

# Self-Help Legal Manual

for Survivors of Domestic Violence,  
Sexual Violence and Stalking



Ohio Domestic Violence Network  
Ohio Poverty Law Center  
Ohio Alliance to End Sexual Violence

Updated 2016

# Self-Help Legal Manual for Survivors of Domestic Violence, Sexual Violence and Stalking



The comprehensive resource on domestic violence

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Special thanks to Becky Mason, ODVN for proofing, and  
to attorneys Emily Crabtree, Darla Character Johnson, Tanya Linetsky, Amy  
Roehrenbeck, Sarah Schregardus, Inna Simakovsky for consultation and research.  
Front cover designed by Clay and Stan.

## **About This Manual**

This manual was developed by the Ohio Poverty Law Center and the Ohio Domestic Violence Network, with partners at the Ohio Alliance to End Sexual Violence, and private attorneys Micaela Deming (Columbus, Ohio) and Melanie GiaMaria (Cleveland.) It was only able to be created because of the generous financial assistance of the **Ohio State Bar Foundation**. The views expressed herein do not necessarily represent those of the Ohio State Bar Foundation.

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### How this Manual Is Organized

This manual begins with an introduction that covers how to find an attorney, information on domestic violence, sexual assault and stalking, and how to find an advocate. From there, legal topics are listed in alphabetical order.



# INTRODUCTION

## In this section:

- Language
- How to Find an Attorney in Ohio
- Pitfalls and Perils of Representing Yourself
- Getting Support & Safety Planning
- How to Find an Advocate

***This manual does not provide legal advice, and is not a substitute for legal advice.***  
*It provides legal information, but only your own attorney can give you specific legal advice that accounts for all the facts and circumstances in your individual case.*  
*The information contained here is current as of September 2013. Please copy and share.*

## Language

We use different words in this manual to describe people, forms of violence and other things. These are not the legal definitions of these terms; here is what we mean by them:

- **Victim/survivor** – a person who has been battered, abused, raped, sexually assaulted, stalked, threatened, psychologically abused, or controlled
- **Abuser/perpetrator/offender** – a person who committed battering/abuse/domestic violence, sexual violence, or stalking against you and/or your children
- **Battering/abuse/domestic violence** – acts by a partner or family member using threats, violence, stalking, sexual assault, psychological abuse, or control
- **Sexual violence** – acts by a stranger, friend, acquaintance, co-worker, or partner/former partner to force or get you to have unwanted sexual contact or exposure to sexual activity or pornography; voyeurism; sexual harassment; threats of sexual violence; taking nude sexual photographs without consent or knowledge, or of a person unable to consent/refuse (adapted from the Centers for Disease Control)
- **Stalking** – acts by a stranger, friend, acquaintance, co-worker, or partner/former partner to create unwanted contact, and may include following, watching, monitoring, entering your home when you are gone, and using technology to watch your activities
- **Criminal matters** – cases filed, typically through a prosecutor in municipal or common pleas court, which may involve a jail sentence, fine, and probation or parole (post release control)
- **Civil matters** – cases filed by a party with an attorney or on their own, which typically involve orders to settle issues such as custody, housing, etc., and which do not involve a penalty such as jail (unless the person violates the Court orders)
- **ORC** – Ohio Revised Code, the statutes in Ohio which are available at: <http://codes.ohio.gov/orc/>

## How to Find an Attorney in Ohio

We begin this Self-Help Legal Manual with a section on How to Find an Attorney, ***because it is always best to have an attorney in your legal case.*** The law is a very complex web of statutes, rules, and case law. It is impossible for the average person to know and keep up with the frequent changes in all of these areas of law. It is often essential to have an attorney who can interpret the law and advise you.

And certain trial skills and knowledge of evidence are required to effectively present or defend a legal case at a trial or court hearing. Be sure you have explored **every option** to find an attorney.

