exception of discharge from prison, instead of completion of probation.

- A.R.S. § 13-907: Setting aside judgment of convicted person upon discharge; making of application; release from disabilities; exceptions
- A.R.S. § 13-908: Restoration of civil rights in the discretion of the Superior Court Judge.
- A.R.S. § 13-909: Restoration of civil rights; persons completing prison for federal offense
- A.R.S. § 13-910: Applications by persons discharged from federal prison
- A.R.S. § 13-912-01: Restoration of civil rights; persons adjudicated delinquent
- A.R.S. § 13-3113: Adjudicated delinquents; firearm possession; violation; classification

Persons convicted of a felony in an Arizona Superior Court
A person convicted of a felony can apply to the court in which the conviction occurred to vacate the judgment of guilt, dismiss charges and/or restore their civil rights in Arizona.

Persons convicted in Federal Court
A person convicted in the U.S. District Court in Arizona may apply to the Superior Court for restoration of civil rights only.

Applicants can obtain the appropriate form from the Superior Court clerk, Court Administrator, or Adult Probation Department in their county. The application and detailed directions for this form are also downloadable from the Clerk of the Superior Court, Maricopa County web site: http://www.maricopa.gov/clkcourt/catalog.pdf.

While persons convicted of a misdemeanor have not lost their civil rights, many people, especially victims who were convicted of a domestic violence offense, often want their records cleared. The following is a sample motion to expunge misdemeanor charges.

NAME and ADDRESS
Attorney for Defendant
State Bar ID XXXXX

SCOTTSDALE CITY COURT

STATE OF ARIZONA, COUNTY OF MARICOPA

STATE OF ARIZONA,	) Citation Nos:	) NO.
	)	)
Plaintiff,	)	) APPLICATION TO
	)	) SET ASIDE JUDGMENT(S)
	) Charges:	)
	)	)

XXXXXXXXXXXXXXX,	)	)
	)	)
Defendant.	) CR NO.:	)
	) XXXXXXXXXX	)

COMES NOW the Defendant, _____ to apply to set aside or expunge the Judgment(s) entered herein. This Application is submitted in conformance with Arizona Revised Statutes, including A.R.S. §13-907 and is addressed to the Judge who pronounced sentence or said Judge's successor. Defendant has fulfilled all conditions of probation or sentence and has been discharged of all responsibilities in that regard.

Defendant requests the Court to set aside all judgments of guilt entered herein for so that the accusations or citations be dismissed and the Defendant be released from all penalties and disabilities resulting from those convictions, except that as otherwise prescribed by law. At the time of the filing of this Motion, a form of Order is lodged with the Court on this date.

DATED this __ day of _____, 2003

NAME AND ADDRESS

ORIGINAL filed with the Court
and COPY of the foregoing mailed
this __ day of _____,
2003, to:

The defendant should also include an order, see sample below, with the application to expunge misdemeanor charges.

NAME
ADDRESS
Attorney for Defendant
State Bar ID XXXXXXX

_____ CITY COURT

STATE OF ARIZONA, COUNTY OF MARICOPA

STATE OF ARIZONA,	) Citation Nos:	) NO. CR 2001-12824
	)	)
Plaintiff,	)	) ORDER TO SET
	)	) ASIDE JUDGMENT(S)
v.	) Charges:	)
	)	)
XXXXXXXXXXXXXX,	)	)
	)	)
Defendant.	) CR NO.:	)
	) XXXXXXXXXX	)

The Court having read the Application to Set Aside Judgments, and in conformance with the Statutes, being fully apprised of the premises,

IT IS ORDERED granting the Application and further ordering that the Judgments of Defendant's guilt for xxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx are hereby set aside. The accusation, citations or complaints associated therewith are hereby dismissed. The Defendant is hereby released from all penalties and disabilities resulting from these convictions or pleas except as otherwise prescribed by law.

DATED this __ day of ____, 2003.

Judge of the _____ City Court

ORIGINAL of the foregoing
lodged with the Court and
COPY of the foregoing mailed
this __ day of ____, 2003,
to:

SECTION SIX: FAMILY LAW SYSTEM

Introduction

It is important for a woman to be knowledgeable about the issues involved in a court action so that she can make informed decisions on her rights with regard to custody, support, spousal maintenance, and property issues. It is also important for a woman to be aware of the procedures and timeframe in the separation and divorce process. Familiarity with the process will reduce the anxiety related to these proceedings, allow the woman to make plans for the future, and allow her to make informed decisions concerning the issues in her case.

Divorce laws and procedures are complicated and continually changing. Each case is unique and needs to be handled differently. It is advisable to have the representation of an attorney in the divorce process. However this is not always possible due to fiscal constraints. Arizona has one of the highest rates of divorce. A study in the early 1990's showed that in 52% of the cases, neither side had an attorney; in 38% of the cases, only one side had an attorney and in only 10% of the cases did both sides have an attorney. Court staff think the statistics would be little different today. The side without an attorney is usually the woman as she has less money. Thus it is all the more important that the information provided in this section give the advocate and woman an understanding of the process. However it does not provide enough material for someone to get a divorce without additional information, forms, or legal representation.

Marriage

What is a marriage?

In Arizona there are two different kinds of marriages, a covenant marriage and non-covenant marriage. A non-covenant marriage is a marriage that "is contracted by a male person and a female person with a proper marriage license who participated in a ceremony conducted by and in the presence of a person who is authorized to solemnize marriages and at which at least two witnesses who are at least eighteen years of age participate" (A.R.S. § 25-125(A)).

A covenant marriage is different from a non-covenant marriage in that the parties must sign a declaration of intent. The declaration of intent must include a written statement as required in A.R.S. § 25-901(B)(1), an affidavit by the parties that they have received premarital counseling from a member of the clergy or from a marriage counselor and the signature of both parties witnessed by a clergy. The written statement is a declaration that the parties intend to be married for the rest of their lives and that if problems arise, the parties commit themselves to take all reasonable efforts to preserve the marriage, including marital counseling (A.R.S. § 25-901).

While there is no common law marriage in Arizona, if a couple had a valid common law marriage in another state it will be considered as valid in Arizona. (A.R.S. § 25-112). Although the requirements for a common law marriage vary by state statutes, generally a common law marriage does not meet the requirements for a "formal" marriage. Instead the couple must intend to be married, hold themselves out to the public as husband and wife, and must cohabitate for a certain number of years.

Ending a Marriage

In Arizona there are three ways to terminate a marriage. Either party may initiate the proceedings, so a woman may find herself in court because her husband chooses to end the marriage. First, you may obtain an annulment. Secondly, you may obtain a legal separation. Lastly, you may obtain a decree of dissolution of marriage, otherwise called a divorce, for either a covenant or a non-covenant marriage. Different requirements apply to each method of ending a marriage. These requirements are discussed below.

Annulment

A court may dissolve a marriage, by annulment, thereby declaring the marriage null and void when the cause alleged constitutes an impediment rendering the marriage void (A.R.S. § 25-301). Essentially an annulment is a legal declaration that the marriage never existed because of a legal impediment rendered the marriage void. Examples of such legal impediments would include, marriages that are void or prohibited because of an incestuous relationship, a same-sex relationship, or an underage relationship (A.R.S. § 25-101 and § 25-102). If grounds for an annulment exist, the court shall divide the property of the parties and shall establish rights and obligations of the parties with regard to any children in accordance with A.R.S. § 25-320 and chapter 4, article 1 of this title. The jurisdictional requirements for an annulment are the same as the requirements for a divorce, i.e., one of the parties must be domiciled in Arizona for at least ninety days prior to filing the petition for annulment (A.R.S. § 25-312).

Legal Separation

The court shall enter a Decree of Legal Separation if it finds each of the following (A.R.S. § 25-313):

- That one of the parties was domiciled in this state or was stationed in this state while a member of the armed services, when the action was commenced.
- The conciliation provisions of A.R.S. § 25-381.09 either do not apply or have been met.
- The marriage is irretrievably broken or one or both parties desire to live separate and apart or, if a covenant marriage, any of the grounds prescribed in § 25-904 exist.
- The other party does not object to a Decree of Legal Separation. (If the other party objects to a Decree of Legal Separation, or one of the parties meeting the required domicile for dissolution of marriage, the court shall direct that the pleadings be amended to seek a dissolution of marriage).
- The court has considered, approved and made provisions for child custody -- the support of any natural or adopted child common to the parties of the marriage entitled to support; the maintenance of either spouse; and disposition of the property.

The only benefit to a legal separation is that the jurisdictional waiting period of 90 days is absent, and the woman can petition for legal separation immediately, even if neither party has been in Arizona for 90 days. She may then convert the legal separation to a divorce after the time period is passed. Otherwise a decree of legal separation does everything a divorce does, except they are

still married. The only reason to use a legal separation is if the woman has strong religious objections to divorce or she needs to remain on the husband's insurance or military benefits plan because of age or pre-existing conditions.

Dissolution of Marriage

What is a decree of dissolution of marriage?

A "decree of dissolution of marriage," sometimes called a divorce, is a court order terminating a marriage. After a divorce, the marriage no longer exists (A.R.S. § 25-311). Typically, in a divorce the parties and/or court resolve all issues between them such as division of property, child custody and visitation, and spousal and child support.

Arizona is a no-fault divorce state. A no-fault divorce is one in which neither spouse blames the other for the breakdown of the marriage (A.R.S. § 25-316). Both spouses agree that "irreconcilable differences" have arisen, and that neither time nor counseling will save the marriage; it simply will not work. A "no-fault" divorce is a more humane way to end a marriage in those states that permit it.

Dissolution of a non-covenant marriage

You can terminate a non-covenant marriage or a covenant marriage, with a divorce, but the grounds are different. The court shall enter a decree of dissolution of marriage, for a non-covenant marriage, if it finds each of the following (A.R.S. § 25-312):

- That one of the parties was domiciled in this state or was stationed in this state while a member of the armed services and the presence of that person has been maintained for ninety days prior to filing the Petition for Dissolution of Marriage.
- The conciliation provisions of A.R.S. § 25-381.09 either do not apply or have been met. See A.R.S. § 25-381.08 for the jurisdictional requirements of conciliation court and the conciliation court section below.
- The marriage is irretrievably broken.
- The court has considered, approved and made provisions for child custody, the support of any natural or adopted child common to the parties of the marriage entitled to support; the maintenance of either spouse; and the disposition of property.

Dissolution of a Covenant Marriage

The basis for dissolution of a non-covenant marriage, i.e., that the marriage is irretrievably broken is not a valid ground for dissolution of a covenant marriage. The court shall not enter a Decree of Dissolution of a Covenant Marriage unless it finds one of the following (A.R.S. § 25-903):

- The respondent spouse has committed adultery.
- The respondent spouse has committed a felony and has been sentenced to death or imprisonment in any federal, state, county or municipal correctional facility.
- The respondent spouse has abandoned the matrimonial domicile for at least one year before the petitioner filed for dissolution of marriage and refuses to return.

- The respondent spouse has physically or sexually abused the spouse seeking the dissolution of marriage, a child, or a relative of either spouse permanently living in the matrimonial domicile, or has committed domestic violence as defined in section A.R.S. § 13-3601 or emotional abuse.
- The spouses have been living separate and apart continuously without reconciliation for at least two years before the petitioner filed for dissolution of marriage.
- The spouses have been living separate and apart continuously without reconciliation for at least one year from the date the decree of legal separation was entered.
- The respondent spouse has habitually used drugs or alcohol.
- The husband and wife both agree to dissolution of marriage.

Conciliation Court

A conciliation court has jurisdiction whenever any controversy exists between spouses which may, unless a reconciliation is achieved, result in a legal separation, divorce or annulment of the marriage and there is any minor child of the spouses whose welfare might be affected by the separation (A.R.S. § 25-381.08). Either party may file in conciliation court, prior to filing for annulment, dissolution of marriage, or legal separation, for the purpose of preserving the marriage by effecting conciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved. If one party has filed for an annulment, dissolution of marriage, or legal separation, either party may petition to have the case transferred to conciliation court (A.R.S. § 25-381.09).

Abusers often file motions for conciliation, in order to stop the divorce proceedings for up to sixty days so that they are not ordered to pay child support, which would be deducted directly from their check or allotment. If the woman feels that is what is happening, she should ask for an immediate hearing so Conciliation Court can be dismissed and the case proceed in Superior Court.

Procedures in a Dissolution Proceeding

Forms: The forms you will need for filing a petition for dissolution of marriage and many other family court forms are available on line at the Superior Court website at http://www.superiorcourt.maricopa.gov/ under the forms section of the self-service center. These can be modified for other counties if their forms are not on line.

Petition:
A dissolution of marriage proceeding begins when one party files a petition for dissolution of marriage. The party filing the petition is called the petitioner, while the other party is called the respondent. A petition must state the legal requirements contained in A.R.S. § 25-3ll and A.R.S. § 25-3l4. These include:

- The name, address, occupation, social security number, length of domicile, and date of birth of the petitioner. In cases of domestic violence when the petitioner does not want the respondent to know her whereabouts for safety reasons, the address can remain confidential. She can use a P.O. Box, an address he already knows, e.g. her mother, her job, a shelter P.O. box, or she can simply omit the information from the petition. The

court must, however, have some address for notification purposes but should keep it secret (A.R.S. § 25-314(E)). If the petitioner is changing her social security number, or the perpetrator does not know it, do not put it on the petition.

- The name, date of birth, occupation, social security number, length of domicile, and, if known, the address of the respondent.
- The date and place (city and state) of the marriage of the parties and whether it is a covenant marriage.
- That one of the parties has resided in Arizona for at least 90 days preceding the date of filing or been stationed while a member of the armed services at least 90 days in Arizona.
- The marriage is irretrievably broken or (if a covenant marriage) the specific grounds.
- The name, birth date, social security number, and address of each living minor child of the parties born during the marriage. If there are no minor children, the petition should state that fact. To comply with the UCCJA, the petitioner must also state, either within the petition or on a separate document, the residence of each child for the last five years or, if younger than five, from the date of birth. Additional information is also required about potential pending lawsuits in other states (A.R.S. § 25-1039). If for safety reasons the petitioner does not want the respondent to know her whereabouts and she has the children, she can avoid putting the current address on the documents by stating that the health, safety or liberty of a party or child would be jeopardized and she desires the information sealed (A.R.S. § 25-1039 (E)).
- Whether the petitioner is pregnant.
- What community property and debts exist.
- What the petitioner is asking for and the details of any agreements between the parties as to support, custody, visitation, or maintenance.

Subject matter jurisdiction:
The Superior Court has jurisdiction to dissolve a marriage, and petitions should be filed there, so long as the following residency requirement of A.R.S. § 25-312 is met (A.R.S. § 25-311). In order to establish proper jurisdiction, one of the parties must:

- Have resided in Arizona for at least 90 days prior to the commencement of dissolution proceeding.
- Or if a member of the armed services, be stationed in Arizona for at least 90 days prior to commencement of dissolution proceedings.

Arizona may have jurisdiction over the children of the marriage. (See the discussion of the Uniform Child Custody Jurisdiction Act (U.C.C.J.E.A.) under Custody and Visitation.)

Arizona has jurisdiction over all the real and personal property of the parties that is found within the State. Property brought from a common law state into Arizona becomes quasi-community property and will be divided as such (A.R.S. § 25-318).

Arizona has jurisdiction over the respondent if he was personally served within the state or if the last marital domicile was in this state even if the respondent is served personally or by certified mail out of state. If the respondent is served by publication, no order for maintenance or child support directing payment by the defendant may be made until he is actually served.

Venue:
Venue means the location in which the dissolution proceeding takes place. The dissolution or legal separation proceeding can be brought in the county where the petitioner resides at the time the action is filed (A.R.S. § 12-401(13)).

Affidavit and Order to Waive Filing Fees:
Filing fees can be waived or deferred (postponed) in a dissolution action along with service fees and other costs. (A.R.S. § 12-302). Pursuant to § 12-302(C)(1) and (2) the court shall defer the fees if:

- The applicant is receiving TANF.
- The applicant is receiving food stamps.
- The applicant is receiving SSI.
- The applicant is receiving General Assistance.
- The applicant has an income that is insufficient or barely sufficient to meet the daily essentials of life, e.g. gross income is 150% or less of the current poverty rate or the applicant has extraordinary expenses such as elder or disabled care that reduce the income to below 150% (A.R.S. § 12-302(C)(3)).

The fees shall be waived if the applicant is permanently unable to pay, which means that the income and liquid assets are insufficient or barely sufficient to meet daily essentials and are unlikely to change in the foreseeable future. The applicant can request the fee waiver or deferral at the beginning or end of the case and if the fees are only deferred, can ask for reconsideration before the end of the case. (A.R.S. § 12-302(D)).

Preliminary injunction:
Pursuant to A.R.S. § 25-315(A), in all actions for dissolution of marriage, legal separation or annulment, the clerk of the court shall issue a preliminary injunction, directed to each party to the action, with the following orders:

- That both parties are enjoined from transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property of the parties except if related to the usual course of business, the necessities of life or court fees and reasonable attorney fees associated with the dissolution, separation or annulment action, without the written consent of the parties or the permission of the court (A.R.S.§25-315(A)(1)(a)).
- That both parties are enjoined from molesting, harassing, disturbing the peace of or committing an assault or battery on the person of the other party or any child of the parties (A.R.S.§25-315(A)(1)(b)(i)).
- That both parties are enjoined from removing any child of the parties then residing in Arizona from the jurisdiction of the court without the prior written consent of the parties or the permission of the court (A.R.S.§25-315(A)(1)(b)(ii)).
- That both parties are enjoined from removing or causing to be removed the other party or the children of the parties from any existing insurance coverage, including medical, hospital, dental, automobile and disability insurance (A.R.S.§25-315(A)(1)(b)(iii)).

- That both parties shall maintain all insurance coverage in full force and effect (A.R.S.§25-315(A)(1)(c)).

The injunction is effective against the petitioner when the petition is filed and against the respondent on service of a copy of the order or on actual notice of the order, whichever is sooner. The preliminary injunction is effective until further order of the court or the entry of a decree of dissolution, legal separation, or annulment. Any party can register a certified copy of the preliminary injunction with the county sheriff. If that is then violated, the violator can be arrested for interference with judicial proceedings and the case will proceed similarly to a violation of an Order of Protection (A.R.S. § 25-315 (G)(1-5)).

Service:
In an action for Annulment, Dissolution, Legal Separation, or Dissolution of Marriage, the petitioner shall serve upon the opposing party a copy of the Petition, a copy of the Summons, the Preliminary Injunction issued pursuant to A.R.S. § 25-315(A), and the Notices, Forms, and Orders as designated by the Presiding Judge of the Family Court (Superior Court Local Rules – Maricopa County Rule 6.3(f)(1). Each county has their own local rules. Service can be accomplished in a number of ways (see Arizona Rules of Civil Procedure 3-6):

- The respondent can sign an acceptance of service admitting that he got the papers but not stating that he agrees with them. Under Rule 4.1, the respondent has a duty to save service costs if the documents are properly mailed. If he refuses to sign them, the cost of hiring someone to serve the papers will be placed on the respondent.
- The papers can be served on the respondent, whether in state or out of state, by a process server or sheriff.
- If the respondent lives out of state the papers can be mailed by certified mail return receipt requested with addressee only to sign for them, in which case an Affidavit of Service along with the original returned green card must be filed with the court. Be sure to always make copies of everything for yourself.
- If, after a diligent search, the whereabouts of the respondent are unknown, he can be served by publication in a newspaper of general circulation where he was last known to reside.

Summons:
The summons notifies the respondent of the dissolution proceeding and the time limits for answering the petition. If personally served in Arizona, the respondent has 20 days to respond; if served out of state personally or by certified mail, the respondent has 30 days to respond (AZ Rules of Civil Procedure R 4.2(m)); if served by publication, the respondent has 30 days after the final publication (4 times) to respond.

Answer of respondent to allegations in the petition:
An answer is a formal response to the allegations in the complaint that is served by mail on the petitioner or petitioner's attorney. This tells the court what the respondent disagrees with in the petition (Rules of Civil Procedure 12(a)). The only defense to a petition for the dissolution of a marriage or legal separation is that the marriage is not irretrievably broken. If the marriage is a

covenant marriage, it is a defense that none of the grounds alleged in §25-903 or § 25-904 are met (A.R.S. § 25-314(C)).

Uncontested divorce:
If the respondent does not file and serve an answer to the petition within the required number of days, the divorce is uncontested, and the plaintiff may proceed by default (Rules of Civil Procedure 55(a)). The petitioner must first file an affidavit and entry of default after the time expires. She must mail a copy of this to the respondent. That day she can ask the calendar clerk to set her hearing. Depending on the county and the court calendar she can expect to have her hearing in 3-6 months. The respondent is not notified of the hearing, and the petitioner has no obligation to notify him.

An uncontested divorce hearing is a very brief proceeding in which the petitioner gives testimony to establish the allegations in the petition. The testimony follows the facts in the petition. The attorney will ask the questions if the petitioner is represented. If she is not, the court commissioner who hears uncontested divorces will ask the questions. At the completion of the questions, the commissioner makes a ruling and signs the orders. The petitioner or her attorney must prepare in advance a Decree of Dissolution and, if there are children, a child support worksheet and order along with a computer form.

Uncontested divorces may be finalized by mail under *Rules of Civil Procedure 55(b)(ii)* if there are no children and the wife is not pregnant; if no real property and no property over $15,000 is at issue; and no debts over $10,000 exist. In this case the petitioner does not have to appear in court at all but simply mails in the Decree of Dissolution to the court commissioner.

Contested divorces:
If the defendant files an answer disagreeing with any of the requests of the petitioner, the dissolution is contested. Most contested dissolutions are resolved by agreement of the parties at some point in the process. If the parties reach an agreement the matter can proceed to final hearing in the same manner as described for an uncontested dissolution.

If areas of disagreement affect the temporary situation of the parties, it may be necessary to request an Order to Show Cause (OSC) to determine how the parties will live between the time of filing and time of final divorce. The ruling of the commissioner at the OSC will be the final ruling approximately 90% of the time, so the woman must be ready to present a compelling case at the OSC and not assume that because the decision is "temporary" she needn't prepare. Once children are placed with a parent, the court is reluctant to move them.

Discovery:
In a dissolution of marriage proceeding, as in other civil litigation, the following discovery methods are available:

- Depositions -- taking testimony under oath from a party or other witness outside of a courtroom (Rules of Civil Procedure 27-32).
- Interrogatories -- written questions that the other party must answer within 30 days (Rules of Civil Procedure 33).

- Requests for production of documents or things -- a demand that the other party allow examination of documents or things (Rule 34).
- Physical and mental examinations (Rule 35).
- Requests for admissions which ask the respondent to admit uncontested facts to narrow down the contested items (Rule 36).

Generally, very few limitations are placed on the scope of discovery within a dissolution of marriage, property or custody action, but there are rules that place strict time and length limits regarding the number of questions that can be asked. The object of the discovery process is to provide information that appears reasonably calculated to lead to the discovery of the nature, extent, value, and status of all assets that are owned directly or indirectly by either party.

Pre-trial conference:
A pre-trial conference is mandatory in some courts and is held before the date of the trial. At the pre-trial conference the attorneys and parties meet together at the courthouse with a "pro tem" commissioner and attempt to narrow the issues in the case or to resolve it. If an agreement is reached at the pre-trial conference, the divorce can be granted that day.

Settlement:
Many cases are settled between the filing and the hearing date. Still others are settled the day of the hearing or trial. The parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody and parenting time of their children (A.R.S. § 25-317(A), If the parties sign a separation agreement, the victim of violence must be extremely careful because it could later be construed to having settled all claims in the case. If she desires to sue the perpetrator civilly for the injuries caused to her, she may be foreclosed. Thus before she signs any settlement agreement she should seek legal advice.

Hearing or trial:
A divorce hearing is held before a judge who decides the issues. There is no jury in dissolution proceedings. The party who started the divorce (the petitioner) presents her evidence first. The same procedures are used in a hearing for custody and child support. The issues of property, custody and support can be tried all at one time, with property first or with custody and support first (A.R.S. § 25-328). The parties designate in what order they want the judge to hear the case. Evidence is presented to the court through the testimony of witnesses or the introduction of physical evidence. The attorney who called the witness presents that witness's testimony through direct examination or questions. After the direct examination the other party's attorney has the opportunity to question the witness or to cross-examine. After the petitioner has presented all of her evidence, the respondent has the opportunity to call witnesses in support of his case.

When all the evidence has been presented, the attorneys summarize it and inform the court of the result they desire. This is done through an oral argument or a written memorandum. The judge makes a decision on the issues in the case. The decision can be, but rarely is, made immediately. Often in custody, maintenance, and property cases the judge takes the case under advisement and makes the decision at a later time. As soon as the decision is made the written judgment or order should be entered.

The parties should read the judgment or order carefully. Each party should make sure s/he understands the details of each provision as well as how to enforce each provision, such as the transfer of property, the payment of debts, visitation arrangements, and child support.

Appeal:
If either or both parties are dissatisfied with the decision of the judge, they may appeal the decision to the Court of Appeals. Appeals from a judgment or order must be made within 30 days of entry of the judgment or order and must be based on error of law, not just dissatisfaction with the results.

Modification of the judgment or order:
If there are changes in the situation of the custodial party or of the children, changes can be made with regard to the terms of custody or visitation (See A.R.S. § 25-403, A.R.S. § 25-408 and A.R.S. § 25-411 and Child Custody and Visitation section below).

Generally, no changes can be made with regard to property issues unless there was fraud or an error in the judgment.

Decisions Made in a Divorce Proceeding

Termination of the marriage:
A divorce decree ends the marriage relationship between two people. A finding that a marriage is irretrievably broken is a determination that there is no reasonable prospect of reconciliation. A court may find an irretrievable breakdown of the marriage if both of the parties state under oath or affirmation that the marriage is irretrievably broken or if one of the parties so states and the other does not deny it, the court shall make a finding as to whether or not the marriage is irretrievably broken (A.R.S. § 25-316(A)). If one of the parties denies that the marriage is irretrievably broken, the court shall hold a hearing to consider all relevant factors as to the prospect of reconciliation and shall do either of the following:

- Make a finding as to whether or not the marriage is irretrievably broken.
- Continue the matter for further hearing, not more than sixty days later. At the request of either party or on its own motion, the court may order a conciliation conference. At the next hearing the court shall determine whether the marriage is irretrievably broken. (§ 25-316(B)).

Child custody and visitation/parenting time:
In a divorce proceeding, the court must enter an order setting forth the terms of custody and visitation/parenting time on a permanent basis (A.R.S. § 25, Chapter 4). If asked, the court will also enter an order setting forth terms on a temporary basis until the final decree. Unless the court has entered a custody order, both spouses have equal rights and responsibilities toward their children. In situations where there is a dispute with regard to where the children reside, how much time they will spend with each parent, the terms of visitation, or other issues related to children, it is advisable to obtain a temporary order setting forth the terms of custody and visitation/parenting time pending a final order. (See Section 7, Custody and Visitation, for more detailed information.)

In a divorce with children, the court will order the parents to a parental education program (A.R.S. § 25-352). If the victim cannot afford the program, she should ask for a fee waiver (A.R.S. § 25-355). If there is a history of domestic violence, the court may enter appropriate orders to protect the safety of the parties (c).

Child support:
On both a temporary and permanent basis, the court will order the non-custodial parent, or in cases of joint custody the higher earning parent, to pay child support. The child support order usually follows legislative child support guidelines that set the amount of child support to be paid based on the combined income of the parents, the number of children to be supported, and other factors (A.R.S. § 25-320).

Spousal Maintenance:
Nationwide, spousal maintenance is ordered in only 15% of the cases. It is received in less than that. Spousal maintenance (A.R.S. § 25-319) in Arizona is based on the factors set out in the statute and is not based on fault.

First the court must find that the spouse seeking maintenance lacks sufficient property to provide for her reasonable needs; is unable to support herself through appropriate employment; is the custodian of a child who requires her to work in the home; lacks earning power; contributed to the educational opportunities of the other spouse; or had a long marriage and is of an age which makes it difficult to support herself.

Then the court will look at various factors to determine the amount of maintenance:

- Standard of living during the marriage.
- Duration of the marriage.
- Age, employment history, earning ability, and physical and emotional condition of the seeking spouse.
- Ability of paying spouse.
- Comparative financial resources.
- Contribution of seeking spouse to earning ability of payer spouse.
- Extent seeking spouse has reduced her income or career opportunities for benefit of the other spouse.
- Ability of both parties to contribute to future educational costs of children.
- Financial resources.
- Time for seeking spouse to acquire sufficient education or training.
- Excessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of property.

A change in the law during the 2002 legislative session changed the conditions under which a decree for maintenance or support may be modified (SB 1028) so that the addition or change in availability of health care coverage may constitute a continuing and substantial change in circumstances, which would justify a motion for modification. (A.R.S. § 25-327).

The legislature also established a spousal maintenance enforcement enhancement fund to increase collection enforcement. The fund is generated by an additional $5 cost for each petition or answer in a divorce action. The clerk may provide services to help collect spousal maintenance such as information, assistance in preparation of forms, instructions regarding enforcement actions, and referrals to collection agencies. Spousal maintenance collection actions have priority over all other civil actions except child support collection actions (A.R.S. § 12-283).

In 2002, SB 1088 also added as a factor to be considered the cost of health insurance for the spouse seeking maintenance and the reduction of cost to the spouse ordered to pay spousal maintenance. A person who fails to pay spousal maintenance has committed a Class 1 misdemeanor.

Name change:
A name change for either party can be a part of a divorce decree. The name change can be to a maiden name or formerly used name but not to a totally new name. A separate procedure exists to change to a totally different name (A.R.S. § 25-325).

Management and Control:
The spouses have equal management, control and disposition rights over their community property and have equal power to make the community liable (A.R.S. § 25-214). Some transactions require both parties to sign:

- Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented mining claim or a lease of less than one year;
- Any transaction of guaranty, indemnity or surety ship;
- Any debt obtained after service of a petition for dissolution of Marriage, legal separation or annulment if the petition results in a Decree of Dissolution of Marriage, legal separation or annulment.

Property Distribution:
Arizona is a community property state. Community property is regarded as all property that has been acquired during the marriage, other than by gift or inheritance (A.R.S. § 25-211). In community property jurisdictions, spouses equally own all community property (fifty percent owned by the husband and fifty percent owned by the wife). Even if one spouse earns all the money to acquire the property, all the property acquired is considered to be community property. Community property is also called marital property.
The time frame for "during the marriage" starts as of the day the couple marries and is ended on the day of service of a Petition for Divorce or Separation, which results in a final divorce or separation. Fault is not considered in dividing property or deciding spousal or child support. Financial mismanagement may be considered.

What is the difference between community property and separate property?
A spouse's real and personal property that is owned by that spouse before marriage and that is acquired by that spouse during the marriage by gift, devise or descent, and the increase, rents, issues and profits of that property, is the separate property of that spouse (A.R.S. § 25-213).

Property that is acquired by a spouse after service of a Petition for Dissolution of Marriage, for Legal Separation, or for Annulment is also the separate property of that spouse if the petition results in a Decree of Dissolution of Marriage, Legal Separation, or Annulment. Upon divorce, separate property goes completely to the spouse who owns it. Conversely, community property is divided between the spouses in the event of a divorce.

The court shall assign each spouse's sole and separate property to such spouse. It shall also divide the community, joint tenancy, and other property held in common equitably, though not necessarily in kind, without regard to marital misconduct (A.R.S. § 25-318).
When dividing property the court can consider excessive or abnormal expenditures, destruction, and concealment or fraudulent disposition of property (A.R.S. § 25-318). If the abuser has broken household furniture, wasted or hidden community monies etc. that should be brought to the attention of the court. There are some very complicated issues when community and separate property is mixed. An attorney is necessary to sort it out.

What is equitable distribution?
Instead of a strict fifty-fifty split (in which each spouse receives exactly one-half of the marital or separate property), equitable distribution looks at the financial situation that each spouse will be in after the termination of the marriage. While equitable distribution is more flexible, it is harder to predict the actual outcome since the various factors are subjectively weighed. Factors considered in equitable distribution include:

- Earning power of the spouses (one might be much greater than the other).
- Separate property of the spouses (one might be greater in value than the other).
- One spouse having done all the work to acquire the property.
- The value that one spouse contributed as the home-maker for the family.
- Economic fault of one spouse in wasting and dissipating marital property.
- Duration of the marriage.
- Age and relative health of the spouses.
- The responsibility for providing for children of the marriage.

How is the debt incurred during the marriage divided?
In addition to the property acquired during the marriage, the debt incurred during the marriage is divided upon divorce. Dividing the debt upon divorce determines who is responsible to repay the debt. In Arizona, a community property state, both spouses are equally responsible for the repayment of debt incurred during the marriage, even if only one spouse enjoyed the benefit (A.R.S. § 25-215). Separate debt, debt that each spouse had individually, before the marriage, remains separate. Also, debts acquired after service of a Petition for Divorce or Separation, belong solely to the person who acquired them. When a joint tax return is filed, the Internal Revenue Service holds both spouses to joint and several liability for the tax. (See tax section.)

The court shall require the parties to submit a debt distribution plan that states the following:

- How community creditors will be paid.

- Whether any agreements have been entered into between the parties as to responsibility for the payment of community debts, including what, if any, collateral will secure the payment of the debt.
- Whether the parties have entered into agreements with creditors through which a community debt will be the sole responsibility of one party.

If a party fails to comply with an order to pay debts, the court may enter orders transferring property of that spouse to compensate the other party (A.R.S. § 25-318(N)). If the court finds that a party is in contempt as to an order to pay community debts, the court may impose appropriate sanctions under the law. A party must bring an action to enforce an order to pay a debt pursuant to this subsection within two years after the date in which the debt should have been paid in full.

Within thirty days after receipt of a written request for information from a spouse who is a party to a dissolution of marriage or legal separation action, that includes the court and cause number of the action, a creditor shall provide the balance and account status of any debts of either or both spouses identified by account number for which the requesting spouse may be liable to the creditor.

If one party has a safe address she must not use that address at the credit agency. The law provides in A.R.S. § 25-318 (G) that upon written request of the other spouse, for good cause shown, the court will issue an order requiring a credit agency to release information about the other spouse. If she is using a safe address, then he will have access to that address. Likewise a creditor shall provide the balance and account status of any debt of either or both parties (A.R.S. § 25-318(O)) and (A.R.S. § 25-512) and no doubt would send a copy of the account with her new, safe address on it.

Payment of distribution awards:
Property distribution payments are separate from child support or spousal maintenance and are not taxable under the tax code because it is simply returning the person's own property.

The awarding of payments for the division of property is payable:

- In a lump sum.
- Over a period of time in fixed amounts.

The payments for vested income, retirement, or other deferred compensation can be given as:

- A lump sum.
- Over a period of time in fixed amounts by agreement.
- As a prorated portion of the benefits made to the designated recipient at the time the party against whom the award is made actually begins to receive the benefits.
- By awarding a larger portion of other assets to the party not receiving the benefits, and a smaller share of other assets to the party entitled to receive the benefits.

If the benefits are awarded as a prorated share of future benefits, a Qualified Domestic Relations Order (QDRO) must be entered as well. The QDRO is a specific court order mandated by the IRS tax code in order to qualify the payments as property that is non-taxable rather than on spousal maintenance payments that are taxable.

What is a premarital agreement?
Before marrying, parties can agree on certain property rights. The court will uphold the agreement unless it is unconscionable or leaves one party on public welfare (A.R.S. § 25-202).

Child Custody and Visitation/Parenting time

Custody and Visitation/parenting time Issues:
The issue of custody can be addressed in a number of legal proceedings including dissolution, legal separation, custody proceedings, and paternity proceedings. A battered woman may need the assistance of the legal system in obtaining a court order granting her temporary or permanent custody or restricting the abuser's access to the children. Sometimes the abuser initiates a custody proceeding as another form of harassment of a woman. Being a party to a custody proceeding is often a very frightening and emotional experience. The more information a woman has with regard to custody proceedings, the easier it will be for her to participate in the custody proceeding, and the more likely it is she will be able to obtain the relief she desires.

In custody and visitation actions in Arizona, judges make decisions based on the "best interest of the child." After hearing all the evidence the judge, in his/her own discretion, determines which parent should have custody, with parenting time allowed to the non-custodial parent. The judge *should* decide custody based on which parent can provide the environment that best encourages the child's physical, mental, emotional, moral and spiritual well-being. Arizona statutes specifically require that the judge take into account the existence of domestic violence and that it is contrary to the best interest of the child (A.R.S. § 25-403). The person who has committed the domestic violence has the burden of proving that visitation will not endanger the child or impair the child's emotional development.

Except in unusual circumstances the non-custodial parent will receive "reasonable" parenting time with the children. Maricopa County has established a definition of what "reasonable" means. The amount of time depends on the age and health of the minor children and the location of the parents. The guidelines can be found at the Self-Service Center or on the Internet at www.superiorcourt.maricopa.gov/. Courts welcome agreements for parenting time and custody, and the parents can agree on any schedule they choose so long as it is in the best interest of the child.

What is Child Custody?
Child custody is a term that refers to the rights and responsibilities that a parent has in regards to his/her child (A.R.S. § 25-402).

“Parenting plan”
The term “parenting plan” refers to the agreement between the parents or the court order that defines provisions for custody and visitation/parenting time. The parenting plan determines

whether one or both parents have the ability to make decisions regarding the health, education, and welfare of the child. The parenting plan also defines when the child is to be with the non-custodial parent (A.R.S. § 25-403(F)).

Types of Custody
There are four different types of custody in Arizona:

- **Joint custody** means joint legal custody or joint physical custody or both.
- **Joint legal custody** means when both parents share legal custody and neither parent's rights are superior except for specified decisions set forth in the final order. The judge may order joint custody if the parents agree in writing or if the judge sets out specific reasons in detail why joint custody is in the child's best interest including:
  - Whether there is agreement.
  - Whether the refusal to agree to joint custody is reasonable.
  - The past, present and future ability of the parents to cooperate in decision-making.
  - The court may not order joint custody if the court makes a finding of the existence of significant domestic violence or if the court finds by a preponderance of the evidence that there has been a significant history of domestic violence. To determine that, the court shall consider findings from another court, police reports, medical records, child protective services records, domestic violence shelter records, school records, and witness testimony.
- **Joint physical custody** means when the physical residence of the child is shared between the parents so that each has substantially but not necessarily equal time and contact.
- **Sole Custody** means when one parent has legal custody and makes all final decisions regarding the care of the child/ren (A.R.S. § 25-403).

The court may specify one parent as the primary caretaker of the child and one home as the primary home of the child for the purpose of defining eligibility for public assistance but that shall not diminish the rights of either parent and does not create a presumption for or against a parent in any modification proceeding.

What is the difference between custodial parent and non-custodial parent?
Custodial parent is the term used for the parent that has primary physical custody of a child. The child resides with the custodial parent.

The term non-custodial parent is used for the parent that has the child for a lesser amount of time. The child does not reside with the non-custodial parent except during the time that the non-custodial parent exercises his/her parenting time with the child.

Determination of Custody:

What if the parents disagree on child custody and parenting time?
If custody is contested, i.e., the parents are unable to reach an agreement on the issues of custody and visitation, the court in certain counties must order mediation of the custody issue to work out such a plan (A.R.S. § 25-381.23).

Mediation is a structured, task-oriented process that relies on various problem-solving techniques to help parties make decisions. Mediation is defined in A.R.S. § 12-2238. Mediation is confidential except for particular reasons. Threatened or actual violence during mediation is not confidential. The mediator cannot be subpoenaed to testify unless there is a lawsuit or claim against the mediator, the statute requires it, or it is necessary to enforce an agreement to mediate. It would seem that if it is necessary to "enforce an agreement to mediate", the likelihood of success in such mediation would be slim.

In the mediation session, both parents meet with a third party, typically an experienced attorney or social worker, to discuss relevant factors in an effort to reach an agreement. In smaller counties the court may contract with qualified marriage and family counselors to provide mediation services. Many contested issues of custody and visitation can be resolved in a mediation session and this session typically results in an agreement that can then be presented as a stipulation for issuance as a court order.

However, when violence is present mediation is not the preferred course of action and joint custody should not be ordered. A victim of violence should strenuously resist going to mediation. In A.R.S. § 25-403(R), the court is prohibited from ordering joint counseling between a victim and a perpetrator of domestic violence. In A.R.S. § 25-381.23, the court may grant an exemption from conciliation court counseling if to require such counseling would cause undue hardship. Forcing a victim to "negotiate" with her abuser certainly is undue hardship. The National Council of Juvenile and Family Court Judges strongly recommends against such joint counseling.

If the court orders mediation anyway, the victim should file a motion to prohibit it. S/he also needs to contact the counselor ahead of time and explain why s/he cannot safely come. Arrangements can be made for the woman to come at a completely different time and day than the abuser. Sheriff's deputies can also be on call and escort her to and from her car. If they are there at the same time, the abuser can be held in the office until she has time to get away safely.

If the parties reach an agreement in mediation, it will be put in writing and submitted to the court. If they don't reach an agreement, the written report will simply state that they did not reach agreement. If the woman goes to mediation, she should take copies of all the evidence she intends to use in court, e.g. police reports, hospital records, photos, etc. Unlike court, she can submit written statements of witnesses, family and friends. This can include the child(ren)'s teacher or babysitter.

Should mediation of custody and visitation disputes fail, the parents can then pursue litigation of unresolved issues. A court hearing will be conducted and evidence presented.
Often expert witnesses such as psychologists and licensed social workers will be called to present evidence for consideration by the court. After the court has received such evidence it is then in a position to make an order regarding custody and visitation.

Custody and visitation disputes can be very difficult and expensive to resolve. An agreement by both parents is the preferred course of action since a joint parental decision is more likely to be followed than if an outsider makes a decision for them.

Best interest of the child:
Custody is based on the best interests of the children. A jury does not decide custody. The trial judge is vested with broad discretion in child custody cases, and the court decision in awarding custody will not be upset on appeal if the findings are supported by competent evidence absent a clear showing of abuse of discretion.

The "best interest of the child" is determined on a case-by-case basis. The court looks at the following in determining "the best interest of the child" (A.R.S. § 25-403(A)):

- The wishes of the child's parent or parents as to custody.
- The wishes of the child as to the custodian.
- The interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interest.
- The child's adjustment to home, school and community.
- The mental and physical health of all individuals involved.
- Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.
- If one parent, both parents, or neither parent has provided primary care of the child.
- The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.
- Whether a parent has complied with chapter 3, article 5 of this title (Domestic Relations Education Program).

The court may not use one factor to the exclusion of all others. The court must include findings of fact that support the determination of best interest in all contested custody cases.

Between the mother and father, whether the child is natural or adoptive, no presumptions shall apply based on gender as to who will better promote the interest and welfare of the child. They should however look at who has provided primary care for the child before the divorce.

Custody Evaluators:

In many custody disputes, the court will appoint a mental health professional to determine which custody placement will serve the "best interest of the child," as the courts seek to avoid placing the child with an abusive parent. Unfortunately, when the court appoints a custody evaluator, the evaluator's goal is not to relieve the child's suffering or to treat the child. Rather, it is to provide an objective and informed opinion to the court as to the best custody situation for the child. This is problematic especially in cases where domestic violence and/or sexual abuse are factors, because custody evaluators may lack knowledge and training about family violence issues. Without training on family violence, custody evaluators are likely to work against the "best interests of the child" by placing the child in the batterer's care. Likewise custody evaluators may fail to screen for domestic violence, thereby neglecting their duty to determine placement in the best interest of the child.

Many studies have shown chronic problems with custody evaluations. Abusers often appear to be charming, charismatic, and good-tempered. An untrained custody evaluator may take this pleasant behavior at face value, failing to recognize the father's amicable behavior as a manipulative attempt to convince the evaluator that he is not an abuser. Alternatively, when the evaluator questions an abuser about past instances of abuse, the abuser usually appears regretful and justifies his abuse by blaming poor anger management, depression, substance abuse, or even his partner. Thus, the evaluator concludes that the abuser is no longer a danger and will not repeat the abuse.

The batterer's manipulation of the evaluator can be detrimental to the child's welfare. Evaluators are in danger of accepting the abuser's position that he just "snapped" or that the victim not only caused but deserved the abuse. To the detriment of the children involved, most uninformed evaluators do not comprehend that the abuser does not seek custody out of love and concern for the children; he seeks custody as a way of continuing his abuse. Thus not only does the abuser continue his harassment by continually dragging the victim into court, by fighting for custody of children that he will most likely abuse he delivers the "ultimate blow to the victim-more serious than the years of psychological and physical abuse."