**Finding an Attorney to Pay** - If you can afford an attorney, get attorney names from someone you trust. In Ohio, there is also a telephone lawyer referral service in each major metropolitan area. For a listing of lawyer referral services in Ohio, go to the Ohio State Bar Association website at [www.ohiobar.org](http://www.ohiobar.org) or check the yellow pages. You can also call your local domestic violence or rape crisis program for names of attorneys who assist victims in your community. In addition to paying an attorney directly, their fees may be paid other ways:

- **“Contingency” or “Fee Shifting” basis** - An attorney may take your case on a “contingency fee” basis, where she or he only gets paid if you win your case, with money damages recovered from the opposing party. (Contingency arrangements cannot be used in divorce cases or criminal cases.) If your case involves a “fee shifting” statute (such as many consumer protection and civil rights cases), the court may – or must - order your opposing party to pay your attorney’s fees.
- **Payment Plan, Using Assets from Your Case** - Some attorneys will let you pay them on a payment plan, or with assets that you may get at the end of a case such as cars, homes, etc.

**Evaluating an Attorney’s Qualifications** - Consider factors such as:

- attorney fee arrangements
- level of experience and whether the attorney specializes in the area of law you need
- level of expertise with domestic violence, sexual violence or stalking
- whether your attorney previously represented or advocated for certain parties, such as plaintiffs or defendants, men or women, landlords or tenants, consumers or businesses, etc.
- whether the attorney knows the local judges, court personnel, or other key players in the local court system or relevant government agencies
- If the attorney has been in trouble. You can check disciplinary records at the Supreme Court’s website:  
[www.supremecourt.ohio.gov/AttySvcs/AttyReg/Public\\_AttorneyInformation.asp](http://www.supremecourt.ohio.gov/AttySvcs/AttyReg/Public_AttorneyInformation.asp). Enter the attorney’s full name, when their record appears, click on their Registration Number, then click on the Discipline or Sanction History button.



*Note: If you do retain an attorney, insist on getting a signed fee agreement and read it carefully, because it is a binding contract. Also, insist on getting monthly statements showing what has been billed against any retainer, and so that you can track what you owe the attorney.*

**Free Consults** - Some attorneys will consult with you once for free to evaluate your case. Even if you cannot hire an attorney, you may be able to find someone who will at least consult with you about your case once and provide helpful guidance about next steps.

**Legal Aid** - If you have low income, you may qualify for free legal assistance. Legal aid programs handle only certain types of cases because of their limited resources and case priorities. For contact information for your local legal aid program or office, call 1-866-LAW-OHIO (1-866-529-6446), or go to the “public area” of the Ohio Legal Services website at: <http://www.ohiolegalservices.org/programs>. If you are an indigent defendant in a criminal case or an indigent parent in a child abuse, neglect or dependency case filed by children’s services, **you are entitled to a court-appointed** attorney. You can



find this out by looking at your Court papers or asking the court. Make sure to ask the court for the attorney at your first opportunity; don't wait until your first court appearance.

**Court Appointed Attorneys** - If you are a defendant in a criminal case or a parent in a child abuse, neglect, or dependency case filed by children's services, and you cannot afford an attorney, ***you may be entitled to a court-appointed*** attorney. You can find this out by looking at your Court papers or asking the court. Make sure to ask the court for the attorney at your first opportunity; don't wait until your first court appearance. In child abuse, neglect and dependency cases, you are entitled to and should generally ask for your own attorney - not the same attorney who is representing the other parent.

**Bar Associations** - In larger cities, your local bar association may operate a volunteer (free) lawyer project. To find the closest bar association, go to: [www.ohiobar.org](http://www.ohiobar.org).

**Crime Victims Compensation (CVC) for Protection Order Cases** - The CVC program in Ohio—under specific conditions—can pay your attorney fees for Protection Orders. For more information, see the Finances and Money section of this manual, and page 32 of Picking up the Pieces, which you can access at: <http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Victims/Crime-Victims-Publications/Picking-Up-the-Pieces-A-Guide-to-Helping-Crime-Vic>