(Taken from the Battered Mothers' Testimony Project, AzCADV, 2003, Literature Review)

Custody determinations and domestic violence:

There are several statutes governing the determination of custody when domestic violence is present in the family. When making custody determinations, the courts should consider the following statutes and factors:

- Joint custody shall not be awarded if the court finds that significant domestic violence has occurred (A.R.S. § 25-403(E)).
- The court shall consider evidence of domestic violence, including history, as being contrary to the best interests of the child (A.R.S. § 25-403(M)).
- If the court determines that a person has committed domestic violence, there is a rebuttable presumption that sole or joint custody is not in the child's best interests (A.R.S. § 25-403(N)). To show the existence of domestic violence, the court can consider police and medical reports, CPS and shelter records, school records and witness testimony (A.R.S. § 25-403(S)).
- If a person has been convicted of a drug offense or drunk driving within 12 months, there is a rebuttable presumption that sole or joint custody is not in the child's best interests (A.R.S. § 25-403(K).
- The burden to show that visitation will not endanger the child is on the perpetrator (A.R.S. § 25-403(P)).
- The court can order that the visitation exchange be in a protected setting and be supervised. Other imposed conditions may include attending a batterers program, maintaining sobriety, prohibiting overnight visitation, requiring a bond, and keeping the address confidential (A.R.S. § 25-403(P)).
- If, after the custody and parenting time order is in effect, one parent is charged with a dangerous crime against a child, child molestation, or an act of domestic violence in which the victim is a minor, the other parent may ask the court for an expedited hearing.

The court may suspend visitation or change custody immediately without the notice or presence of the other party pending the hearing (A.R.S. § 25-408(M)).

Non-parent Custody:
By statute, A.R.S. § 25-415, a non-parent who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time, could petition for custody or visitation if one of the legal parents is dead, the child's legal parents are not married to each other at the time of filing, or there is a pending proceeding for dissolution at the time the petition is filed. Thus lesbians and gays can request custody or visitation of the children of their ex-partners. But they may also be subject to child support.

Modification of a Custody Order:
Before a party may petition for a modification of a custody order, that party must submit an affidavit setting forth detailed facts supporting the requested modification and shall file notice, together with a copy of the affidavit to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the pleading, in which case it shall set a date for hearing on why the requested modification should not be granted (A.R.S. § 25-411).

The court shall determine custody on petition for modification, in accordance with the best interests of the child. The court shall consider all relevant factors, as listed in A.R.S. § 25-403(A).

A motion to modify custody shall not be made earlier than one year unless the child is endangered (A.R.S. § 25-403(T)). In cases of joint custody, a parent may petition for a modification if domestic violence, spousal abuse or child abuse has occurred (T). Six months after a joint custody order a parent may petition for modification for the failure of the other parent to comply with the joint custody decree.

The court must also consider the terms of a parent's military deployment in determining the child's best interest but the military deployment is not a change of circumstances that materially affects the welfare of the child if the custodial parent has filed a military family care plan with the court at a previous custody proceeding and if the military deployment is less than six months (A.R.S. § 25-403(U)).

What if the custodial parent wants to move away from the non-custodial parent?
When both parents are entitled to custody or parenting time and both parents reside in the state, at least sixty days' advance written notice must be provided to the other parent before a parent may relocate the child outside the state, or relocate the child more than 100 miles within the state (A.R.S. § 25-408(C)). The notice shall be sent by certified mail, return receipt requested, or pursuant to the Arizona rules of civil procedure. A parent who does not comply with the notification requirements is subject to court sanction (§ 25-408(D)). Within 30 days after notice is made the nonmoving parent may petition the court to prevent relocation of the child. A parent who is seeking to relocate the child may petition the court for a hearing, on notice to the other parent, to determine the appropriateness of a relocation that may adversely affect the other parent's custody or parenting time rights (§ 25-408(E)).

Pending determination by the court of a petition or application to prevent relocation of the child:

- A parent with sole custody or a parent with joint custody and primary physical custody who is required by circumstances of health or safety or employment of the parent or that parent's spouse to relocate in less than 60 days after written notice has been given to the other parent may temporarily relocate with the child.
- A parent who shares joint custody and substantially equal physical custody and who is required by circumstances of health and safety or employment to relocate in less than 60 days after written notice has been given to the other parent may temporarily relocate with the child only if both parents execute a written agreement to permit relocation of the child (A.R.S. § 25-408(G)).

A battered woman who wants to relocate to another state with her children should argue that relocation is necessary because of health and safety concerns, as provided above.

The court shall determine whether to allow the parent to relocate in accordance with the child's best interests. The burden of proving what is in the child's best interests is on the parent who is seeking to relocate the child (§ 25-408(H)). In determining the child's best interest the court shall consider all relevant factors including:

- The factors prescribed under § 25-403.
- Whether the relocation is being made or opposed in good faith and not to interfere with or to frustrate the relation ship between the child and the other parent or the other parent's right of access to the child.
- The prospective advantage of the move for improving the general quality of life for the custodial parent or for the child.
- The likelihood that the parent with whom the child will reside after relocation will comply with parenting time orders.
- Whether the relocation will allow a realistic opportunity for parenting time with each parent.
- The extent to which moving or not moving will affect the emotional, physical or developmental needs of the child.
- The motives of the parents and the validity of the reasons given for moving or opposing the move including the extent to which either parent may intend to gain a financial advantage regarding continuing child support obligations.
- The potential effect of relocation on the child's stability (§ 25-408(J)).

The court shall not deviate from a provision of any parenting plan or other written agreement by which the parents specifically have agreed to allow or prohibit relocation of the child unless the court finds that the provision is no longer in the child's best interest. There is a rebuttable presumption that a provision from any parenting plan is in the child's best interest (§ 25-408(I)).

A modified custody order of the court could provide for additional time with the non-custodial parent during summer and other school recesses and for the obligation of the custodial parent to pay the additional transportation expenses incurred in facilitating the visitation exchange.

Custodial parents who move away with the child without providing notice to the other parent not only may face a change in custody to the other parent but also criminal charges of kidnapping. "Move away" cases can become very difficult to resolve and court involvement can be both costly and time consuming. Thus leaving in the dead of the night without leaving a forwarding address could have very detrimental effects to the custodial parent who, when caught, might lose custody completely.

Uniform Child Custody Jurisdiction and Enforcement Act (U.C.C.J.E.A.)

The uniform act was passed to prevent parents from getting custody decrees in different states and then kidnapping the child back and forth. Decrees from other states and other countries will be given full faith and credit in the U.S. unless the laws of the other country violate fundamental principles of human rights (A.R.S. § 25-1005 and A.R.S. § 25-1053). One could argue that countries in which women do not have equal rights under the law and equal rights to custody of their children violate fundamental principles of human rights.

To prevent the seesawing of children from state to state, the courts may communicate (A.R.S.§ 25-1010), take testimony in both states (A.R.S. § 25-1011), and share records (A.R.S. § 25-1012). Specific factors are detailed which the court must consider to determine which is the "home"state of the child (A.R.S. § 25-1031). That state then has jurisdiction.

Temporary emergency jurisdiction can be taken by a state if the child is present and it is necessary to protect the child because the child, a sibling, or a parent is subjected to or threatened with mistreatment or abuse (A.R.S. § 25-1034(A)). So victims of domestic violence who flee to this state can ask that Arizona take temporary emergency jurisdiction of the custody matter.

Then a parent can argue to keep jurisdiction in Arizona because any other state would be an inconvenient forum (A.R.S. § 25-1037). One factor the courts will consider is whether domestic violence has occurred, whether it will continue, and which state can best protect the parties and the child (A.R.S. § 25-1037(B)). A court can also decline jurisdiction because of the conduct of the parties (A.R.S. § 25-1038). This could harm a victim of violence if she violated a court order in the other state, or could help the victim if the perpetrator has been violent.

If a child has been kidnapped into another country, the parent must use A.R.S. § 25-1052, the Hague Convention on the Civil Aspects of International Child Abduction. The attorney general is responsible for acting on behalf of the court to locate the child and have her/him returned (A.R.S. § 25-l065). The attorney general does not act on behalf of the parent. An excellent resource is A Family Resource Guide on International Parental Kidnapping from the Office of Juvenile justice and Delinquency Prevention. It is available on the Internet at http://ojjdp.ncjrs.org/pubs/missingsum.html#190448. The handbook has:

- An action checklist after each chapter.
- A flowchart of the Hague Application process.
- Instructions for the application and the application itself
- Information about finding a lawyer

- An abduction checklist for parents and law enforcement

The handbook also has very practical suggestions such as:

- Asking the Office of Children's Issues in the Department of State to flag a U.S. passport application for your child and/or to deny issues of a passport. Ask to have your child's name entered into the Children's Passport Issuance Alert Program to block issuance.
- Both parents must sign a passport application for a child under 14 with some exceptions.
- Ask for police and prosecutor to intervene. Do not ignore abduction threats.
- Notify schools, daycare centers, and babysitters of custody order. Give them photos of the other parent.
- Make a list of personal information about the other parent especially anyone s/he knows in another country.
- Flag airline records. Contact airlines the abductor might use and ask for their cooperation in alerting you if reservations are made or tickets issued in the child's name. You can get a court order to do this if they refuse. A request form is in the handbook.

It also has some very valuable information:

- State law enforcement agencies are prohibited by federal law (National Child Search Assistance Act 42 U.S.C. §§5779-5780) from maintaining any waiting period before accepting a missing child report
- Law enforcement is required to immediately enter missing children reports into both state and NCIC missing persons file
- You do not need a custody order to report your child missing or for law enforcement to enter the child into NCIC.
- The abductor does not have to be charged with a crime to enter the missing child report into NCIC.
- The abductor can also be entered into the NCIC file.
- The abductor can be stopped as s/he tries to enter another country and returned to the U.S.

If a parent has a custody determination, she can request the issuance of a warrant to take physical custody if the child is imminently likely to suffer serious physical harm or be removed from the state A.R.S. § 25-1061. Federal regulations have been issued regarding international parental abductions. You can access them at http://travel.state.gov/abduct.html.

According to the Federal Population Law in Mexico, a parent who wants to take the minor child to Mexico and if that parent's name is the only one on the birth certificate, they can do so without any consent from the other parent. If both names are on the certificate, the non-traveling parent has to give written notarized authorization that the traveling parent is allowed to take the minor child out of the country, including destination and time frame. It is best if the non-traveling parent goes to the airport. If the traveling parent has sole custody, a copy of the court order is sufficient. For more information in Spanish and English see http://www.cddhcu.gob.mx/leyinfo/.

Other Custody Issues:

Judicial Supervision:
If either party requests, if all contestants agree, or if the court finds that absent supervision the child's physical health would be endangered or emotional development significantly impaired, A.R.S. § 25-410 allows the court to order a local social service agency to exercise continuous supervision over a case to assure that the custodial or visitation terms of the decree are carried out. While this sounds like a good idea, most social service agencies are not knowledgeable in the dynamics of battering, and the woman often suffers from their supervision as she tries to protect the child.

Professional Assistance:
The court may appoint a psychologist to evaluate all the parties and submit a written report (A.R.S. § 25-405). Once again the woman must ensure that the person chosen is familiar with domestic violence or the results could be harmful.

Investigation:
The court may order an investigation of all the parties and the child(ren) (A.R.S. § 25-406). The Conciliation Court or a private psychologist on a court-approved list will do this family study. The woman must be very careful about who is appointed because many of the evaluators are unfamiliar with or hostile to victims of violence.

Attorney for child:
The court may appoint an attorney to represent the interests of a minor with respect to support, custody and parenting time. The court will decide who is to pay. This might be helpful to a victim of violence if the court is refusing to listen and consider the violence but, on the other hand, if the attorney is not well educated in the dynamics of violence, it might make things worse rather than better (A.R.S. § 25-321).

Guardian *ad litem*:
In any family court proceeding involving children, the court may appoint a guardian *ad litem* to protect a child's best interest if it finds any of the following:

- There is an allegation of abuse or neglect of a child;
- The parents are persistently in conflict with one another;
- There is a history of parental alienation, substance abuse by either parent, or family violence;
- There are serious concerns about the mental health or behavior of either parent;
- The children include infants or toddlers; or
- A child has special needs (Superior Court Local Rules – Maricopa County Rule 6.13).

The court can appoint a guardian *ad litem* on it's own motion or on motion from either party. A victim should be careful when requesting a guardian *ad litem*, as there are no domestic violence training requirements or guarantees that the appointed guardian *ad litem* will be knowledgeable or helpful when dealing with the issue of domestic violence.

Interview of a child by the Judge:
Very few children testify in divorce actions in Arizona courts. However the judge may, though seldom does, interview a child in chambers about custody or visitation (A.R.S. § 25-405). A battered woman should use this only sparingly as most judges are not educated in either talking to children or in how children might respond in a domestic violence situation.

Parenting Time

The term "child visitation" has been changed to "parenting time" and refers to the time when the non-custodial parent has the right to be with the child. A.R.S. § 25-408 mandates that the parent not granted custody of the child(ren) is entitled to reasonable parenting time unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health. In that case the court may restrict parenting time by the non-custodial parent as to time, place, duration, or supervision or may deny parenting time entirely, as the circumstances warrant. A total denial of visitation is rare even in the most egregious cases. Additionally, a parent's failure to pay child support shall not be sufficient cause for denial of parenting time.

A court order for parenting time may simply be for "reasonable visitation." In that case the county guidelines define the arrangements for parenting time. Or a court order may specify a schedule for parenting time that details specific days and times for parenting time or that may set conditions such as sobriety or the presence of a third party supervisor. The Arizona Supreme Court website has several booklets and information regarding divorce, child support, and parenting time available. The website for the parenting time booklet is http://www.supreme.state.az.us/dr/pdf/custvis.pdf, please visit this site for more information.

The amount of parenting time for each parent depends on the child's age and stage of development. For example, it may not be appropriate to have lengthy periods of parenting time with a newborn child, although more frequent shorter visits may be appropriate. It is important to remember that the county guidelines are just guidelines and may not apply to all family situations or to all children. The guidelines do not discuss situations of domestic violence and should not be applied to such cases.

What happens when parenting time is frustrated?
Frustration of parenting time occurs when the custodial parent takes steps to prevent the non-custodial parent from having contact with the child. This could be an innocent isolated occurrence, such as taking a child to a doctor to receive medical attention at the time the non-custodial parent is to arrive at the residence to pick-up the child for a scheduled visit. On the other hand, when one parent "disappears" with the child, this could be a kidnapping or abduction that would result in criminal prosecution. Frustration of parenting time could be the grounds criminal charges and for modification or termination of custody rights (A.R.S. § 25-414) and (A.R.S. § 13-1301 et seq.).

If the court finds that a parent has unreasonably denied, restricted or interfered with court-ordered parenting time, the court shall assess attorney fees and costs against them. In addition such denial or interference will be used against them in any future modification, since one factor

for best interest is which parent allows more frequent contact with the other parent. However, if she allows access to the child and the child is injured, she can be criminally charged with child abuse for allegedly “failing to protect.” This puts battered women in a bind when they are trying to protect their children, and their very protection efforts may cause them to lose custody altogether.

Arizona also has a criminal statute for "access interference" (A.R.S. § l3-l305). A person commits this crime if s/he knowingly takes, entices or keeps from specified access any person who is the subject of an access order. Violation is a class 3 misdemeanor. The police may cite and release.

What is a visitation exchange?
A visitation exchange takes place every time a child goes from the physical custody of one parent to the other (A.R.S. § 25-408) or one parent goes to the residence of the other to pick up the child.

Visitation exchanges become problematic when the personal differences between the parents are not settled. In the extreme, a domestic violence case makes the visitation exchange difficult to handle, especially when orders of protection are in effect (such as an order that both parents are to stay at least 100 yards away from one another and may not go to the residence of the other). In these difficult cases, visitation exchanges can be conducted in a public place such as a restaurant, police station, or public library. In extreme cases, one parent would leave the child with a visitation supervision monitor, and the other parent would arrive 15 minutes later.

Modification of a Visitation Order:
A court may modify an order regarding parenting time whenever it would serve the best interest of the child but shall not restrict such rights unless it finds that visitation would endanger seriously the child's physical, mental, moral or emotional health (A.R.S. § 25-408).

If a parent has been arrested for a dangerous crime against children, child molestation, or domestic violence in which the victim is a minor, the other parent may seek an expedited hearing. Pending the hearing the court may suspend visitation or change custody ex parte (A.R.S. § 25-408(M)).

Grandparent visitation:
In accordance with A.R.S. § 25-409, the superior court may grant the grandparents and great-grandparents of the child reasonable visitation rights on a finding that the visitation would be in the best interest of the child and any of the follow is true:

- The marriage of the parents of the child has been dissolved for at least three months.
- A parent of the child has been deceased or has been missing for at least three months.
- The child was born out of wedlock.

In determining the child’s best interests the court shall consider all relevant factors, including (A.R.S. § 25-409(C)):

- The historical relationship, if any, between the child and the person seeking visitation.
- The motivation of the requesting party in seeking visitation.
- The motivation of the person denying visitation.
- The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's activities.
- If one or both of the child's parents are dead, the benefit in maintaining an extended family relationship.

The grandparents have to petition for visitation rights in the same action in which the parents had their marriage dissolved or by a separate action in the county where the child resides if no action for dissolution has been filed or the court entering the decree of dissolution no longer has jurisdiction (§ 25-409(E)).

Parental Rights of Access to Important Records and Information:
By statute (A.R.S. § 25-403(H) and A.R.S. § 25-408(L)), absent an order of the court to the contrary, each parent has the right to access school, medical, dental, religious training, and other important records and information. If the court finds that such access would endanger seriously the child's or custodial parent's physical, mental, moral or emotional health, access can be prevented. This allows the woman to keep her residence address secret.

Child Support

What is child support?
As every person has a duty to provide support for their child, a court can order either parent of a child to pay support to the other parent, regardless of where the child resides and the marital status of the parents (A.R.S. § 25-501). In a proceeding for dissolution of marriage, legal separation, maintenance or child support, the court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support of the child, without regard to marital misconduct (A.R.S. § 25-320). Child support can be ordered retroactively, if it was not ordered in the original divorce or separation hearing.

Conditions that Determine Child Support :
Child support may be ordered to be paid by the non-custodial parent or one with joint custody (the obligor), to the custodial parent (obligee) for the following reasons (A.R.S. § 25-320):

- Children are under the age of eighteen or until the child/ren graduates from high school -- whichever occurs last -- but in no event longer than age 19.
- In the case of a mentally or physically disabled child: If the court, after considering the factors in A.R.S. § 25-320(A), deems it appropriate, the court may order support to continue past the age of majority and to be paid to the custodial parent, guardian or child -- even if at the time of filing, the child had reached the age of majority.
- If the child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided during the period in which the child is actually attending high school or the equivalency program, but in any event, does not continue past age 19.

Either or both parents may be ordered to pay child support in an action for divorce, legal separation, maintenance or child support. Proceedings to compel support may be started by either parent, the guardian, conservator or best friend of a child or children born out of wedlock or a public welfare official or agency where the child resides or is found -- or the State.

What is a child support order?
A child support order is a document from a court that states (a) when, (b) how often, and (c) how much a parent is to pay for child support (A.R.S. § 25-503). A child support order is typically part of a divorce decree or paternity judgment.

The court order for support is usually payable on a monthly basis. Arizona requires that child support be paid by wage assignment (automatic deductions from the paycheck) whenever available, thus reducing the need for subsequent enforcement actions (A.R.S. § 25-323, 25-504). In every case with a child support order the payor will have an attachment issued against that person's wages. An attachment mandates that the child support be taken directly out of the payor's check before he receives it. It is not the same thing as a garnishment, and no adverse action may be taken by a job, credit agency, or debtor because of the attachment. All child support funds are paid to the clearinghouse and then forwarded to the payee. Any monies paid outside of the attachment are considered gifts.

Determining Child Support

Federal law requires that the amount of a child support payment be set in accordance with a guideline. Having a guideline is believed to prevent widely different amounts of child support being ordered from courtroom to courtroom. Guidelines provide an objective basis for the determination of the amount of support to be paid. As a result Arizona has established a formula that is used to determine the amount of the payment from one parent to the other, which can be found in A.R.S. § 25-320.

Child Support Guidelines:
The Arizona Child Support Guidelines are based on the premise that child support is a shared parental obligation and the concept that a child should receive the same proportion of parental income he or she would have received if the parents lived together. A basic child support obligation is determined based on (a) the combined income of the parents and (b) a predetermined schedule of amount of child support according to combined monthly income. Additions and subtractions can be made depending on medical, educational and other needs and which parent is paying the medical insurance. The total amount is then prorated in proportion to each parent's income. Adjustments are also being made for joint custody, amount of parenting time, and significant visitation travel. This seems to directly conflict with A.R.S. § 25-403(W) that states that joint custody should not diminish the amount of child support. Advocates should encourage the recipient of child support to point this out to the judge.

The guidelines are binding and presumptive unless a written finding is made, based on the following criteria approved by the Arizona Supreme Court, that application of the guidelines

would be inappropriate or unjust in a particular case. The guidelines and criteria for deviation from them shall be based on all relevant factors, including (A.R.S. § 25-320):

- The financial resources and needs of the child.
- The financial resources and needs of the custodial parent.
- The standard of living the child would have enjoyed had the marriage not been dissolved.
- The physical and emotional condition of the child, and the child's educational needs.
- The financial resources and needs of the non-custodial parent.
- Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
- The duration of parenting time and related expenses.

For the purposes of these guidelines "income" is defined as the actual gross income of the parent, if employed to full capacity, or potential income if unemployed or underemployed. The gross income of each parent should be determined as specified in A.R.S. § 25-320 section 4 that is quite detailed:

- Gross income includes income from any source with a few exceptions. It includes self-employment, a business, expense reimbursements, in-kind payments and other income. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps and General Assistance.
- If a parent is voluntarily unemployed or underemployed, child support may be calculated based on a determination of potential income, except that a determination of potential income should not be made for a parent who is physically or mentally incapacitated, for one who is in training to improve skills and earning capacity, for the unusual needs of the child in the home, or for a recipient of TANF.

Are there special provisions for obligees on TANF?
The Department of Economic Security will receive and keep the monthly child support that is paid, as long as the woman is on TANF. If the amount paid is more than the amount the woman would get on TANF, she will be dropped from that program (A.R.S. § 46-401 to A.R.S. § 46-444).

In the 2002 legislative session, HB 2095 changed the rules for TANF recipients who are receiving child support. Now, if child support is received by the state for a child who is not eligible for cash assistance through TANF, the state can no longer keep that money but must turn it over to the recipient for the child (A.R.S. § 46-408). This should increase the net income for some recipients.

However, an obligee on TANF can have a problem with arrearages because the Department of Economic Security will want to collect all they are owed before the money is sent on to the client, even after the woman is off TANF, and even if the woman's arrearages accrued before those of DES. The attorney general represents DES, not the woman, for collection of child support and may agree to a reduced amount of arrearages against her wishes. DES then keeps the arrearages, and the obligee has lost out. Her only protection, although not foolproof, is to have

her own attorney represent her. However, if the woman is off TANF, the current monthly child support must be sent to her and cannot be held for payment of back benefits. Arrearages should be sent on a proportionate basis.

Information to Bring to Court:
Generally other factors that the court will take into consideration in setting child support include:

- The special needs of the child, including physical and emotional needs, day-care costs, or needs related to the child's age.
- Any shared physical arrangements or extended or unusual visitation arrangements.
- A party's other support obligations to a current or former household, including the payment of spousal maintenance.
- A party's extremely low or extremely high income, such that application of the guidelines produces an amount that is clearly too high in relation to the party's own needs or the child's needs.
- A party's intentional suppression or reduction of income (unless attending school to improve one's profession and income), hidden income, income that should be imputed to a party, or a party's substantial assets.
- Any support that a party is providing or will be providing other than by periodic money payments, such as lump sum payments, possession of a residence, payment of a mortgage, payment of medical expenses, or provision of health insurance coverage.
- A party's own special needs, such as unusual medical or other necessary expenses.
- The financial resources and needs of the child, the custodial parent and the non-custodial parent.
- The standard of living the child would have enjoyed had the marriage not been dissolved.
- The physical and emotional condition of the child, and his/her educational needs.
- Any other factors the court finds to be just and proper.

Any documents used in court must be given to the other party.

When requesting the court to enter a support order, the court should be informed of the following information:

- Monthly expenses of the obligee and children -- The obligee should make a list of her reasonable monthly expenses. Most counties use a form called an Affidavit of Financial Information (AFI). Although monthly expenses should not be overstated, the obligee will only handicap herself by minimizing her needs. It is not unusual to have more outgo than income. The list of monthly expenses should be reasonable expenses, not necessarily what is currently being spent. At the time of the child support request, the client is often in a temporary situation, living with friends or relatives and living on little or no income. The list of reasonable monthly expenses should reflect the obligee's projected expenses of a lifestyle similar to that if the parties had not separated.
- Additional needs of the children -- In many situations the children have additional expenses that need to be brought to the attention of the court. If the children have special medical or dental needs, the custodial parent should bring evidence of these needs and the expenses related to them. Expenses could include physical therapy, prescriptions,

orthodontia, or other ongoing medical or dental expenses. If the children attend private schools, take music or dance lessons, or participate in sports, the court should be informed of the expenses related to these and other activities.

- Debts -- The obligee should bring in a list of all debts of the parties. In making a determination on how the resources of the parties are to be allocated, it is important that consideration be given to debt payment. It is often necessary for the parties to have a clear understanding of who is responsible for each debt payment.
- Monthly expenses of the obligor -- It is often helpful for the obligee to make a list of the reasonable monthly expenses of the obligor. This information is useful if the obligor attempts to overstate his monthly expenses to the court. It is important for the court to realize that if one party needs to "get by" on less than adequate income, it should not be the party that has custody of the children.

Financial Requests:
The client should specifically request all the relief the client desires from the court. It is often helpful to have a list of the desired relief so that important provisions are not forgotten. If the request is made in a dissolution or other family court proceeding, the requests are set forth in the original petition or the affidavit of financial information form (AFI). Requests can include:

- Child Support -- The guidelines are binding unless the court makes specific findings as to the reason for departure. The calculations used to arrive at net income and the calculations used to determine child support should be available for the court to verify the information. If there are unusual circumstances that warrant an upward deviation from guidelines, the circumstances should be clearly set out and a specific amount of support requested.
- Uninsured medical expenses -- A request is included in the AFI for the obligee to pay for all or part of the uninsured medical or dental expenses of the child. It is customary to allocate the uninsured expenses at the same percentage of income as the child support proration.
- Counsel Fees -- In an action or proceeding for the custody, support -- or both -- of a minor child, including a motion in the cause for modification or revocation of an existing order for custody or support -- or both -- the court may in its discretion order payment of reasonable attorney's fees to a party acting in good faith who has insufficient means to defray the expense of the suit. However, should the court find that a party has initiated a frivolous action or proceeding, the court may order payment of reasonable attorney's fees to the other party as deemed appropriate under the circumstances.
- Payment of debts -- The payment of community debts is completely separate from child support. It will not be assumed that the payment of child support relieves the obligor from responsibility for ongoing debt payments.
- Direct payments to providers -- In addition to a child support order, the custodial parent may want an order requiring the non-custodial parent to make payments directly to service providers. For example the non-custodial parent could be ordered to make payments for private school tuition or make payments directly to the dentist. If a person receives public assistance, this will not be included in their income and they will be eligible for increased assistance. Any payment for college tuition must be in separate

contract as it will not be enforceable in domestic relations court after the child is eighteen.

- Immediate payment -- In many situations the custodial parent is without any income or resources. She may need a support order to be effective immediately. She will have to file for an order to show cause and ask for it to be accelerated. Once she obtains an order for child support, it still will take l5 days for the order to be effective on the employer. When the order is effective, the employer must deduct the money and send it to the Clearing House. The Clearing House will mail the money out to the obligee. Depending on how busy the Clearing House is, it may take a few more days.

Is it possible to modify or defer child support payments?
Child support may be modified as to future installments only after a motion for modification is filed and notice given to the opposing party and only upon a showing of changed circumstances (A.R.S. § 25-503(F)). The parties are obligated to exchange financial information every two years from the date of decree. If there have been changes to the income of either party such that the ultimate support payment would change l5% in either direction (more money or less), either party can file a request for modification of child support based on the new figures or new circumstances.

Unexpected, significant decreases in income can be a reason to request modification or deferral of a child support order (A.R.S. § 25-327 and A.R.S. § 25-503(F)). One way is to ask the other party to agree to a temporary reduction or deferral. If successful, put the terms in writing, preferably with the advice of a lawyer, and sign and date the document.

If that does not work, ask the court to modify the amount of the child support owed in the future. Explain your major and unavoidable drop in your financial situation, that the income is not likely to be replaced soon, and why the change would be fair. Most courts are sympathetic and receptive and will make necessary changes in child support when you have experienced a financial setback.

When does a child support obligation end?
According to A.R.S. § 25-501(A), "every person has the duty to provide all reasonable support for that person's natural and adopted **minor**, **unemancipated** children, regardless of the presence or residence of the child." The question then becomes when is a child not a minor, or when is the child emancipated. There are several answers to this question. The following are different statutory definitions of emancipation and minor child:

- The Arizona Supreme Court website defines age of minority as "age at which duty of support terminates." Current age is 18 in Arizona unless the child is actually attending high school, a certified high school equivalency program, or the child is disabled.
- A.R.S § 15-1801(4) under Title 15 – Education: "emancipated person" means a person who is neither under a legal duty of service to his parent nor entitled to the support of such parent under the laws of this state.
- A.R.S. § 46-296(B)(2) TANF: "emancipated person" means a person who, under the laws of this state, is neither under a legal duty of service to a parent, other adult relative or legal guardian nor entitled to support…

- A.R.S. § 25-503: "…a child is emancipated: on the date of the child's marriage, on the child's eighteenth birthday, when the child is adopted, when the child dies, on the termination of the support obligation if support is extended beyond the age of majority
- A.R.S. § 1-215(3): "adult" means a person who has attained the age of eighteen years.
- A.R.S. § 1-215(6): "child" or "children" as used in reference to age of persons means persons under the age of eighteen years.
- A.R.S. § 1-215(19): "majority" or "age of majority" as used in reference to age of persons means the age of eighteen or more

In the case of a mentally or physically disabled child, the court may order support to continue past the age of majority (A.R.S. § 25-320(B)). Additionally, if the child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided while the child is still in school, but only until the child reaches the age of nineteen (A.R.S. § 25-320(C) and § 25-501(A)).

Enforcement of Child Support

All child support payments will be made through the Clearing House for remittance to the party entitled to receive the payments. The Clearing House then forwards the payment to the obligee either through check or direct deposit. The Clearing House maintains records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. Again, the domestic violence victim can keep her address confidential.

In IV-D cases (when one of the parties is receiving TANF) the party receiving benefits has to sign over her rights to support to the Department of Economic Security (DES) (A.R.S. § 46-407). They are responsible for enforcing payment. Specific rules for payment of monies under TANF, both current support and arrearages, are determined in A.R.S. § 46-408. If the custodial parent disagrees with the decision of DES, s/he can request administrative review (A.R.S. § 46-408(C)). All payments shall go through the Clearing House (A.R.S. § 46-441).

The parties affected by the order shall inform the Clearing House of any change of address or other conditions that may affect the administration of the order. The court may provide in the order that a party failing to inform the court of a change of address within a reasonable period of time may be held in civil contempt. This may present problems for a victim of violence and she should use a safe address or inform the court why she cannot give a current address or why it should be confidential.

Immediately after signing a child support order, the court shall transmit a copy of such order to the employer of the obligor. The order is then effective on the employer l4 days from the date of signing. The employer, from then on, shall transmit the child support payment directly to the court and deduct it from the paycheck of the obligor.

If the obligor changes jobs or transfers locations, the obligor is required to notify the court of the change. Failure to do so could cause a person to be held in contempt of court.

Information can also be requested from an employer (A.R.S. § 25-330 and A.R.S. § 25-513) to enforce payment of support so if the victim of violence is ordered to pay, make sure the employer knows not to release address or social security information. A party shall not ask for or get address information protected by an order of protection, an injunction, or any other court order in a domestic violence matter. However the employer is not required to search to determine if such an order exists (A.R.S. § 25-523(D)). Therefore the employee must be sure to give the employer a copy of the order and request that it be prominent in both her personnel file and her payroll file.

If the child support payment is one full month or more late, the obligee can initiate an order to show cause for contempt for failure to pay child support. The petition for order to show cause for contempt must be served personally on the obligor. The court will then set a hearing that will proceed exactly as those described earlier. When the hearing comes before the court, the court may proceed with contempt, including jail time, imposition of a lien, or other available, appropriate enforcement remedies.

If the late payor is or may be licensed as a professional in Arizona, the court, in addition to any other enforcement action, may direct the licensing board or agency to conduct a hearing to suspend that person's license. If the parent does not pay child support for two months or more, his professional, recreational, and driver's licenses can be revoked (A.R.S. § 25-517).

Unless otherwise agreed in writing or expressly provided in the decree, provisions for child support are not terminated by the death of a parent obligated to support the child. When the parent dies, the amount can be modified, revoked, or commuted to a lump sum that is just and appropriate and shall have priority equal to the right for family allowance in the probate code (A.R.S. § 25-317). The order has priority in the estate equal to family support in A.R.S. § 14-2404.

Two little-used criminal provisions exist in Arizona to assist in the collection of child support. The abandonment and neglect of spouse statutes (A.R.S. § l3-36l0 and A.R.S. § l3-36ll) say that a spouse who has sufficient ability to provide for the other spouse and knowingly abandons and leaves such spouse destitute is guilty of a class 6 felony unless s/he is justified in doing so by the others misconduct. These statutes, while rarely if ever enforced in a criminal action, can be used by a sympathetic police officer prior to an order of child support or spousal maintenance to force the abuser to provide financial support.

However a newer law in the family code says that failure of the parent to provide for the child is a class 6 felony (A.R.S. § 25-511). A party can request or the court can order an arrest warrant for failure to pay child support if a person was ordered to appear at a hearing on child support and didn't (A.R.S. § 25-681).

If the parent who pays child support is entitled to the tax deduction for that year, make sure that the divorce decree says that the payor must be current in child support on December 31 of the year s/he wishes to take the tax deduction. That gives the payor an incentive to pay child support timely.

Each child support payment is a final judgment when due. Unpaid child support can be enforced up to three years after the emancipation of the youngest child covered (18, married, joins military). However, the obligee must get a judgment from the court for the total back-owed child support before the obligee's youngest child turns 21 years of age, or the obligor will be no longer responsible for paying the arrearages on child support. Starting in January 2000, child support orders must include this language in the order. When the child support amount owed is reduced to a money judgment by a court, it can then be enforced for five years and can be renewed three times for a total of 20 years.

Past Due Payments:
Each past due child support payment is vested when it accrues and may not thereafter be vacated, reduced, or otherwise modified in any way for any reason, in this state or any other state.

A past due child support payment that is vested is entitled, as a judgment, to full faith and credit in this state and any other state, with the full force, effect, and attributes of a judgment. Such orders from another state should be registered as foreign judgments, given an Arizona docket number and then proceeded on for collection.

Child support enforcement office:
The attorney general's office has a child support enforcement office (IV-D unit) that provides legal representation in child support matters for both public assistance and non-public assistance cases. The child support enforcement office will provide assistance with the collection of support, enforcement of the support order, and modification of child support. The obligee may also hire independent counsel, which is often a good idea since the attorney general's office is very backlogged and getting assistance takes a very long time. Some firms specialize in the collection of child support. The attorney general or county attorney may file an action with the court for collection of child support, but s/he represents the State not the mother. The attorney general or county attorney also may not defend in custody or visitation matters that the child support request may create (A.R.S. § 25-509(c))

Other enforcement procedures:
A judgment must be obtained for a child support arrearage. This judgment can be collected by garnishment, attachment, or lien. A lien on a boat or car should be filed with the Department of Motor Vehicles, while a lien on real property should be filed with the County Recorder. A lien for anything else, lottery winnings, restitution awards, etc., should be filed with the Secretary of State, UCC Department, which is located at 1700 W. Washington, 7th Floor, Phoenix Arizona 85007. The phone number is (602) 542-6178. To file with the Secretary of State you will need a UCC-1 Initial Financing Statement form that is available online at http://www.sosaz.com/Business_Services/ucc_forms.htm, there is a $5.00 filing fee.

A child support arrearage can also be withheld from state or federal income tax refunds. The court can also jail the obligor for contempt of court for non-payment of child support.

For collection of child support or spousal maintenance, the court may direct an agency or officer of the state, e.g. Department of Revenue, to disclose information about a payor to assist in obtaining the court ordered support. But the residence and place of employment shall not be

disclosed if the court finds the obligor has been the victim of domestic violence (A.R.S. § 25-322(E)). No procedure for informing every agency exists, so the victim needs to let the agencies know, e.g. by attaching a copy of the Order of Protection to tax returns, applications for government benefits or services, etc.

A self-employed parent can be asked to submit six months worth of payments to be held as security (A.R.S. § 25-503.0l).

What is the Uniform Interstate Family Support Act?
If a person has an out-of-state child support order, the person can hire a private attorney or go to the child support enforcement agency. If the person goes to a state enforcement agency, the Department of Economic Security has a list of enforcement agencies in the state (A.R.S. § 25-637). If the child support enforcement agency does not act promptly on the case, the attorney general can intervene to get things moving (A.R.S. § 25-635). A person can keep identifying information confidential and out of court if the tribunal, court or administrative agency finds that health, safety, or liberty requires it, or that a previous order found that such was the case (A.R.S. § 25-638(c)).

There is no fee to file an action for enforcement (A.R.S. § 25-638(D)). A support order from another state can be registered in Arizona for enforcement (A.R.S. § 25-648).

In 1992, then Attorney General Grant Woods signed a reciprocity agreement with Mexico in which they agreed to be treated as "states" under the child support collection statutes. Thus the attorney general can enforce child support orders and collect money from payors in Mexico just as they can in other states. This agreement has been little used and most offices are not aware of it. If you want a copy, contact AzCADV.

Paternity Adjudication

A paternity adjudication is a determination by a court that a man is the legal father of a child. The establishment of the paternity of a child gives both parents the same rights, duties, and obligations with regard to support and custody.

Benefits of Adjudication:
The establishment of paternity in a civil paternity adjudication is necessary to obtain an award of retroactive and future child support.

Problems with Establishment of Paternity:
Problems with the establishment of paternity arise when the father is abusing the mother or child or both. The court may grant custody or visitation rights/parenting time to the father. The court may also punish the mother who violates the court order and refuses to give up custody to allow the father to visit the child. Thus the mother may have to remain in contact with the abuser/father for the remainder of the child's years of minority with no guarantee that child support will ever be collected.

Paternity Proceedings:

The mother, the father, the guardian, the conservator or best friend of a child or children born out of wedlock, or a public welfare official or agency in the county or the state where the child resides may file for a paternity proceeding. This proceeding may be brought in the county where the mother lives or is found, where the alleged father lives or is found, or where the child resides or is found (ARS § 25-803).

Proceedings to establish paternity may be instituted during the pregnancy or after the birth of the child. However, a paternity action may not be brought after the death of the alleged father (A.R.S. § 25-804).

Representation:

Since a paternity adjudication involves a civil and not a criminal hearing (where the defendant might have to spend time in jail), an indigent defendant in a paternity action has no constitutional right to a court-appointed attorney.

Procedure

Initiation of proceeding:

Filing a verified complaint starts a paternity action. The complaint is filed with the clerk of the superior court. A summons shall be issued and served along with a copy of the petition. The summons notifies the defendant that he must appear and answer the petition within certain time periods. The procedure shall be the same as in other civil cases (A.R.S. § 25-806).

Contested Cases:

Pending the outcome of blood grouping tests or tissue typing tests the alleged father may contest the issue of paternity. In a paternity adjudication, the defendant has the right to a trial by jury. The finding in a paternity adjudication determines the issue of parenthood. If decided in the affirmative, the court shall make an order for retroactive and future child support. If the issue of custody arises, it must be dealt with in a separate hearing. In an IV-D action, the attorney general will represent the mother to establish paternity and collect support but cannot represent her if the father then brings a custody action (A.R.S. § 25-807).

Blood Testing

Blood Grouping Test:

The right to a blood test is a substantial right of a defendant in a paternity hearing. If the defendant asks for a blood test, the court must order that the blood test be performed. The court may also order a blood test in the absence of a motion by the defendant. The testing method can only determine whether the alleged father could have fathered the child, not whether he definitely did father the child. The results are therefore only conclusive when used to exclude the defendant as the possible father. The court can order the alleged father to pay the cost of the test or can order it to be split between the parties or for the county to cover the cost.

DNA Testing:
The court may also order DNA testing. This method is perhaps the simplest and least obtrusive to administer. An expert agreed upon by the parties or appointed by the court may be necessary to interpret the results (A.R.S. § 25-816).

Statistical Likelihood:
Arizona allows evidence of the statistical likelihood of parentage in paternity adjudication. The statistical likelihood is determined by the results of the blood test and comparisons. Statistical likelihood is a numerical interpretation of the likelihood that the defendant is the child's father and is usually determined by an expert. For example an expert witness could testify that the statistical likelihood that the defendant is the father is 95 percent. If so, the defendant is presumed to be the father and has to show by clear and convincing evidence that he is not.

Establishing Paternity without Adjudication

There are several ways to establish paternity, which is necessary to obtain an award of retroactive and future child support.

Presumed Paternity
Pursuant to A.R.S. § 25-814, a man is presumed to be the father of the child if:

- He and the mother of the child were married at any time in the ten months immediately preceding the birth or the child is born within ten months after the marriage is terminated by death, annulment, declaration of invalidity or dissolution of marriage or after the court enters a decree of legal separation.
- Genetic testing affirms at least a 95% probability of paternity.
- A birth certificate is signed by the mother and father of a child born out of wedlock.
- A notarized or witnessed statement is signed by both parents acknowledging paternity or separate substantially similar notarized or witnessed statements are signed by both parents acknowledging paternity.

Any presumption under this section can be rebutted by clear and convincing evidence. If two or more presumptions apply, the presumption that the court determines is based on weightier considerations of policy and logic will control. A court decree establishing paternity of the child by another man rebuts the presumption (A.R.S. § 25-814).

Voluntary Paternity
There are two methods to establish voluntary paternity. In the 2003 Legislative session, HB 2139 was passed which amended A.R.S. § 25-812. The state or the parent of a child born out of wedlock may establish the paternity of a child by filing one of the following with the clerk of the superior court, who will then transmit the order of paternity to the Department of Economic Security or the Department of Health Services:

- A notarized or witnessed statement that contains the social security numbers of both parents and that is signed by both parents acknowledging paternity or two separate substantially similar notarized or witnessed statements acknowledging paternity. If another man is presumed to be the child's father pursuant to § 25-814, an

acknowledgment of paternity is valid only with the presumed father's written consent or as prescribed pursuant to § 25-814. A statement that is witnessed by an employee of DES, DHS, by an employee of a hospital, or any other person must contain the printed name and address of the witness. The witness must be an adult who is not related to either parent by blood or marriage.

- An agreement by the parents to be bound by the results of genetic testing including any genetic test previously accepted by a court of competent jurisdiction, or any combination of genetic testing agreed to by the parties, and an affidavit from a certified laboratory that the tested father has not been excluded.

The mother or the father may rescind the acknowledgment of paternity within the earlier of:

- Sixty days after the last signature is affixed to the notarized acknowledgment of paternity that is filed with the clerk of the court.
- The date of a proceeding relating to the child, including a child support proceeding in which the mother or father is a party.

The rescission must be in writing and a copy shall be filed with DES.

Birth Certificate

If a child is born out of wedlock in an institution, the parents shall have an opportunity to voluntarily acknowledge paternity immediately before or after the birth of the child, by signing the birth certificate (A.R.S. § 36-322(C)). The voluntary acknowledgment of paternity that is made pursuant to § 36-322 is a determination of paternity and has the same force as a judgment of the superior court subject to the right of the mother or alleged father to rescind the acknowledgement pursuant to § 25-812. The birth certificate of a child born out of wedlock shall be filed directly with the state registrar (§ 36-322(I)).

Custody and Visitation

In the criminal law, prior to the establishment of paternity, the mother of a child born out of wedlock has sole custody of the child (A.R.S. § 13-1302). The father's name is not on the birth certificate, and he has no rights to custody or visitation and no duty to support the child. However the family law has a conflicting provision that says, unless otherwise ordered by the court, the parent with whom the child has resided for the greater part of the last six months prior to the establishment of paternity shall have legal custody (A.R.S. § 25-803).