**Law School Clinics** - (guidelines and priorities may change; contact them for current information)

<b>Allen and Hardin Counties</b>	<b>Ohio Northern University</b> (419) 227-0061	Help with family law cases (divorce, etc.) For details: <a href="http://www.law.onu.edu/academicsclinical-programs">www.law.onu.edu/academicsclinical-programs</a>
<b>Akron</b>	<b>University of Akron</b> (330) 972-7462	Help with expungement, clemency, Certificate of Qualification for Employment. For details: <a href="http://www.uakron.edu/law/clinical/cqe-clinic.dot">www.uakron.edu/law/clinical/cqe-clinic.dot</a>
<b>Cleveland</b>	<b>Case Western Reserve</b> (216) 368-2766	Help with contractor disputes, debt collection, Social Security appeals, criminal defense. For details: <a href="http://www.law.case.edu/clinic/">www.law.case.edu/clinic/</a>
<b>Cleveland</b>	<b>Cleveland Homeless Legal Assistance Program</b> (216) 432-0543	Located in day and overnight homeless shelters, clinics provide legal help and advice with family law, housing, expungement and public benefits issues. For details: <a href="http://www.neoch.org">www.neoch.org</a>
<b>Columbus</b>	<b>Capital University Law Clinic</b> (614) 236-6779	Help with Protection Orders, divorce cases involving domestic violence and no children, contested custody cases involving domestic violence, criminal defense (misdemeanors), tenant rights issues. They don't handle post decree cases. For details: <a href="http://www.law.capital.edu/legal_clinic/">www.law.capital.edu/legal_clinic/</a>
<b>Columbus</b>	<b>CRIS Refugee and Immigration Services</b> (614) 840-9634	Help with Immigration cases.
<b>Columbus</b>	<b>Ohio Hispanic Coalition</b> (614) 840-9934	Free legal consultation on immigration issues, Mondays except holidays, 5:30pm to 7:00pm at the Ohio Hispanic Coalition Cultural and Educational Center, 3556 Sullivant Ave. First come, first served.
<b>Cincinnati</b>	<b>University of Cincinnati</b> (513) 241-9400	Assistance with Civil Protection Orders. For details: <a href="http://www.law.uc.edu/institutes-centers/rgsj/dvcpc/about">www.law.uc.edu/institutes-centers/rgsj/dvcpc/about</a>
<b>Dayton</b>	<b>University of Dayton</b> (937) 229-3817	Help with misdemeanor criminal defense, civil matters, some family law. For details: <a href="https://www.udayton.edu/law/academics/clinics/civil-law-clinic.php">https://www.udayton.edu/law/academics/clinics/civil-law-clinic.php</a>
<b>Toledo</b>	<b>University of Toledo</b> (419) 530-4236	Child custody, child support and other domestic violence-related issues, housing, immigration, social security, contracts.

**Ohio Domestic Violence Network** - If you are a victim of domestic violence, stalking or sexual assault (by a partner or a non-partner), you may be able to get a private attorney through the Ohio Domestic

Violence Network's (ODVN) Legal Assistance to Victims program. To seek legal assistance from ODVN, contact your local domestic violence or rape crisis program to see if you are eligible.

## Pitfalls and Perils of Representing Yourself

You may be able to successfully navigate the legal system on your own and win your own case without having to hire or pay for an attorney. But in many situations a good attorney can make a huge difference in the outcome of your legal case. It is usually wise to explore any existing avenues for obtaining legal advice or representation from an attorney before deciding to proceed **pro se** (without legal representation) in your legal case. Lawyers understand both the law and court procedures, rules of evidence and how to navigate the legal system. Non-lawyers may find themselves filing the wrong papers, missing court deadlines, unable to get key evidence admitted at a court hearing, or misunderstanding the law. Sometimes, laws must be interpreted because a statute is complicated or ambiguous or has never been applied to a particular set of facts. Also, some laws cannot be found in Ohio or federal statutes because such laws are judge-made law, created by court decisions. Judge-made law is often referred to as the "common law" or "case law."

## Getting Support & Safety Planning

Domestic violence, sexual assault and stalking are all acts that can create both trauma and danger for the victim/survivor. Trauma can affect us in many ways, such as how we think, feel and behave. And, it can affect our physical health. Being involved in a legal process with the person who inflicted harm or trauma on us can be difficult. The court process can be a time of higher danger, too.