Once paternity is established, the father will have the same rights, duties, and obligations as he otherwise would. This means the court will order the father to pay support but will also grant him visitation rights/parenting time or custody of the child (A.R.S. § 25-809 and A.R.S. § 25-817).

A putative father may bring an action to establish paternity and gain the rights to visitation/parenting time and possible custody of a child. As in paternity adjudications where the putative father is the defendant, a plaintiff putative father also has the right to a blood test. Once paternity is established, the court may grant the father custody or visitation rights/parenting time in a separate action.

Child Support and Paternity
Upon the establishment of paternity, the court shall make an order for retroactive child support for the period between the commencement of the proceeding and the date that current child support is ordered to begin. However, the court may also award past support retroactive to before the commencement of proceedings. Generally, support will be retroactive to no more than three years before the commencement of the proceeding unless the defendant has somehow impeded the establishment of paternity or there are special circumstances why the mother did not seek to establish paternity sooner.

Determining Whether to Initiate a Paternity Action
A review of the above information will provide some of the information needed to decide whether to proceed with an adjudication of paternity. The possible financial benefits of child support, insurance coverage, social security, workman's compensation, veteran's benefits, and inheritance rights need to be weighed against the safety issues confronting the victim of violence, potential detriment to the child, and the potential for financially burdensome litigation that may result from the establishment of custody or visitation rights. At times the biological father will request custody when faced with a possible child support obligation, although he would not have done so if not faced with that obligation. If the custodial parent is a recipient of public assistance and does not qualify for a good cause exemption, she will be required to cooperate with the attorney general to establish paternity. It should be noted however that the biological mother cannot prevent the biological father from initiating a paternity action.

Elder Abuse

Although elder abuse has occurred for centuries, it wasn't until the late 1970's, early 1980's that elder abuse received national attention. In 1981, the Select Committe on Aging held hearings in which victimized elders gave testimony of their experiences. The report concluded that elder abuse is a full-scale national problem, and exists with a frequency few dare to imagine. It is estimated that 1.5 to 1.84 million Americans are victims of elder abuse annually. Arizona Adult Protective Services handles approximately 10,000 cases a year in Maricopa County alone.

Characteristics of Victims

- Majority are 75+ years of age
- Two-thirds are female
- Have one or more physical or mental impairments
- Often widowed or divorced and socially isolated
- Usually live with the abuser

Characteristics of Abusers

- 90% of abusers are known to the victim
- More than two-thirds are relatives of the victim
- May be socially isolated, possibly substance abusers or persons with poor employment records
- May be forced to provide care, and are unprepared for the responsibility and related stress
- May be financially or emotionally dependent on the elder

Accurate statistics regarding elder abuse are hard to determine because the abuse is rarely reported. Estimates show that only one in 14 incidents of elder abuse are reported to authorities. The reasons why this abuse in rarely reported include:

Fear

- Fear of retaliation by the abuser
- Fear of not being believed
- Fear of being institutionalized, or separated from family and familiar things
- Fear of the criminal justice system
- Fear of loneliness

Protect the Abuser

- Adult children and caregivers are often the abusers, and because of the guilt and shame in being abused by one's own child or by a trusted caregiver, the abuse is not reported.

Social Isolation

- An isolated older victim may not know how or where to seek help. Elders often live alone, or with family members and don't interact with others in the community.

Self-Blame/Denial

- Many victims do not seek help because they either blame themselves for the abuse, or they tolerate and accept the abuse.

Inability to Report

- Mental impairments: Alzheimer's disease or other forms of dementia may cause memory loss and impair the ability to communicate effectively.
- Physical impairments may affect the victim's ability to get to the phone or leave the home to report abuse, or a stroke may affect their ability to communicate.

Types of Elder Abuse and the Warning Signs

Physical Abuse: the infliction of physical pain or injury, and/or the use of physical restraints that result in physical pain or impairment. Warning signs include:

- Bruises, welts, lacerations, fractures, burns, hair missing from being pulled, abrasions from physical confinement, over-or-under medicated, unexpected deterioration of health
- Victim is agitated or fearful, caregiver refuses to let the elder have visitors.

Sexual Abuse: non-consensual sexual contact of any kind with an elderly person. Warning signs include:

- Unexplained genital infections or sexually transmitted diseases, torn or bloody underclothes, difficulty walking or sitting
- Victim is withdrawn, fears touching, shameful, anxious

Psychological/Emotional Abuse: infliction of mental pain, anguish or distress through verbal or nonverbal acts. Warning signs include:

- Fearful, eating disorders, self-medication with alcohol or prescription medications, depression, agitation, withdrawn, anger, low self-esteem

Financial Abuse/Exploitation: illegal or improper use of funds, property, or assets. Warning signs include:

- Unexplained or sudden inability to pay bills, unexplained or sudden withdrawal of money from accounts, disparity between assets and living conditions, unusual interest by family member in an elder's assets, changes in the elder's will or other documents, improper use of guardianship, conservatorship, or power of attorney

Neglect: failure or refusal to fulfill any part of a person's obligations or duties to an elderly person. Warning signs include:

- Bed sores, dehydration, malnutrition, poor hygiene, unsanitary/unsafe living conditions, improper use of medication
- Victim appears detached, unresponsive, helpless

Arizona State Statutes Pertaining to Elder Abuse

Arizona has been very active in legislating elder abuse. Several statutes are now in place to protect the victims of abuse, and to prosecute the abusers. The statutes are available at www.azleg.state.az.us/ars/ars.htm.

- A.R.S. § 13-3623 Child or Vulnerable Adult Abuse
- A.R.S. § 46-451 Definitions; program goals
- A.R.S. § 46-452 Protective Services Worker; powers and duties
- A.R.S. § 46-452.01 Office of State Long Term Care Ombudsman
- A.R.S. § 46-454 Mandatory Reporting Statute; duty to report abuse, neglect and exploitation of vulnerable adults
- A.R.S. § 46-455 Neglect
- A.R.S. § 46-456 Financial Exploitation

(Information in this section obtained from the City of Mesa website at http://www.ci.mesa.az.us/police/elderabuse.asp.)

For additional information, there is a wonderful packet regarding elder abuse that was issued by the Arizona Attorney General available at www.ag.state.az.us/seniors/elderabuse.pdf.

Adult Protective Services

Adult Protective Services (APS) has as its goal to protect abused, exploited or neglected incapacitated or vulnerable adults. (A.R.S. § 46-452) They can receive both oral and written information that starts an evaluation and offer of services. They may file a petition for the appointment of a guardian of the person or conservator of the estate.

An ombudsman for long-term care is to visit long-term care facilities and communicate with residents, investigate and resolve complaints and grievances, render advice to residents of long-term care facilities, refer cases to APS, legal services or other services. (A.R.S. § 46-452.02)

The person making the complaint has immunity unless they act with malice or is the abuser. None of the privileges apply except lawyer/client and clergy/penitent thus doctors and social workers etc. have to report. A.R.S. § 46-0453

In fact, they are mandated to report if they have responsibility for the care of the incapacitated or vulnerable adult. A.R.S. § 46-454. The procedure is the same as for mandatory child abuse reporting.

However, an attorney, accountant or other person who has responsibility for tax or property records must also report if they have a reasonable basis to believe that financial exploitation, abuse or neglect is occurring. A.R.S. § 46-454

A person who has been employed to care for the adult and who causes or permits the life of the person to be endangered or his health to be injured or endangered by neglect is guilty of a class 5 felony. A.R.S. § 46-455. Both criminal and civil charges can be filed. If a person in a position of trust regarding finances abuses it, it is theft under A.R.S. § 13-1802 and they can be sued civilly for three times the amount of the damages. A.R.S. § 46-456 If that person would have received something from the estate, that is forfeited as well.

Protection of Disabled Persons or Minors

The State of Arizona has several statutes protecting the estates, property, and other interests of persons who are disabled or who are minors.

Public Fiduciary

Each county shall establish the office of and appoint a public fiduciary (A.R.S. § 14-5601(A)). The court shall appoint a public fiduciary for those persons or decedents' estates in need of guardianship, conservatorship or administration because there is no other person qualified and/or willing to manage the estate. The public fiduciary shall take possession of all properties when a law enforcement agency is unable to determine or locate the heirs or personal representative of a deceased person (§14-5602(B)). All funds coming into the custody of the public fiduciary shall be deposited in the county treasury and disbursed at the direction of the public fiduciary or shall be deposited or invested in an insured bank or credit union and may be withdrawn only at the direction of the public fiduciary (§ 14-5603(A)). The public fiduciary has a claim against the estate for reasonable expenses related to the administration of the estate (§ 14-5604(A)).

Guardianship

Guardians may be appointed for minors either by the court or by the parent of a minor in his or her will (A.R.S. § 14-5201). A guardian of a minor has the powers and responsibilities of a custodial parent regarding the child's support, care and education (§ 14-5209(B)). Specifically, a guardian shall:

- Become or remain personally acquainted with the child and maintain sufficient contact with the child to know of the child's capacities, limitations, needs, opportunities and physical and mental health
- Take reasonable care of the child's personal effects and commence protective proceedings if necessary to protect other property of the child
- Apply any available monies of the child to the child's current needs for support, care and education
- Conserve any excess monies for the child's future needs, but if a conservator has been appointed for the estate of the child, the guardian, at least quarterly shall pay to the conservator money of the child to be conserved for the child's future needs
- Report the condition of the child and of the child's estate which has been subject to his possession or control, as ordered by the court on petition of any person interest in the child's welfare

A guardian may also be appointed for an incapacitated person. "Incapacitated person" is defined as any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he or she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person (A.R.S. § 14-5101). The parent or spouse of an incapacitated person may appoint a guardian by will. An effective appointment by a spouse has priority over an appointment by a parent unless appointment by the spouse is terminated by the denial of probate in formal proceedings (A.R.S. § 14-5301). The court may appoint a guardian if it is satisfied by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary to provide for the demonstrated needs of the incapacitated person (§ 14-5304).

Conservator

The general duty of a conservator is to act as a fiduciary (§ 14-5417). The conservator shall observe the standard of care applicable to trustees as described by § 14-7302. Appointment of a conservator may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided or has or may have affairs which may be jeopardized or prevented by his/her minority or that funds are needed for his/her support and education and that protection is necessary or desirable to obtain or provide funds (A.R.S. § 14-5401). Specifically, appointment of a conservator may be made in relation to the estate and affairs of a person if the court determines both of the following:

- The person is unable to manage the person's estate and affairs effectively for reasons such as mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.
- The person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by the person and that protection is necessary or desirable to obtain or provide funds (§ 14-5401).

SECTION SEVEN: OTHER LEGAL ISSUES

Department Of Economic Security

Benefits Generally

For more information regarding the specific information regarding eligibility requirements and DES programs please see http://www.de.state.az.us/tp/portal.asp.

Alien Status

Eligibility for government benefits depends on the immigration status of any applicant who is not a citizen (See Immigration Status: terms and concepts section below). Each program has its own rules. Even if the adult is not eligible, the children might be. DES workers are not to communicate with the INS about a person who has applied for or received government benefits without the written consent of the person -- except that they are directed to inform INS whenever they determine "that any member of a household is ineligible to receive food stamps because the member is present in the U.S. in violation of the Immigration and Naturalization Act." Nor can they call to see if a deportation order exists. These two rules together however make no sense.

Benefit Time Limits

There are limits to how long a person can receive benefits. Again, each program has its own rules.

Assets and Property

Eligibility for DES benefits is based on income and financial resources. While there are asset limitations to receive assistance, property is not counted as a resource unless it is "available". Thus some joint property including bank accounts may be excluded as a countable resource if the applicant can demonstrate that she does not have ownership of or access to the funds or property. Often battered women have no access to the funds of the primary wage earner and she should document this in order to obtain assistance.

An example of a property resource that may or may not affect eligibility is a car. For the TANF cash program, the value of one car is totally exempt; the equity value (market value minus loans) of any other car owned by the client is countable against the $2000 resource limit. DES must construe this policy favorably to the client so the car with the higher value should be exempt if the client owns more than one car. Kelly Blue Book is used to determine value. The client can dispute the value if it needs repairs etc.

For Food Stamps, regulations are very liberal and most cars are exempt.

For General Assistance, state statute allows you to have one car worth no more than $1500 in one sentence and $1200 in another sentence.

Good Cause Exceptions

Many DES programs have a "good cause" exception to eligibility requirements that may apply to victims of domestic violence. For example, a "good cause" exception exists for a person

participating in the Arizona Jobs Program (Program Instructions: DES 2-10.802.01(I)). An applicant may be temporarily excused from participating in the JOBS program or Arizona Works if they are a victim of domestic violence whose participation in work activities would threaten the person's safety or the safety of the children. She will need to show proof that she is a victim of domestic violence and that the circumstance threatens the safety of or causes emotional harm to the participant or any children living with the participant. She can show this proof by a physician's statement, police records, statements of crisis shelter staff, or witnesses of the violence. If she is sanctioned for refusing to participate, she should request a fair hearing under DES 2-10-809.

Another example is the "good cause exception" for mandatory cooperation for the collection of child support, an eligibility requirement for some programs. An applicant for public benefits has the right to refuse to cooperate with the collection of child support if s/he believes that:

- Such cooperation is reasonably anticipated to result in physical or emotional harm to the recipient or the child.
- The child is the result of incest or rape.
- Adoption proceedings are in progress.
- An agency is helping in the decision to put the child up for adoption.

She will need to verify her claim with medical records or police reports. The State must provide written notice of the good cause exception and must assist the recipient in establishing grounds for good cause. Still some applicants have not been told of or were refused this option. If she is denied benefits for lack of cooperation, she needs to appeal (A.A.C. § R6-12-312).

Because of these problems, new rules are being drafted. The following are draft internal instructions for the DES eligibility workers.

DES 2-10.307.01(B) – Victims of domestic violence are temporarily deferred from work requirements and the 24-month benefit limit. The deferral is for the "period of time that will enable the participant to safely participate in work activities, up to a maximum of six months per incident." Her deferral does NOT end when she leaves the shelter. Note that caseworkers can grant additional deferrals beyond the six months. Note that in this section and in .02(B), the victim determines when there is an immediate threat, not the caseworker.

DES 2-10-209 – "The Jobs case manager <u>will treat all claims of domestic violence as valid</u> and act immediately to identify the nature of the violence and determine temporary deferral status." The definition follows in the regulations and also says that immediate threat is determined by the victim. Proof includes police, medical, court records or statements from a shelter. A statement by the victim is sufficient (see I).

DES 2-10-806 – The good cause process is outlined. Notice that the request for good cause information should be sent in Spanish and English. The applicant has 10 days to provide the information. The DES worker is to assist the applicant in gathering the information. Verification includes doctors and police records as well as orders of protection and statements from a shelter. Note that if there is no verification, the caseworker is to accept the participants

signed statement. Domestic violence is a specific reason for granting good cause and "The participant will be allowed to define his/her perception of immediate threat." No longer is the caseworker to decide whether s/he think is violence is an immediate threat. The caseworker is to listen to the victim who knows best.

When good cause is established, a notice should be mailed to the applicant. If good cause is not established, a notice should be mailed and the participant can appeal.

DES 2-10-808.05 – Notice Requirements. If an applicant is sanctioned, a 10-day notice must be issued giving the applicant notice of the appeal procedures. Assistance is to continue during those 10 days. The applicant can appeal the denial of good cause at every stage of the process.

Confidentiality
Releasing her address is a violation of state and federal laws. Giving it to the abuser is obviously a direct assault on her safety. She should insist the exception be honored especially in the light of these violations.

Applicants also need to know that the attorney general who might be handling her child support collection case, or the county or city attorney, who might be handling an assault case, is NOT her attorney and is NOT bound by attorney/client confidentiality. S/he is the attorney for the State, county or city, not for the applicant or witness. Thus, if she tells that attorney about a crime or a violation of the rules she may have committed, that attorney can use that information against her.

SPECIFIC DES PROGRAMS AND BENEFITS

Cash Assistance
To be eligible for cash assistance a person must be a qualified alien. Qualified battered aliens include adults and children who have been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent, or by a member of the spouse's or parent's family living in the same household where the spouse or parent consented to such abuse. In order to qualify for benefits there must be a substantial connection between the abuse and the need for benefits; the immigrant must no longer reside with the abuser; and the immigrant must have a pending or approved Violence Against Women Act (VAWA) self-petition, or a pending or approved visa petition to remain in the U.S. filed by the parent or spouse. If pending, the VAWA petition must set forth a prima facie case for relief (ARS 46-0292 (A)(2) and 8 U.S.C. 1641 (c)).

Once an adult has received cash assistance for 24 months during a consecutive 60-month period, the adult is no longer eligible, although the children are. Certain months are not counted against the 24-month time limit. These months include any month that an adult is:

- Disabled or incapacitated.
- A full-time caretaker of a disabled, dependent person.
- Age 62 or older.
- Participating in a work subsidy program.
- If an adult is a victim of domestic violence.

General Assistance
An applicant not eligible for TANF might be eligible for general assistance if she is unemployable due to a medical disability or a medical disability in combination with a social disability or caregivers for disabled dependent persons living in the same household. An application for SSI, SSDI or other federal disability benefits must be pending.

Child Care
DES 603 – Not only TANF but non-TANF at risk are eligible for childcare services to obtain or maintain employment.

DES 2-20-603.06 – Day care is authorized when reasonably related to employment. It does not end when the victim leaves the shelter.

Short-Term Crisis Services
Such payments are not paid to the family or household, but to vendors such as a hotel, motel or homeless shelter, rental deposit, rent or mortgage payments, utility bill or deposit, or to the repair or replacement of an essential appliance. If it will help the recipient get or keep a job, the money can be used to repair a car, get eyeglasses, or pay for dental work. The services are available to households that are homeless, without heating or cooling, or facing immediate prospect of losing their home, heating or cooling. Domestic violence is listed as a permissible cause of the emergency to qualify for services.

Unemployment Insurance
The requirement is that a person who is genuinely attached to the labor force be unemployed through no fault of her own and be able and available to work. The weekly maximum payment is $285 per week for up to 26 weeks. Some people can get extended benefits.

A woman who quit or was fired from her job because of domestic violence is eligible for unemployment benefits under the provision of "compelling personal reason not connected with work." The burden of proof is on the employee. However DES has stated they consider domestic violence a compelling personal reason. If she applies and is denied, she should appeal. AzCADV filed a petition for rule change to codify this position. The "file" is open and the rule change is in process.

To assist a person to find a job, you can call 877 –USA JOBS or check on line at http://www.servicelocator.org.

Food Stamps
Eligibility is based on economic need not number of children or disability. While generally food stamps may not be used for ready-to-eat foods, residents of centers for battered women and children may use food stamps to buy food that is available at those institutions and is ready-to-eat upon purchase. Homeless households can use food stamps to buy prepared meals from authorized homeless meals providers such as emergency shelters and soup kitchens.

A woman and her children who have had to move to a shelter for battered women and children can apply for food stamps as a household even though they are already certified as a household

with the abuser. The income, resources, and expenses of the former household are irrelevant in determining the new household's eligibility.

Vendor payments ordered by the court or required by a legal document and that are made to a third party and not to the household, e.g. house payment, school tuition, counseling, may be excluded from income and thus allow the household to be eligible for food stamps and other benefits.

Able bodied adults are limited to food stamps for three months in a 36 month period unless they are working at least 20 hours a week, participating in an approved training, or live in an area which has been waived from the time limit due to high unemployment. This includes all of Arizona except Maricopa, Pima, Pinal, and Yavapai counties (except Flagstaff and Lake Havasu City) and all Native-American reservations except Ak-Chin/Maricopa, Fort McDowell, Gila River, Salt River, Yavapai-Prescott and Camp Verde. DES can exempt others from this requirement if they are living at a temporary address (a shelter), pregnant in the second trimester, lack reasonable work opportunities or childcare, etc. If a battered woman cannot work due to domestic violence, she should make this argument and appeal if she is denied food stamps.

Undocumented Women

Undocumented or immigrant women usually face more obstacles obtaining safety and security in the United States than U.S. citizens. Often their abusers use the fact that they are not "legal" as a means to control and isolate them. In addition there may be a language barrier that again limits her ability to seek safety and services.

An additional problem unique to Arizona is the epidemic of "notario" fraud. In Mexico and other countries with the civil law system, a "notario" is very similar to an attorney. In the U.S. a notary is not an attorney at all but simply a person who can verify the identity of a person who is signing a particular document. Women mistakenly pay a notary exorbitant fees, believing they are paying for an attorney.

VAWA provides specific relief for battered immigrant women. In the first place, battered immigrant women can claim domestic violence as a defense to deportation. In the second place, battered immigrant women can self-petition for permanent resident status. In order for a woman to qualify for legal permanent residence, the woman must:

- Prove domestic violence, battering or extreme cruelty by a spouse who is a U.S. citizen or lawful permanent resident.
- Be married to the abuser or divorced less than two years when she files for self-petition..

Immigration Status: terms and concepts
There are many categories of immigration status. A person's immigration status may be temporary or permanent. A person's immigration status determines, among other things, legal rights, employment rights, and eligibility for public benefits.

Non-U.S. Citizen (AKA: immigrant; "alien")

- A person who is not a citizen of the U.S.
- Non-citizens may be documented or undocumented.

Undocumented Immigrant (AKA: undocumented alien; illegal alien)

- A non-U.S. citizen who is present in the U.S. without current permission from INS.
- Many undocumented immigrants entered the U.S. without permission and never obtained any permission from INS to remain in the U.S.
- Other undocumented immigrants may have entered the U.S. illegally, or entered legally and stayed longer than INS authorized them to stay, or may even have had some form of long-term or permanent immigration status that they lost or abandoned.

Documented Immigrant

- A non-U.S. citizen, who has some kind of current permission from INS to be in the U.S., either temporarily or permanently.
- There are many categories of documented immigrants. Examples include: tourists; foreign students with current student visas; refugees; and lawful permanent residents (LPRs or green card holders).
- The immigrant's category, or status, determines eligibility for employment authorization and public benefits.

Lawful permanent resident (LPR or green card holder)

- A non-U.S. citizen who has been granted a green card, which gives him or her the right to reside and work in the U.S. indefinitely. LPR status does not expire, even though LPR cards (green cards) have an expiration date ten years after the date of issuance. INS requires LPRs to replace their green cards every ten years.
- LPRs can lose their LPR status, however, for certain reasons, as specified by federal immigration law. Reasons include, among other things, being convicted of certain crimes, alien smuggling, and residing outside the U.S. for more than six months a year.

Naturalized citizen of the U.S.

- After residing in the U.S. for at least five years after being granted LPR status, an LPR may apply to become a naturalized citizen. The applicant must file an application, pass language and government tests, and meet other requirements to become a naturalized citizen. The person becomes a U.S. citizen as of the date they take the oath of citizenship.
- Naturalized citizens remain citizens for life. Citizenship may be revoked in rare cases, such as fraud in the application process, or holding a political office in a foreign country.
- Naturalized citizens have the same right to receive public benefits as native citizens.

Acquired and Derivative U.S. Citizenship

- A person who was born outside the U.S., but has at least one U.S. citizen parent, may acquire citizenship **at birth** through the U.S. citizen parent, if both parent and child meet certain criteria. Different criteria apply depending on the child's date of birth and the citizen parent's gender and marital status. Although the child born outside the U.S. derives citizenship at birth, he or she must file an application for a U.S. passport or for a certificate of citizenship, to obtain documentation of their status as a U.S. citizen.

- Minor children may derive U.S. citizenship from their parents' naturalization if both parents become naturalized citizens while the child is a minor.
- People who acquired or derived citizenship from their parents have the same right to receive public benefits as naturalized and native citizens.

Citizenship by birth in the U.S.

- Persons born in the U.S. are citizens by birth, even if their parents were undocumented.

Battered Immigrant Women and Services

Are battered immigrant women eligible for shelter services funded by DHHS?
Yes, if a service provider receives funds through FVPSA, there is no requirement to verify immigration status and programs may not discriminate based on national origin (42 U.S.C. 10406).

Funds provided through TANF or LIHEAP do have immigrant eligibility restrictions. However, not-for-profit charitable organizations are exempt from any TANIF and LIHEAP requirements to verify immigration status. DHHS has issued guidance that shelters for homeless or battered individuals may use TANF funds to provide services, regardless of immigration status.

Short-term shelter or housing assistance is exempt from immigrations requirements (AG Order No. 2353-2001, 66 Fed. Reg. 3613 (Jan 16, 2001)). Other services which can be offered without verification of alien eligibility include counseling, intervention, child protection, violence and abuse prevention, victims of domestic violence, runaway, abused, or abandoned children.

Are battered immigrant women eligible for other benefits?

- Yes, in most cases, HHS-funded programs serving domestic violence victims are available to all immigrants who have been abused when those programs do not impose eligibility criteria, such as income (means tested).
- Yes, if they qualify as a "qualified alien." A battered woman is a qualified alien if s/he has an approved or pending application which makes a case for entry filed by a spouse or parent, as a widow of a U.S. citizen, self-petition under VAWA, or cancellation of deportation based on VAWA requirements. The person has to show that she has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent -- or a member of the household -- and the spouse or parent consented or acquiesced in the battery or cruelty. (See the Benefits section for specific information on applying for benefits).
- Transitional housing programs that are not "means tested" are open to all persons without regard to immigration status. If the program is funded by HUD and is means tested, then the program is a federal public benefit. The HUD dollars can only be used to help qualified immigrants, including undocumented battered immigrants with prima facie determination letters or approvals in VAWA cases. If a program receives both means tested monies and non-means tested monies, they can use HUD money to provide housing to persons who meet those requirements and other monies to provide housing to those who don't.

Can battered immigrants get TANF or AHCCCS?
Maybe. It depends on whether the state has elected to provide these benefits to "qualified aliens" and whether the applicant meets that definition. "Qualified" includes lawful permanent residents, refugees and asylees, persons granted withholding of removal, persons paroled for at least a year, and certain battered immigrants if they have filed their self petition and received the Notice of Prima Facie Determination or Notice of Approval.

Do battered immigrants have to provide Social Security numbers to receive TANF or medical benefits?
Yes, but numbers are required only for the persons applied for e.g. if the mother is applying only for the children, only the children need numbers. Emergency medical coverage does not require a social security number. For more information go to http://www.hhs.gov/ocr/immigration/griagency.html and Q&A at http://www.hhs.gov/ocr/immigration/finalqa.htm.

Should agencies consider the income of the battered immigrant's sponsor when determining the eligibility?
No. That income is not available to them and should not be counted.

The Violence Against Women Act (VAWA)

Under the Violence Against Women Act (VAWA) passed by Congress in 1994, the spouses and children of United States citizens or lawful permanent residents (LPR) may **self-petition** to obtain lawful permanent residency. The immigration provisions of VAWA allow certain battered immigrants to file for immigration relief without the abuser's assistance or knowledge, in order to seek safety and independence from the abuser. Please call the **National Domestic Violence Hotline on 1-800-799-7233 or 1-800-787-3224 [TDD]** for information about shelters, mental health care, legal advice and other types of assistance, including information about self-petitioning for immigration status or visit http://www.bcis.gov/graphics/howdoi/battered.htm.

Who can self-petition?
The spouse or children of U.S. citizens or lawful permanent residents or a former spouse (within 2 years) who have been subjected to battery or extreme cruelty in the U.S may file a petition. They have to show a good faith marriage (not one just to get into the U.S.) and good moral character. If the women are already in deportation proceedings, they have to show extreme hardship if they are deported. The INS cannot base its decision solely on negative information from an abuser. If the VAWA self-petition is granted, that only gives the applicant the permission to apply for legal status. It does not guarantee status will be adjusted to legal permanent resident or citizen. See http://www.ins.gov for more information.

Self-petitions, unlike petitions filed by sponsors, must all be filed at the INS Vermont Service Center (VSC). The VSC makes a decision "on the papers" without an interview with the applicant. Vermont has a special group of INS officers reviewing these applications; this group receives regular training in domestic violence. Once Vermont approves a self-petition, an applicant whose abuser is a U.S. citizen may immediately apply for lawful permanent residence at her local INS office. If the abuser is a lawful permanent resident, however, the petitioner must

wait for her number to come up in the visa quota system before she can apply for lawful permanent residence, just like her counterpart in the "normal" family immigration system. Vermont will grant work authorization to all approved self-petitioners while they wait to apply for lawful permanent residence, however. This helps them flee economic control by their abusers.

Self-petitioners no longer need to show extreme hardship to win VAWA self-petitions. Those applying for VAWA cancellation in immigration proceedings, however, still must show they or their children will suffer extreme hardship if INS removes them.

To win a VAWA self-petition case, a battered immigrant must show
One of the following relationships:

- The spouse or child of a U.S. citizen or a lawful permanent resident
- The spouse or child of a U.S. citizen or a lawful permanent resident who lost his status within the past two years because of domestic violence
- The former spouse of a U.S. citizen or lawful permanent resident and the divorce took place in the past two years and was related to domestic violence
- The spouse of a U.S. citizen or lawful permanent resident who was a bigamist (and therefore they were never legally married, but she married in good faith)
- The spouse of a U.S. citizen who died within the past two years

Note: If the U.S. citizen spouse died within the past two years, in order to win a VAWA self-petition case, the widowed spouse must not have remarried.

What is the role of an advocate?
The advocate can assist by:

- Obtaining information about the abuser's immigration or citizenship status, prior divorces, and residence.
- Documenting the existence of "battery or extreme cruelty."
- Documenting her good moral character. If she has an arrest from domestic violence, get it expunged.
- If she is already in the deportation process, research the issue of domestic violence and available protections for women in her home country, and document why she needs to receive services in the U.S.

Does the receipt of benefits harm the persons application for self-petition?
No. A law passed Oct 11, 2000 says that VAWA petitioners who receive benefits will not have those benefits considered against them as a "public charge" when considering their application.

If a woman is not eligible for a VAWA petition, is there any other visa she can apply for?
Yes. If she was the victim of a crime in the United States, she can apply for a U visa. If she has suffered substantial physical or mental abuse flowing from criminal activity and is willing to cooperate with law enforcement investigating or prosecuting such criminal activity. To be eligible, she must show:

- She suffered substantial physical or mental abuse as a result of one of the following forms of criminal activity: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tapering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. She must also show that she possesses information about the criminal activity.
- She must provide a certification from a federal, state or local law enforcement official, prosecutor, judge or authority investigating criminal activity that states that the applicant is being, has been or is likely to be helpful in the investigation.

Applications for U visas will now be sent and processed through the INS Vermont Service Center, the same place VAWA petitions are sent.

Can battered women get asylum?
As of December 8, 2000 a proposed INS rule change would include victims of domestic violence as a "social group" facing persecution and eligible for asylum in the U.S. It would recognize that women sometimes face persecution because of their gender. The proposed rule was prompted by the Rodi Alvarado Pena case, a Guatemalan woman long brutalized by her husband, a former soldier. Her application for asylum was denied but the case was stayed and put under review by Attorney General Janet Reno. In March 2001 the 9th Circuit Federal Court (San Francisco) upheld an asylum appeal based on the domestic abuse a Mexican teen-ager suffered at the hands of her father. The argument was based on her membership in a particular social group – her family. Claims by women facing genital mutilation were recognized in l996.

Who qualifies for asylum?
An applicant needs to show one or more of the following factors:

- The government in her home country tolerates or condones domestic violence.
- Her partner abused her while they were together in the home country or will abuse her there if she returns.
- Her abuser believes she has the political opinion, contrary to societal norms, that men should not be able to subordinate women in marriage.
- She belongs to a social group that her abuser wishes to subdue, such as abused spouses who challenge male dominance.

Women from countries with coercive population control (China) are eligible.

Women should be referred to an immigration law expert -- hopefully one with domestic violence experience -- not the INS.

Resources for Battered Immigrant Women

Written Resources
Domestic Violence in Immigrant and Refugee Communities: Asserting the Rights of Battered Women produced by the Family Violence Prevention Fund, Northern California Coalition for Immigrants Rights and National Immigration Project of the National Lawyers Guild, Inc.

Programs
- **Battered Women's Justice Project**, 4032 Chicago Ave South, Minneapolis, MN, 55407, Telephone - 800-903-0111, Fax – 612-824-8965.
- **National Immigration Project,** 14 Beacon Street #506, Boston, MA 02108, Telephone - (617) 227-9727.

Arizona Landlord Tenant Law

What law governs a landlord/tenant relationship?
The Arizona Residential Landlord and Tenant Act governs all tenancies in which a tenant rents a home or an apartment from a landlord with a few exceptions (A.R.S. § 33-1301, *et. seq.)*. The exceptions include (§ 33-1308):

- Public housing (which is governed by Federal law).
- Housing that is secondary to medical, religious or counseling treatment.
- Tenant is buying the property.
- Tenant is a member of fraternal or social organization that owns property.
- Tenant is living on property as part of employment.
- Transient housing in hotel, motel or recreational lodging.

The Arizona Mobile Home Residential Landlord & Tenant Act governs all tenancies in which a mobile home owner rents a space from a mobile home park. This law is found at A.R.S. § 33-1401, *et seq.* The lease also governs all tenancies. A lease cannot waive any rights a tenant has under the law (A.R.S. § 33-1315).

(These questions are only pertaining to the requirements under the Arizona Residential Landlord Tenant Act since it governs most tenancies.)

Vacating the Premises

If a member of the household moves out, what happens?
If a member of the household moves out of the apartment, can the rest of the household remain on the premises? The rest of the members of the household can remain if they are on the lease. The best bet is to make sure everyone is on the lease before problems begin. If everyone is not on the lease, the landlord has discretion to maintain the tenancy or not. However, if the tenants are married and live in a community property state (AZ), then it doesn't matter whether both names are on the lease, both persons are entitled to the lease. Additionally, a landlord cannot just throw remaining family members out on the street. (See below for how a landlord has to terminate a tenancy).

What happens to the amount of rent if a member moves out? In a normal landlord/tenant relationship the amount of rent remains the same when a person moves out. However, if the tenancy is in public housing or is HUD subsidized, the amount of rent should decrease if a working member of the household moves out. In order to receive a recalculation of rent, the remaining household members should report as soon as possible that a family member has left.

If the household leaves the premises, what happens?
If the household leaves the premises for a couple of months to enter a domestic violence shelter, do they still have to pay rent even if they are not there? Can the household continue their tenancy when they return from the shelter?

A household must pay rent every month during their tenancy if they want to maintain it – even if they are not present for a few months. Rent must be made in a timely manner. Security deposits cannot be used to pay rent unless a landlord agrees in writing. Also, the tenant may want to inform the landlord in writing that they will be absent for a month or two but plan to pay rent. As long as the tenant continues to pay rent and the landlord has not properly terminated the tenancy, the tenant may return to the tenancy. If the tenant does not notify the landlord that s/he will be gone for some time, e.g. to a shelter, the landlord under A.R.S. § 33-1370(H) may conclude the tenant has abandoned the unit and will proceed with eviction.

If a tenant wants to permanently move out of the premises, how does s/he proceed?
If a tenant has:

- Month-to-month tenancy, he or she must give a thirty-day notice to move out of the premises. (Most tenancies are month-to-month unless the tenant signed a lease for a different time or pays rent weekly.)
- Week-to-week tenancy, he or she must give ten days notice to move out.
- A year tenancy, he or she must give thirty days notice that she plans to not renew the lease.

Currently in Arizona, domestic violence is not a reason to break a lease. However, if a landlord violates the lease, the tenant has various remedies.

What are the tenant's rights?

Material Noncompliance
If there is a material noncompliance with the rental agreement, the tenant must give the landlord written notice and ten days to correct. If the landlord does not fix or cure the problem, the tenant may end the lease ten days from the date of the notice. If the landlord's noncompliance with lease affects health and safety, the tenant only has to give the landlord a five-day notice and may move out in five days if the landlord does not fix or cure the problem. A.R.S. § 33-1361

Fit Premises
If the landlord does not maintain fit premises and the cost of compliance would be less than $300 or half the monthly rent, the tenant may recover damages under § 33-1361. The tenant may also give the landlord a written notice stating what the problem is and that the tenant plans to have it fixed if the landlord does not fix it in ten days (A.R.S. § 33-1363). If the landlord does

not fix it in 10 days, the tenant can have the work done by a licensed contractor, submit to the landlord the invoice and waiver of lien, and deduct it from her rent.

Wrongful failure to supply utilities
If the landlord wrongfully fails to supply electricity, heat, air-conditioning, cooling, water, hot water or essential services, the tenant must give reasonable notice to the landlord. A.R.S. § 33-1364. The tenant can then:

- Get the service herself
- Recover damages based on the lesser value of the property
- Obtain other housing during the time it takes the landlord to fix it, not pay rent, and recover for excess rent if the other housing was more expensive.
- Recover costs and reasonable attorney fees
- Get an injunction to stop the landlord from doing something or make him do something

Basis for suit against landlord
If the landlord sues the tenant and the landlord is not in compliance with the lease or the law, the tenant should counterclaim under the remedies listed above. A.R.S. § 33-1365

If the landlord unlawfully excludes the tenant from the residence or stops utilities, the tenant can sue for possession or to reinstate the rental agreement. In either case, the tenant can get damages of two months rent or twice the actual damages, which ever is greater.

If the landlord makes an unlawful entry or an entry in an unreasonable manner or makes repeated demands for entry that harass the tenant, the tenant can sue to stop the behavior and recover actual damages not less than one month's rent. A.R.S. § 33-1376

Pursuant to A.R.S. § 33-1381, a landlord may not retaliate by increasing rent, decreasing services or by bringing or threatening to bring an action for possession after any of the following:

- The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety.
- The tenant has complained to the landlord of a violation under § 33-1324.
- The tenant has organized or become a member of a tenants' union.
- The tenant has complained to an agency charged for enforcement of the wage-price stabilization act.

If the landlord tries to evict the tenant within six months of the tenant filing a complaint, it is presumed to be retaliation (A.R.S. § 33-1381). However this presumption does not apply if the tenant made the complaint after notice of termination of the rental agreement. This does not apply of course if the tenant has not paid rent.

If a tenant leaves before the end of the tenancy and does not pay rent, what happens?
If a tenant leaves before the end of the tenancy, the tenant will be responsible for all of the rent for the rest of the tenancy. However the landlord has a duty to mitigate the damage. Therefore

the landlord has a duty to try to re-rent the premises. A.R.S. § 33-1370(C). The new tenants rent has to be deducted from the amount the former tenant still owed. Landlords can keep a tenant's security deposit and deduct it from the amount owed in the tenancy. If money is still owed to the landlord, the landlord can try to get a judgment against the tenant. The tenant should try to arrange a payment plan to pay the remaining rent.

What happens to his/her belongings if a tenant suddenly leaves?
If a tenant has been evicted and a writ of restitution is issued, then the landlord must keep the belongings in good condition for twenty-one days. The tenant may access the property and remove necessities. The tenant cannot remove the property until he or she pays for all reasonable moving and storing costs of the belongings.

If the tenant is evicted and a writ of restitution is issued, the landlord must hold the tenants property 21 days (A.R.S. § 33-1368 (E). The tenant must pay what is owed to get her/his property except for clothing, tools, books and apparatus of a trade or profession, and identification or financial documents.

If a tenant is not evicted and just leaves his or her personal belongings and does not pay rent for ten days, the landlord must post a notice of abandonment on the door -- if the tenant has been missing for seven days. The notice must remain on the door five days. At the same time the notice is posted, the landlord must send a certified letter to the tenant's last address. After five days the landlord may retake the premises and use the security deposit for unpaid rent. The landlord must then use reasonable care to store the belongings for ten days. After ten days, the landlord may sell the belongings and use it for money the tenant owes. A.R.S. § 33-1370

If there is excess money from the sale, the landlord must try to mail it to the tenant or keep it for a year. The landlord must keep records of the sale for a year.

If a tenant is not evicted and but takes his or her belongings and does not pay rent for five days, then the landlord can begin the process of posting the notice of abandonment if the tenant has been missing five days.

How does a tenant get a security deposit back?
A landlord can charge no more than one and one-half times the monthly rental for a security deposit no matter what they call it (A.R.S. § 33-1321(A)). All tenants should do walk-through inspections when they move in and out of premises. Since January 2, 1996, a move in form to specify any existing damages must be provided to the tenant (A.R.S. § 33-1321(C)). After a tenant moves out she can send a landlord a notice with his or her new address. The notice can tell the landlord that the tenant wants her security deposit back in fourteen days or wants an itemized list of what the landlord is keeping as a security deposit. The landlord then has fourteen days to return the deposit or provide the list. If the landlord does not return it or the tenant disagrees with the amount, the tenant can take the landlord to small claims court to get the deposit back and get twice the amount of actual damages (A.R.S. § 33-1321 (D)).

Landlord Right's

How can a landlord terminate a tenancy?

Material violation of the lease

A landlord can only terminate a tenancy if he or she gives a tenant a notice of termination. All notices must specify what the tenant did wrong. For material violations of the lease (lies on application, income, number of people living there), the notice must tell the tenant that he or she has ten days to cure the breach or the tenancy will be terminated.

If the lie is about a prior felony record, prior eviction record, or current criminal activity, the tenant has no ability to cure the defect and will be evicted. A.R.S. § 33-1368(A).

If the breach is affecting health and safety, the tenant must be given notice and five days to cure. If a second breach occurs of the same type, the landlord must give a ten-day notice that s/he is beginning a special detainer.

Material and irreparable breaches

For material and irreparable breaches (serious breaches including but not limited to drugs, threats, crime, property destruction, and violence) the landlord only has to give the tenant a notice and does not have to give the tenant a right to cure. The landlord can proceed immediately to eviction. This presents special problems to battered women. If the husband is committing crimes, she should not be evicted because of his behavior. A.R.S. § 33-1368 (G) says that the tenant is held responsible for the actions of the guests that violate the lease agreement if the tenant could reasonably be expected to be aware that such actions might occur and did not attempt to prevent those actions to the best of the tenant's ability. This provision gives the battered women several arguments:

- If the abuser is a tenant also, this section does not apply because he is not a "guest".
- If the abuser is a tenant, the tenant who breached the lease should be evicted, not the other tenant
- If the abuser has an order of protection against him ordering him not to come to that apartment, then he is not a "guest" and the victim should not be held responsible for his behavior. He is a trespasser and she is the victim of a crime.
- The tenant, the battered women, by making a police report and/or getting an order of protection has done all she can to the best of her ability to prevent the action.

If the tenant has not paid rent, the landlord must give the tenant a five-day notice that gives the tenant five days to cure and pay the rent. A.R.S. § 33-1368(B)

Forcible detainer

After the time to cure is over, the landlord may file a forcible detainer complaint against a tenant if the tenant has not cured the problem. A.R.S. § 12-1171 *et seq*. The landlord may file this in justice court or superior court. The tenant will then receive a summons. The summons usually tells the tenant that they must defend the action in court three days after the summons. The tenant will then be able to present his or her defense in front of a judge. If a tenant loses, the judge will tell the tenant that he or she has five days to move. After five days the landlord can file a writ of

restitution and the sheriff or constable can lock the tenant out of the premises. Thus from the date of notice of termination, the tenant has up to 20 days before the sheriff actually arrives to lock the door (5 days for notice of late payment, 3 days before trial, 5 judicial days to move – 7 actual days, five days for writ of restitution). So the tenant should not move immediately but take time to find a new place, perhaps get a check from work, move her belongings etc. In a trailer park, the tenant has even more time.

Special Detainer
A landlord can file a special detainer if the tenant has violated § 33-1368 i.e. breach affecting health and safety or material and irreparable breach (A.R.S. § 33-1377). The summons is issued on the same day and the hearing is from 3-6 days away. A writ of restitution can issue for 12-24 hours. In other words, the sheriff will arrive to lock the doors within that time and the tenant has to be out.

Public Housing

If the housing has some sort of Department of Housing and Urban Development (HUD) subsidy, such as Section 8 or public housing, then federal regulations, the HUD Handbooks, and local administrative plans govern the tenancy.

An advocate can help a woman to get on the Section 8 certificate/voucher waitlist. She can get on as many waitlists as she likes, even in towns where she doesn't live. Criminal record checks will be done before an applicant is eligible.

For those in Section 8 housing a final rule permits use of tenant-based assistance as a mortgage subsidy by voucher holders for home purchase (65 Fed. Reg. 55134; Sept 12, 2000). (To find out more about this project, contact National Housing Law Project at www.nhlp.org).

Two problems for abused women in public housing are the zero tolerance and the "one strike" rules. Zero tolerance says no drugs or violence will be allowed. The "one strike" rule means that one violation can lead to eviction. In an attempt to prevent crime and drug dealing, if the police are called to an apartment, the tenant can be evicted. This is an obvious disincentive for a battered woman to call the police. Most public housing tenants approve of the rule so education with the property manager should be done. The Supreme Court decided HUD v. Rucker, No. 00-1770 on March 26, 2002. It was a very bad decision for battered women. It holds tenants liable for the violence or crimes done by other tenants and guests even when the tenant did not know about the activity, did not condone it, and could not control it. The case dealt with drug use and not specifically battered women but the precedent is very bad. Language has been introduced into Congress to fix it but it has not yet passed. In the meantime, advocates will have to be very astute to protect their client's rights. Even with this decision, public housing official are not required to evict for any criminal activity, but rather are given discretion to do so. They must consider the extent to which the housing project suffers from the action, the seriousness of the criminal action, and the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the criminal activity. Advocates should ensure that the victim gets an order of protection, ensure that the properly manager knows about it, and get the victim moved to another apartment or complex.

If a person is evicted from public housing, they can never again get public housing anywhere in the country for the rest of their lives. This is a very severe penalty for poor people. Therefore, advocates must be very aggressive to protect their client's rights. If an adverse decision regarding housing is made against the victim, the tenant has the right to appeal. The process has specific administrative hearing requirements. Local legal services may be able to represent the client or a non-lawyer advocate can represent a tenant in the hearing and should prepare just as they would for a trial in court.

Federal law used to mandate preferences in public housing for battered women with children. The local level is now able to set their own preferences. Advocates should work with those public housing authorities and other housing advocates to ensure that housing for battered women with children remains a preference. In Arizona, only two housing authorities have domestic violence as a priority: Eloy and Winslow.

Creditor/Debtor Issues

Community Property
Assets acquired during marriage are, in most instances, community property. This means that legally both spouses own a one-half share in any assets they have acquired during marriage, including bank accounts, personal property (such as cars) and real property, regardless of whose name the property is in. Similarly, the community shares most debts incurred during marriage, even if one spouse acquires the debt without the other's knowledge. Arizona's community property statutes are found at ARS 25-211, et seq.

Effect of Divorce
Simply filing for separation or divorce does not sever the community. Community property ends after service of a divorce petition, separation or annulment which actually results in a divorce, separation or annulment. When a petition for divorce or separation is served, property and debts acquired after that time are those of the person who acquired them.

Fair Debt Collection Practices Act
Under this federal law, found at 15 U.S.C. § 1692(c), bill collectors are prohibited from doing certain things. They may not:

- Call about a bill before 8:00 a.m. or after 9:00 p.m.
- Contact the debtor's neighbors, friends or relatives about the debt.
- Threaten the debtor, the debtor's relatives or the debtor's friends with criminal prosecution or any form of harm or harassment.
- Threaten to publish or publish the debtor's name as a person who does not pay bills, except in credit reports.
- Make false claims that they are lawyers or law enforcement officials or other governmental officials.
- Contact the debtor's employer for any reason other than to verify employment or arrange a wage attachment.
- Threaten to take the debtor's property without a judgment.

- Claim they will increase the debt when the debtor has not agreed in writing to pay attorneys' fees, service fees or other charges.

If the creditor does not abide by these rules, the debtor may wish to write a letter to the creditor, stating the following:

> ***I have received numerous phone calls and letters from you concerning bills I haven't paid. As I have informed you, I cannot pay due to circumstances beyond my control. Pursuant to 15 U.S.C. 1692(c), I am giving you formal notice to cease all further communication, except for the reasons specifically set forth under the law.***

Be sure to keep a copy of the letter.

Credit Reporting

If the debtor believes s/he has been billed unfairly, or the amount that they have been billed is incorrect, the debtor should write a letter to the creditor immediately, explaining why the bill is incorrect. The letter should also request an accounting of what is owed, and if applicable, the dates and amounts of any payments already made. The debtor should also check to see if the incorrect debt has been reported to a credit agency. Credit Data Southwest at 1825 East Southern in Tempe and 4344 West Indian School in Phoenix provides copies of credit reports for a small fee. Or, a person can obtain a copy of her credit report by mail from Trans Union Corporation, P.O. Box 7000, North Olmstead, OH 44070. The fees for obtaining credit reports will be waived if the person has been denied credit within thirty (30) days of the request. Once the credit report has been obtained, if it contains incorrect information the credit reporting agency should be notified in writing immediately.

If the victim is maintaining a secret address, she must not give it to the credit agency. First, if a debt is not paid as ordered under the divorce decree, an ex-spouse can request a credit status from the creditor that might reveal her address. Further, credit agencies have, in response to a request for a credit report, included the new address of the ex-spouse. If a joint account relationship continues to exist, i.e. both parties still owe this debt, which is the case in community property states, the Equal Credit Opportunity Act requires a creditor to report the account information in the name of both parties. Suppose the victim assumes the credit obligation and provides the creditor with a new address. Unless the account record also terminates the relationship with the ex-spouse (i.e. removes his name from the account), the creditor will continue to report the account under both names and the new address associated with the account. If the ex-spouse then requests a credit report, that debt with its accompanying name and address of the co-debtor (the ex-wife) will be on the credit report.

The victim can request removal of an ex-partner's name from any previous joint credit relationship records. She should request a written confirmation from the creditor that the ex-partner has been removed from the records. This means of course that she remains solely responsible for the debt. She could also give the creditor only a secure address, one that she would not care if the ex-partner obtained.

Repossession
Under the law, there are two types of creditors: unsecured and secured. Most credit is unsecured. An unsecured creditor must file suit, win and obtain a judgment in order to collect the debt. Some credit is secured. This means that the secured creditor has the option of taking back the property that secured the underlying debt. For example a car purchased on credit could be repossessed if the debtor stops making payments.

Exempt property
Some property is exempt from creditors, i.e. creditors cannot take it in an attempt to satisfy a debt. Under A.R.S. § 33-1101 et seq., creditors cannot take certain property, including but not limited to:

- Equity in a home up to $100,000.
- Furniture and appliances up to $4,000.
- Clothing up to $500.
- A car with fair market value up to $5,000 or if disabled, up to $10,000.
- Bank accounts up to $150.00 ($300.00 for joint accounts).
- Social security income.
- Child support payments.
- TANF.
- Be sure to check A.R.S. § 33-1123 through 1130 for additional items.

Bankruptcy
Filing for bankruptcy is an important decision and should be examined in the context of whether the debtor is filing for a legal separation or divorce. Upon service of a petition for legal separation or divorce that actually results in a divorce or separation, the community will be severed. If the debtor files for divorce before the divorce is served, then the time period between the bankruptcy filing and the time of service is extremely important: the other spouse can still incur debts during that period; the community will still be responsible for those debts; and the bankruptcy will not discharge those debts. It is best to simply wait until after the dissolution or legal separation is final so that all property has been distributed and there will be no questions. In a bankruptcy certain debts are not dischargeable including:

- Child support and spousal maintenance payments.
- Certain income taxes.
- Debts for writing bad checks or committing fraud, under Chapter 7.
- Most student loans.

Privacy Protection for Victims of Domestic Violence

The federal Department of Health and Human Services (DHHS) released new privacy regulations that went into effect April 14, 2001. Health care providers, health plans and health clearinghouses must comply within two years. Small health plans must comply within three years.

Only health care providers, health plans and health clearinghouses are covered. Most shelter programs and domestic violence service providers are not covered. The secretary of DHHS can impose civil and criminal penalties, but individuals do not have a right to sue. The regulations do not override state law if state law is more protective of clients. In Arizona, our existing state laws are more protective of patient rights. Therefore, HIPAA does not override state law. It also does not override more protective federal law. Health care providers generally must obtain patient consent prior to using or disclosing health information for treatment, payment or health care operations. However a provider can refuse to treat a patient who does not consent. An individual must be informed in advance and be given an opportunity to agree to, object or restrict certain uses and disclosures.

Patient information may be disclosed to a family member, other relative or close personal friend if:

- The individual agrees.
- The individual is given an opportunity to object and does not.
- The entity reasonably believes the individual does not object. Therefore an abused woman must make it clear to the health care provider that she does not want information disclosed to the abuser and insist that fact be written prominently on the record.

Health care providers and health plans must accommodate reasonable requests by patients about how and where to communicate with them. For example a victim who does not want her partner to know about treatment for domestic violence injuries may request that the provider communicate with her by mail to a different address, or by phone to a designated phone number. She can request a closed envelope rather than post card. The provider may not require an explanation for the basis of such requests.

Institutions may refuse to treat a person, including a spouse, as a patient's personal representative with respect to health information if the entity believes that the representative has or may subject the patient to abuse or neglect or that the patient would be endangered by the disclosure. They can also deny access to patient's health information if the entity believes that the disclosure is reasonably likely to cause substantial harm to the patient or another person.

Health information may be disclosed without consent for certain reasons such as child abuse or domestic violence if:

- The patient agrees.
- There is mandatory reporting.
- It is expressly authorized by statute or regulations.

Institutions must inform the patient or personal representative of the reporting unless the personal representative is the suspected perpetrator. Health information may also be released subject to a court order, warrant, subpoena, summons, or administrative request for the purpose of locating a suspect, witness or missing person and then may only disclose the name, address, date and place of birth, social security number, blood type, type of injury, date and time of treatment or death and physical description of the person.

Persons have a right to inspect, copy, amend and receive an accounting of disclosures up to six years. The individual must be notified how and when information will be used.

Shelter Regulations

Domestic violence shelters are regulated and licensed by the Arizona Department of Health Services as Behavioral Health providers. Standards for a shelter for victims of domestic violence can be found at http://www.sosaz.com/public_services/Title_09/9-20.htm under R9-20-1301.

Previous licensing standards from DHS regarding distribution of medication caused some hardships for domestic violence shelters because of the different make up and needs of the residents and shelter programs. Therefore, after some statewide meetings and discussions, new rules were created specifically for domestic violence shelters that should make compliance easier. The new standards follow.

Standards for a Shelter for Victims of Domestic Violence, R9-20-1301(C)

A licensee of a domestic violence shelter shall develop, implement, and comply with policies and procedures for storing a client's medication that include:

- For a client who does not meet the requirements in R9-20-1202(F), compliance with R9-20-408 (see section below)
- For a client who meets the requirements in R9-20-1202(F):
  - Providing the client with an individual locked storage area that is not accessible to other clients; or
  - Storing the medication in a central locked area or container that:
    - Is accessible only to a staff member of the agency;
    - Complies with the medication manufacturer's recommendations; and
    - While unlocked, is not left unattended by a staff member

In order for a client to meet the requirements of R9-20-1202(F), the standards for a level 4 transitional agency, the client must be independent in self-administering the medication, i.e., does not require a reminder to take medication, does not need assistance opening a medication container, and takes medication as directed by the client's medical practitioner.

Pursuant to R9-20-1301(C)(3)If medication is stored in a central locked area or container for independent clients meeting the R9-20-1202(F) criteria, the shelter agency shall:

- Store medication for other than oral administration separately from medication for oral administration;
- Ensure that a client takes only medication prescribed for the client and that the medication is taken as directed;
- Store medication in an original labeled container that, for prescription medication, indicates: the clients name; the name of the medication, the dosage, and directions for taking the medication; the name of the medical practitioner prescribing the medication; and the date that the medication was prescribed

- Maintain an inventory of each medication stored
- Inspect the central locked storage area at least once every three months to ensure compliance with this section, and document the inspection to include: the name of staff member conducting the inspection, the date, the area inspected, whether medication is stored according to the requirements in this section, whether medication is disposed of, and any action taken to ensure compliance with this section.

So, if the client is not independent and does need assistance in taking medication the shelter must comply with R9-20-408 (see below), while the shelter only need to comply with R9-20-1202(see above) if the client is independent and does not need assistance in taking her medication.

Assistance in the Self-Administration of Medication, R9-20-408

A licensee shall ensure that a client who requires assistance in the self-administration of medication receives assistance from agency staff. *This ONLY applies to those persons who require assistance to take medication. It does not apply to all residents*. Such assistance MAY include:

- Storage of medication
- Reminders when to take the medication
- Verification that medication is taken appropriately (i.e., prescription is in the name of the client, dosage is correct, and client takes the right amount)
- Assistance in opening the container
- Observation of the person taking the medication

If the program does assist the patient in administering medication, it SHALL have policies related to the practice that are approved by a medical practitioner, pharmacist, or registered nurse. Theses procedures are onerous and include:

- Instructing the client on results, reactions and side effects
- Documenting, obtaining and disposing of medications
- Each persons medication regimen must be approved by medical personnel
- Assistance to the resident can only be done by a medical practitioner, a nurse, or staff member who has extensive training, skills, and knowledge
- Having written authorization from medical personnel
- Having an up-to-date Physician Desk Reference and toxicology reference book available
- The actual storage of the mediation is outlined in detail and has to be inspected every three months – meticulous records must be kept.

Counselor's Duty To Warn

A mental health service provider shall release information if the patient has communicated to the mental health provider an explicit threat of imminent serious physical harm or death to a clearly identified or identifiable victim or victims, and the patient has the apparent intent and ability to carry out the threat and the mental health provider fails to take reasonable precautions. The

provider shall tell the intended victim and the police; initiate voluntary or involuntary hospitalization; or take other precautions (A.R.S. § 36-517.02).

A.R.S. § 36-517.02 states that there is no legal liability to the service provider unless the patient has communicated an explicit threat of imminent action and the mental health provider fails to take reasonable precautions. However, in Little v. All Phoenix South Community Mental Health Center Inc., 186 Ariz. 97, 919 P. 2d 1368 (l996), the Arizona Court of Appeals held that this part of the statute was unconstitutional because it violated common law. Common law recognizes a general negligence cause of action. Under Hamman v. County of Maricopa, 161 Ariz. 58, 775 P. 2d 1122 (1989), general negligence includes harm to someone who is in the "reasonably foreseeable area of danger," not only to those against whom an explicit threat has been made. A statute cannot eliminate a common law cause of action. Eliminating a common law cause of action is prohibited under Article 18, section 6 of the Arizona Constitution. Thus that part of the statute was declared unconstitutional.

In the Little case, Dennis Little's wife was hospitalized after being stabbed by her husband. Dennis Little had repeatedly made threats against his wife prior to the stabbing. She sued Phoenix South for failing to take reasonable precautions to protect her. Phoenix South's defense was based on an argument that the victim was not "clearly identified" as required in the statute. However, she was a "foreseeable victim within the zone of danger" under previous Arizona case law. The court upheld the case law and declared the statute unconstitutional because it conflicted with the common law. The result of the ruling is that mental health providers should warn foreseeable victims within the zone of danger, even though the patient may not explicitly name those victims.

In addition to the child abuse statute, a person who has responsibility for the care of an incapacitated or vulnerable adult and who has a reasonable basis to believe that abuse or neglect has occurred shall report to a peace officer or protective services worker in the same manner as child abuse reports (A.R.S. § 46-454). Permitting the life or health of an incapacitated or vulnerable adult to be endangered is a class 5 felony (A.R.S. § 46-455). A vulnerable adult means an individual who is 18 or older who is unable to protect himself/herself from abuse, neglect, or exploitation by others because of a physical or mental impairment (A.R.S. § 46-451 (A)(10)).

While communicable disease information is protected (A.R.S. § 36-664), if a person in possession of confidential HIV-related information reasonably assumes that an identifiable third party is at risk of HIV infection, the person may report that risk to DHS (A.R.S. § 36-664(K)). The report shall be in writing and include the name and address of the identifiable third party and the name and address of the person making the report. The address of the shelter should not be revealed.

Except as provided in A.R.S. § 36-665, a person with confidential HIV-related information shall not disclose that information or be compelled by subpoena, order, search warrant or other judicial process to disclose that information.

Voter Registration Records

HB 2108 was passed in the 2003 Legislative Session amending A.R.S. § 16-153 to provide:

- Victims and survivors of domestic violence can seal their voter registration record so their address, telephone number and voting precinct number is not accessible to the general public.
- A survivor has two ways to seal a record. If the survivor has an order of protection or an injunction against harassment, even an expired one or one from another state, they simply go to the recorders office with a copy and ask for the record to be sealed (A.R.S. § 16-153(J)).
- If the survivor does not have an OOP or IAH, a survivor must file an affidavit with the presiding judge of the superior court in the county where she lives (A.R.S. § 16-153(A-I))
- Survivors will need the following information to complete the affidavit: full legal name, residential address and date of birth. They will also need one of any of the following documents to show they are or were a victim of domestic violence: findings from a court, such as a minute entry, statement by the judge recognizing the presence of domestic violence, police reports, medical records, child protective services records, domestic violence shelter records or school records.
- Voter records can also be sealed for any other individual that lives at the same address as the victim.
- If the affidavit is accepted the records will be sealed for five years. If the affidavit is not accepted, the survivor can ask for a court hearing on the issue.
- Once the record has been sealed, the woman can no longer vote at the polls. She must personal go to the Elections Department in her County and pick up a mail in ballot. She may not request a ballot be mailed to her, as this will unseal her record. After she has the ballot she may mail it in or drop it off at any polling place.
- The county recorder has 120 days to seal the record, which could present a danger to the woman.
- The definition of "domestic violence" is the one in A.R.S. § 20-448, so it is broader than the criminal definition.

Driver License Records

An area of concern is drivers and car license records, which are public records (A.R.S. § 28-447). Certain restrictions apply to the release of the information (A.R.S. § 28-450). Information from a vehicle title or registration shall not be released unless the requester provides the name of the owner, the vehicle identification number, and the vehicle license plate number. Information from a driving record shall not be released unless the person provides the name of the licensee or the name of the person whose record is requested, the driver's license number, and the date of birth or expiration of the driver's license. Obviously a former spouse or partner could provide this information, which could endanger the victim. A person is required to update their records if the name or address changes (A.R.S. § 28-448) making it difficult for women to relocate and stay safe. However, on the request of an applicant, the Division of Motor Vehicles (DMV) shall allow the applicant to provide a post office box for an address rather than a street address (A.R.S.

§ 28-3166). The applicant does have to provide the social security number to the DMV, but they do not and should not use it on the license itself. (A.R.S. § 28-3158(F)).

Under the federal Driver Privacy Protection Act, Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, s. 30003, 108 Stat. 1796, 18 U.S.C. 2721-2725 (1994) states are prohibited from releasing individuals photographs, social security number, driver identification number, name, address, telephone number, and medical or disability information, without express consent. States were given three years to implement these changes, which Arizona has not yet done. However, a state is deemed in compliance if it enacts a procedure which implements the changes only as individuals renew their licenses, titles, registrations, or identification cards. It appears Arizona is out of compliance with this provision.

In July of 2003, AzCADV wrote a letter of concern to the MVD and Department of Transportation regarding noncompliance with the DPPA. We received a letter from ADOT with an update on their policies regarding the release of driver's records and the steps taken to protect the privacy of individual records in compliance with federal and state law. They assure us that the Division has made changes in the manner in which motor vehicle record requests are processed so that this process fully conforms to the requirements of the DPPA.

First, the record requester must establish his or her eligibility under the DPPA (18 U.S.C. § 2721(b) and then comply with the relevant provisions of A.R.S. § 28-450 or § 28-452 before information will be released.

Secondly, on December 1, 2000, MVD began "tagging" all of its existing title, registration and driver license records with a status code indicating that the person has not consented to the release of his or her information. The same status code is also placed on all new or changed records, unless an individual actually grants consent to the release of personal information. MVD's driver application, title applications, renewal notices and change of address card now have an "Opt-in" box which will allow individuals to give their express consent. In addition, a new Consent to Release Motor Vehicle Record form, #96-0276, can be used to provide either a general release or a one-time only release (to a specific person or entity) (ADOT, MVD Policy Memo 01-005).

SECTION EIGHT: PROCEDURES

Change Of Name And Social Security Number

A person can change her name by filing an application in the superior court of the county of residence (A.R.S. § 12-601). The parent, guardian *ad litem*, or next (meaning close) friend of a minor may apply for a child as well. The court shall consider the best interest of the child in determining whether to change the child's name.

A.R.S. § 12-602 says that the court can determine if it is proper that notice be given for the name change. Thus notice is not required and the applicant should state in her petition why notice should not be given and why the record should be sealed. Applicant should file a "Sealed Record Name Change" with the original documents. Otherwise the abuser can easily find the new name. Legal forms stores and office supply stores carry forms for a change of name.

We have had difficulty with Arizona courts understanding the rationale for not obtaining the permission of the other parent to change a child's name. Most will insist that the other parent must have notice and give permission. Obviously this would be counter-productive if the reason is to protect the child from that parent. In order to convince a judge, there must be substantial evidence of the harm to the child e.g., criminal convictions, CPS substantiated reports, photos etc. The law provides for it; the advocate must be very assertive.

First gather documentation of the abuse. Some examples include:

- Police reports.
- Medical records.
- Copies of orders of protection.
- Criminal charges/dispositions.
- Your counseling records/shelter records.
- Letters from others with knowledge of the abuse.
- Audio/video/photographs.

Prepare the petition by answering all the questions and, if necessary, filling out an affidavit of financial hardship if you cannot afford to pay court costs and filing fees. Be sure to file an affidavit and petition to have the hearing closed and the record sealed. Be sure that is on top of the papers you file. Be sure you say that notice should NOT be given and the hearing should not be publicized. Judges are hesitant to do this and you have to be very firm and continue to point out the statute and the purpose of and need for the protection.

The hearing should be held *in camera* with only the judge, petitioner, and petitioner's attorney, advocate or witnesses present. Witnesses will testify and documentary evidence submitted. The judge will ask if the petitioner is attempting to avoid a debt or hide a criminal record. Also be sure to tell the judge you need an order for a new birth certificate. And you need a certified copy of the order for the Social Security Administration. (Adapted from *Identity Change: A Guide to Remaining Safe and Accessing the System* by Billie Jean Samuels, Livingston, Mt., 2001).

The petitioner also needs to have new birth certificates issued. A court can order that the State department of vital statistics issue a new birth certificate. Copies of medical and immunization records should be obtained so the former name can be blacked out but the information can still be available for new medical practitioners.

In some instances women may want to change their Social Security number, which can be done in person at the Social Security office. The number should be changed after the name change, not before. Call 1-800-772-1213 (voice) or 1-800-325-0778 (TTY) for more information or to make an appointment. If the SSA representative is not aware of the policy for assigning new SSNs in harassment, abuse, or life endangerment situations, refer her/him to *Program Operations Manual System* (POMS), chapter RM 00205. If s/he still refuses, ask to speak to a supervisor. If the supervisor refuses, contact NCADV at 202-745-1211 or ncadv2@sprynet.com.

The applicant must have an in-person interview. She should bring the following information:

- A certified copy of the birth certificate (or if an alien, check with the local office to determine what you need).
- A State-issued photo ID or drivers license.
- A copy of the current Social Security card.
- A certified copy of the order to change one's name and seal the record.
- Documentation of the abuses.

The applicant will need evidence of age, identity and citizenship. Take original documents or certified copies of court documents. To change the children's numbers, the applicant must show she has sole custody and the other parent has no visitation rights. Take evidence that shows abuse such as police reports, medical records, an Order of Protection, and letters from counselors etc. It will take about four to six weeks to get a new number. The applicant should also request that the old and new SSN not be "linked". This must be specifically requested.

The woman must promise Social Security never again to use or reveal her old Social Security number until the first time that she claims any benefits from the Social Security Administration. Then they will cross-reference the old Social Security number to the new one so she can get full benefits.

Further, victims may experience problems such as:

- The inability to get a passport or other federal documentation due to lack of a birth certificate.
- The loss of previous work history.
- Difficulties or delays in receiving benefits.
- Difficulty proving past abuse if medical and court records are under an old name or Social Security number.
- Loss of educational history
- Loss of credit history

There is no guarantee that a private investigator won't find her anyhow. Even the children could inadvertently divulge the location in a telephone call or by mailing a postcard. For information on the pros and cons of a change of name and social security number and the process, see http://www.ncadv.org.

A social security representative should not divulge Social Security information over the phone without six documents that can be verified. If the file is marked as harassment, abuse, or life endangerment, the person requesting information has to go in-person and properly identify her/himself before information will be released. Information will be divulged to other federal agencies and law enforcement.

The victim should be careful about using the new social security number. Just because a business or agency asks for the number does not mean you have to give it. Ask why they need it, what it will be used for, what law requires that the SSN be provided, what happens if a person doesn't give it. Do not use it as your drivers license number. Beginning in January 2005 a person or entity shall not make an individual's social security number available to the general public, print an individual's SSN on a card required to receive products or services, require the transmission of a SSN over the internet unless the connection is secure, require the use of a SSN to log onto a website unless a password is also required, or print an individual's SSN on materials that are mailed to them unless required by law (A.R.S. § 44-1376).

Be wary of credit bureaus, which can cross reference Social Security numbers as well. A recent problem just came to our attention that credit bureaus will often cross-reference the name of the former spouse and put the new address on the former spouses credit rating. Thus an abuser who requests his own credit record might get the new address of the ex-spouse.
More information can be found at http://www.ssa.gov/press/domestic.

Filing a Complaint Against a Shelter, a Judge, a Prosecutor, a Lawyer, Police Officers or AzCADV

The failure of police, attorneys, and judges to respond properly in cases of violence against women often results in dangerous, even deadly, situations for abused women. Advocates work to change the system as well as work to empower the individual in the system. Thus complaints should be made about improper behavior. That is the only way change will occur.

To make a complaint about a shelter program funded by DES, first submit a written complaint to the shelter director; if that does not resolve it, submit the complaint to the executive director; if that does not resolve it, submit it to the board president; if that does not resolve, submit it to DES (Laura Guild, 602-542-6600). If the shelter or program is not funded by DES, follow all the same steps except submitting the complaint to DES. If you can find out who the major funder of the shelter or program is, go to that funder instead.

To complain about a police officer, first find out who his/her superior officer is and send a letter. As in all legal procedures, be sure to keep a copy. If that does not obtain results, send another letter to the police chief. If that does not get results, send it to the mayor of the city or town. If there are still no results, go to the media. A complaint could also be made to the Arizona Police

Officers Standards and Training Board (POST), which is the police certification board for all of Arizona. Their address is 2643 E University Drive, Phoenix, AZ 85034. The telephone number is 602-223-2514.

To complain about an attorney, the Arizona State Bar has a disciplinary committee, a fee arbitration panel, and an ethics board. To file a complaint call them at 602-252-4804 and ask for a complaint form or simply write a letter to State Bar of Arizona, 111 W Monroe, 18th floor, Phoenix, AZ 85003. To find out if an attorney has previously been disciplined, check http://www.aba.org.

A prosecutor is an attorney and a complaint can be made through the Bar. S/he is also a city or county employee, and a complaint can be made by finding out her/his supervisor and submitting the complaint through the chain of command: the supervisor, the county attorney, and the county board of supervisors; if no action is taken, go to the media.

To file a complaint against a judicial officer call 602-542-5200 to get a complaint form or send the complaint to the Judicial Qualifications Commission, 1501 W. Washington St., Suite 229, Phoenix, AZ 85007.

To file a complaint against AzCADV, go to our website at www.azcadv.org and find the external grievance form and procedures. It will tell you how to file the complaint and where to file it.

When a system player does do a good job protecting the victim, it is always appropriate to write thank you letters as well.

Obtaining Court Files

A person who wishes to obtain records from their court file may do so using the following steps: Contact the filing center at (602) 506-3360. The filing center can track a file to help determine at which location the file is kept. Once a person has determined where the relevant file is located, they may travel to that facility to examine the file.

As of June 11, 2001, a new central filing office is open on the lower level at Customer Service Center at 601 W Jackson, Phoenix, Arizona 85003. The majority of files will be stored in the new facility with the exception of those at the Southeast Court Facility located at 222 East Javelina Avenue, Mesa, Arizona 85210-6201. Upon arriving at either facility, the following procedure will assist in obtaining a file:

- Computers are available to assist in determining the file number given to each case by the court system. If a person does not know her/his case number, s/he should proceed to a computer terminal that will perform a search by either name or case number. Assistance with the computers is available at the information station in the filing office.
- Once a person has determined his/her case number, s/he should proceed to the counter where s/he will find orange request forms. An orange request form must be filled out and given to a clerk so that the file can be pulled for review.

- Depending on the age and subject matter of a case, the file could be in standard file form or on microfilm. A file may also be checked out to a judge if a matter is pending in the near future. If a file has been reduced to microfilm, there are microfilm viewers available for examining the file. Assistance with the microfilm viewers is available at the information station in the filing office. If a judge has checked out the file, a return visit at a later date will be required.
- Once the file has been pulled for review, you may examine the contents (or microfilm) within the filing office. Files may not be removed from the office. If copies are needed from the file, a person should paper clip the pages that require copying. In the case of microfilm, the frame number of each document should be noted for the filing clerk who will then make the requested copies. A filing clerk will copy the pages needed for 50 cents per page in the area behind the counter. If a certified copy is needed, the charge is $18.00 per certification. Documents are filed in ascending order with the most recent document on top.
- If assistance is needed for any step in this process, a person may seek help from the customer service counter located in the filing office.

To save time, the Internet can be utilized to determine if a particular document has been filed with the court. A person may log on to www.maricopa.gov. When the homepage is up, click on "case history." A search may then be performed by either a first and last name or by case number. When the relevant case has been located, click on the box with the case number printed in it and a list of documents in the file will appear. This site is usually a week or two behind in updating what has been filed.

Determining When A Hearing Has Been Scheduled

To determine whether or not a hearing has been scheduled, you may do one of the following: In general, when a hearing is scheduled in a specific case, notice will be given in writing to all of the parties to the lawsuit via U.S. mail. It is important for parties in a lawsuit to notify the court if there has been a change of address to ensure receipt of such notices. Victims of violence can give the court a safe address such as a P.O. box or a work address or must let them know that the address should not be released to the other party. However since mistakes happen, a safe address is better.

A person may also utilize the Internet by logging on to www.maricopa.gov. When the homepage is up, click on "court calendar." Choose a start date near the date it is believed a hearing may have been scheduled. Choose either one day or one week for the period of time in which you wish to search. Choose a division of the court if you know which division the case is in or leave "all" selected, which will check all of the divisions at one time. Click on the enter button and a list of all judges will appear. Locate the judge in the relevant case and click on his or her division number. A list of hearings for that period of time will appear. A person can then click on their particular hearing for more information.

The judge's office or court administration may also be contacted directly by telephone. The court administrator or the judge's assistant can provide information regarding any upcoming hearing in

a particular case. The court's information line where numbers for court administration and specific judges can be ascertained is (602) 506-3100/3204. When telephoning administration or a judge's office directly, it is best to have the case number ready for speedy assistance.

Waiver of Court Fees

Arizona law requires the court to charge fees and costs when a person files certain court papers and/or needs court services. There are various fees charged for different kinds of cases, depending on what you want or need to do. You can find out the exact fees and costs that are charged for any particular matter by calling the Clerk of Court at 602-506-6185. The most common events for which fess are charged are:

- To file a Complaint, Petition, Answer, or Response to a new case;
- To file a post-decree Petition or Response in a Family Court case, for example to enforce or modify a court order for child support, custody, or visitation;
- For the issuance by the Clerk of Court for a Summons or Subpoena;
- For service of process or costs of service by publication;
- To get a copy or a certified copy of any court order or judgment or paperwork;
- To file an appeal

Usually the person who wants to file a certain court document, or who wants a certain court service, must pay the fees at the time of the filing or service is done. At the end of the court case the judge might order that one or the other party pay all the costs and fees associated with the case, or part of the case. This means the party who is ordered to do so must pay back the other party who already paid court fees. If you are handling your own court case, be prepared to pay various fees and costs along the way.

However, sometimes a party cannot pay the court fess at the time of filing court papers or asking for court services. If this is the case, the party can apply for a **deferral** or **waiver** of court costs and fees.

- A **waiver** means that the party does **not** have financial resources to pay now, and will not be able to do so in the futures. As a general rule, waivers are only given at the end of a case. The only time you can get a waiver at the beginning of a case is if you are filing for an Injunction against Harassment.
- A **deferral** means that even though the party cannot pay now, he or she may be able to pay in the future. Because you may be able to pay in the future, in most cases, you will get a deferral rather than a waiver. This is because everyone needs to bear his or her fair share of the court costs. If at the end of your case, you meet the financial criteria and still cannot pay your court fees, you can ask the Court to waive or further defer your court fees and costs.

To apply for a deferral you must complete the court paperwork for the "Application for Deferral of Court Fees and/or Costs" and "Consent to Entry of Judgment" along with the court papers you want to file for whatever court proceeding you are involved with (forms are available on the Maricopa County Superior Court website at http://www.superiorcourt.maricopa.gov/index.asp,

under the Self-Service Center, Misc. Info section. For other counties see the Supreme Court website at http://www.supreme.state.az.us/nav2/selfserv.htm).

Do not sign the Application until you get to the Filing Counter at the Court. Sign the original Application in front of the Clerk and give the papers to the Clerk. The Special Commissioner will usually decide whether to grant the Application or not, depending on the information if the Application. Sometimes the paperwork will be sent to a judge to review and decide.

The court recommends you file the Application in person, unless you have a medical or other good reason why you cannot appear in person. However, you can mail the application, if necessary, to the Clerk of the Court, 201 West Jefferson, Phoenix, AZ 85003, if in Maricopa County. If you mail the application, it must be notarized. The Special Commissioner will review your application, determine if you qualify and notify you as to whether you qualify for a deferral or waiver.

If the Application is granted, file the court papers for the court process you are involved with. If the Application is denied, you must pay the fee or costs. If you do not agree with the Court's decision, you can request a hearing in front of a Judge.

Obtaining Public Records

The following is a sample letter you can use to obtain public records.

{Letterhead}

{Date}

Attention: FOIA Officer or Records Manager
Family Court
{COURT ADDRESS}

Re: Freedom of Information Request

Dear FOIA Officer:

Under the Freedom of Information Act (FOIA), 5 U.S.C. subsection 552, and under Title 39 of the Arizona Revised Statutes, the Requestor is requesting access from **{NAME OF COURT/CLERK}** to the following material:

Here list specifically the records you want including dates.

As you are already aware, educational institutions, representatives of the news media, and non-commercial scientific institution requesters must pay for duplication only, and may not be charged for the first 100 pages. (See 47 C.F.R. § 0.470(a)(2) and (b)(1)).

The requester is "an educational or non-commercial scientific institution." The requester provides education and public awareness on issues of domestic violence, and serves as a focal point for service providers and a resources for the general public. The requester advocates effective public policy and provides its members with essential news, information, support and services, thereby meeting the definition of an educational institution. Therefore, the Requestor is only required to pay duplication costs after 100 pages. IF APPLICABLE

If there are any duplication cost for copying the records, please supply the records without informing me of the cost if the fees do not exceed $200, which I agree to pay. If costs exceed $200, please contact me for direction.

The Freedom of Information Act requires this agency to decide within twenty working days whether to comply with a FOIA request. The undersigned acknowledges that a breach of this deadline, barring exceptional circumstances, may be addressed before a federal court.

If you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify the Requestor of appeal procedures available under the law.

For more information look at http://www.justicewomen.com/how_to_english.html
(there is an underline between “how” and “to” and between “to” and “English”. Or same address only replace “english” with “spanish”.

SECTION NINE: RESOURCES

Resources for Legal Assistance for Victims of Domestic Violence

Brief Consultations–Family Law:

Family Lawyers Assistance Project (FLAP) 602-506-7948
201 W. Jefferson, Phoenix, 6th floor in Superior Court Building.

- Brief consultations (½ hour) with volunteer attorney.
- Some emergency consultations possible on standby.
- Can return as needed for additional consultations.
- Free for people with low incomes or $25 per visit for those with higher incomes.
- Attorneys volunteer and do not receive payment.
- Appointments in Phoenix Monday thru Thursday during court hours.
- Limited consultations are available in the East Valley on Thursdays only at the Southeast Court facility at 222 E. Javelina, Mesa, on a first come -- first seen basis.

Lawyer Referral Service (LRS) 602-257-4434
303 E. Palm Lane, Phoenix AZ, 85004 602-257-0522(fax)

- Maricopa County Bar Association
- Appointments for half-hour consultations at attorney's office.
- Can request an attorney who does family law.
- Service charge is $35 for arranging appointment.
- Attorney does not receive payment for consultation.

Brief Consultations–other issues, not family law:

Lawyer Referral Service (LRS) 602-257-4434
303 E. Palm Lane, Phoenix AZ, 85004 602-257-0522(fax)

- Maricopa County Bar Association
- Can request an appointment with an attorney who practices in a specific area of law such as landlord-tenant, consumer, etc.
- Service charge is $35 to arrange a half hour consultation

Resources for Direct Representation on Family Law Issues

Community Legal Services (CLS) 602-258-3434 or 1-800-852-9075
305 S. 2nd Avenue, Phoenix AZ, 85036 602-254-3258(fax)

- Advice, workshops and representation for people with low incomes.
- Eligibility based on income, citizenship status (citizen, permanent legal resident, and some other categories – not temporary or undocumented).
- For representation, the focus is on people in imminent danger due to domestic violence who have a paternity or divorce case where custody of minor children is in dispute, especially if the abuser has hired an attorney.

- Call Mondays between 9 and 11 and request eligibility screening for representation.
- Call Tuesdays between 9 and 11 for information about divorce workshops or brief help with paternity issues.

Volunteer Lawyers Program (VLP) **602-258-3434 or 1-800-852-9075**
305 S. 2nd Avenue, Phoenix AZ, 85036 **602-254-3258(fax)**

- Screens and refers victims of domestic violence to private attorneys, who donate their services. Limited numbers of volunteer attorneys.
- Income and citizenship eligibility standards are the same as for Community Legal Services.
- Eligible clients can be referred to VLP by CLS if CLS cannot assist.
- Call Monday, Tuesday, Thursday or Friday between 1:30 and 4:30 P.M. for eligibility screening.

Private Attorneys

- Recommendations from family, friends, other survivors, or advocacy groups are useful in finding an attorney.
- Some survivors are able to obtain help from family members, and occasionally from churches and other sources, to pay for attorneys.
- Discuss and have in writing any agreements about fees to be paid.

Books

Alcohol and other drugs are associated with violence – they are not its cause by R.J.Gelles in *Current controversies on family violence* edited by R. J. Gelles and D. R. Loseke

Assessing Woman Battering in Mental Health Services by Edward W. Gondolf

A battered woman's problems are social, not psychological by L. H. Bowker in *Current controversies on family violence* edited by R. J. Gelles and D. R. Loseke

Battered women: strategies for survival by K. Ferraro in *Violence between intimate partners* edited by A. Cardarelli

Disorder in the courts: Judicial demeanor and women's experience seeking restraining orders by J. Ptacek in *Dissertation Abstracts International, 56, 1137 (1995).*

Education Groups for Men Who Batter: The Duluth Model by Ellen Pence and Michael Paymar

Ending the Cycle of Violence: Community responses to children of battered women: edited by Einat Pele, Peter G. Jaffe and Jeffrey L. Edleson

Getting Free: You can end abuse and take back your life by Ginny NiCarthy

It Could Happen to Anyone: Why battered women stay by Ola W. Barnett and Alyce D. LaViolette

Next Time She'll Be Dead: Battering & how to stop it by Ann Jones

A risk marker analysis of assaulted wives by G. T. Hotaling and D. C. Sugarman in the *Journal of Family Violence, 5: 1-13*

Safety Planning with Battered Women: Complex lives/difficult choices by Jill Davies, Eleanor Lyon and Diane Monti-Catania

Talking It Out: A guide to groups for abused women by Ginny NiCarthy, Karen Merriam and Sandra Coffman

The Verbally Abusive Relationship: How to recognize it and how to respond by Patricia Evans

Violence against wives: a case against patriarchy by R.E. Dobash and R.P. Dobash

Violence in marriage: Until death do us part? by A. Browne in *Violence between intimate partners* edited by A. Cardarelli

When Love Goes Wrong: What to do when you can't do anything right. Strategies for women with controlling partners by Ann Jones and Susan Schechter

When Violence Begins at Home: A comprehensive Guide to Understanding and Ending Domestic Violence by K.J. Wilson, Ed.D.

Women and male violence: The visions and struggles of the battered women's movement by Susan Schechter

Women Who Kill by Ann Jones

Working for change: The movement against domestic violence by H. McGregor and A. Hopkins

Programs

The American Bar Association
Domestic Violence Commission
740 15th St. NW, 9th Floor
Washington, DC 20005
202-662-1737
202-662-1594(fax)

Battered Women's Justice Project
800-903-0111, 717-671-5542(fax)
bwjp@bwjp.org

Center for the Prevention of Sexual and Domestic Violence
(Special service for religious leaders.)
2400 N 45th ST #10
Seattle, WA 98103
206-634-1903
206-634-0115
www. CPSDV.org; CPSDV@CPSDV.org

Communities Against Violence Network
2711 Ordway St., NW #111
Washington, DC 20008
http://www.cavnet2.org

Domestic Abuse Project
204 West Franklin Avenue
Minneapolis, MN 55404
612-874-7063
1-800-793-5975
612-874-8445(fax)
www.mndap.org

EMERGE (Program for Batterers)
2380 Massachusetts Ave #101
Cambridge, MA 02141
617-547-9879
EMERGEDV.com; info@emergedv.com

Family Violence Department of the National Council of Juvenile and Family Court Judges
PO Box 8970
Reno, NV 89507
775-784-6012
800-527-3223, 800-52PEACE
775-784-6628(fax)
http://www.nationalcouncilfvd.org
info@dvlawsearch.com

Family Violence Prevention Fund
383 Rhode Island Street, Suite 304
San Francisco, CA 94103-5133
415-252-8900
415-252-8991 – Fax
www.fvpf.org; fund@endabuse.org

Family Violence & Sexual Assault Institute
6160 Cornerstone Ct. East
San Diego, CA 92121
www.FVSAI.org; fvsai@alliant.edu

Mending the Sacred Hoop, National Training Project
936 N. 34th St #200
Seattle WA 98103
206-634-1903
206-634-0115 -- FAX

National Center for Victims of Crime
2000 M. St. NW Ste 480
Washington, DC 20036
202-467-8700
202-467-8701 – Fax
www.ncvc.org

National Clearinghouse for the Defense of Battered Women
125 South 9th Street, Suite 302
Philadelphia, PA 19107
215-351-0010
215-351-0779 -- Fax

National Coalition Against Domestic Violence
PO Box 18749
Denver, CO 80218-0749
303-839-1852
303-831-9251(fax)
www.ncadv.org; policy@ncadv.org

National Crime Victim Bar Association
Jim Ferguson
2000 M St, NW #480
Washington, DC 20036
202-467-8753
202-467-8710(fax)
victimbar@ncvc.org; www.victimbar.org

National Domestic Violence Hotline
PO Box 161810
Austin, TX 78716
800-799-SAFE – Crisis (800-799-7233)
800-787-3224 – TTY Crisis
512-453-8117
512-453-8541
www.NDVH.org; ndvh@ndvh.org

Never Again Foundation
480-539-9111
PO Box 893

Gilbert, AZ 85299
Civil Suits for victims of violence
www.neveragainfoundation.org
info@neveragainfoundation.org

National Network to End Domestic Violence
660 Pennsylvania Ave SE #303
Washington DC 20003
202-543-5566
202-543-5626 – FAX
nnedv@nnedv.org

National Organization for Victim Assistance (NOVA)
1730 Park Road, NW
Washington, DC 20010
202-232-6682
202-462-2255 – Fax
800-TRY-NOVA – Crisis (800-879-6682)
nova@access.digex.net
www.try-nova.org

National Resource Center on Domestic Violence
6400 Flank Drive, Suite 1300
Harrisburg, PA 17112-2791
800-537-2238
717-545-9456 – Fax
800-553-2508 – TTY

National Training Center on Domestic Violence and Sexual Violence
7800 Shoal Creek Blvd., Ste. 120-N
Austin, Texas 78757
512-407-9020
512-407-9022 – Fax
www.ntcdsv.org

Pennsylvania Coalition Against Domestic Violence
6400 Flank Drive, Suite 1300
Harrisburg, PA 17112
800-932-4632
717-545-6400
717-671-8149(fax)
www.pcadv.org

Police Abuse complaints
gslate@policeabuse.com
850-894-6819
FAX 202-318-8158

Sexual Violence Resources Center
http://www.fvpf.org

Violence Against Women Office
Department of Justice
633 Indiana, NW, Room 446
Washington, DC 20531
202-307-6015
202-307-2019 – Fax
askvawo@ojp.usdoj.gov
www.ojp.usdoj.gov/wavo

Violence Against Women Net
http://www.vawnet.org

When the abuser is a law enforcement officer
http://www.life-span.org
life-span@life-span.org
Jefferson Park Office
4849 N Milwaukee Ave #306
Chicago IL 60630
773-777-8031
773-777-8138(fax)

Center for Legal Services and Advocacy
20 E Jackson Blvd #500
Chicago Il 60604
312-408-1210
FAX 312-408-1223

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