**Danger in Domestic Violence Cases** - Any domestic violence situation can be dangerous, and can get more dangerous if your abuser believes you are ending the relationship. Here are some known indicators of high danger:

- You have started thinking about, planning to, or are taking steps to end the relationship
- Your abuser is depressed; higher risk if the abuser has talked about or attempted suicide
- Your abuser has a history of threats to seriously harm or kill
- Your abuser is stalking you
- Your abuser has access to weapons, especially guns or has previously used weapons against you
- Your abuser has a history of causing serious injury, strangulation/choking
- Your abuser has an issue with alcohol, drugs, or mental illness
- Your abuser has been able to avoid getting in trouble for the violence, for example, contact with police, courts, protection orders, etc. with no consequences
- Your abuser has a history of injuring or killing pets
- You feel you are in danger. Even if the person abusing you has never done any of these things, if you feel afraid they will seriously hurt or kill you, listen to your intuition

**Safety Plans** - If you are going through any legal process after being battered, sexually assaulted or stalked, it is important that you have a **safety plan**. As your legal case goes on, your situation may get more dangerous for a while. A safety plan is a specific plan you make and update with the help of an advocate to help you manage risks from your abuser in all parts of your life – where you live, work, go to school, your children's school/daycare, etc. Your safety plan also helps you develop allies – people you can turn to if you find yourself in danger. Also, a bigger safety plan helps address other things you might encounter as you get back on your feet and recover from what has happened to you. This part of your safety plan should help you find resources for other issues you may be facing, like the need to find child



care, food, housing, employment, credit repair, public benefits, interpreters, support to get or stay sober, job training, and more.

**Safety at Court** - if you will be entering and leaving court buildings where your perpetrator will be, it is important for you to plan for safety on those days. Some suggestions for safety at court:

- Bring a support person and an advocate if you can
- Ask that the perpetrator be required to stay 15 minutes so that you can leave safely
- Ask for a Bailiff or security officer to escort you in and/or out of the building
- Ask to wait in a separate waiting area from the perpetrator and his or her people
- If the Court has no metal detector and you have reason to fear your perpetrator is armed, consider asking that a security officer search the perpetrator
- Wear sensible shoes so that if you have to hustle to safety, you can
- Have a plan with your advocate/support person to meet after court and re-evaluate your safety plan based on what happened at court, and to also get support

## How to Find an Advocate

To find a domestic violence program, call the **Ohio Domestic Violence Network at 800-934-9840** (v/tty) or go to: [www.odvn.org](http://www.odvn.org), then Information for Survivors, Ohio Program List.

To find a rape crisis program, call the **Ohio Alliance to End Sexual Violence at 888-866-8388** or go to: [www.oaesv.org](http://www.oaesv.org), Resources, then click Directory of Services.



## Civil Protection Orders



### In this Section

- Types of Protection Orders
- How Protection Orders Can Help
- Enforcement of Protection Orders
- Criminal Cases and Civil Protection Orders
- Domestic Violence Protection Orders
- Stalking Protection Orders
- Sexually Oriented Offense Protection Orders
- Juvenile Civil Protection Orders
- Protection Order Process
- Cross or Retaliation Petitions

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## Types of Protection Orders

You may hear people talk about “Restraining Orders.” These are *not* the same as protection orders. Restraining Orders are usually part of a divorce case, are not enforced by the police, and have little value in a dangerous situation. Read the terms carefully if you receive one.

There are different kinds of **Protection Orders** available to victims of domestic violence, sexual assault and stalking. Depending on who the perpetrator is, what happened, and other factors, there are differences in where, when and how you seek these orders, what they do, and how long they last. The charts below provide basic information on each, and then detailed information follows. Ohio has jurisdiction over these cases as long as some of the acts occurred in Ohio, regardless of where the

perpetrator lives. In Protection Order cases, the person who files the motion for the Protection Order is the **“Petitioner”** and the accused perpetrator is the **“Respondent.”**

**Considering Filing a Protection Order: Things to Consider** - Protection orders are often promoted as *the* solution for every situation. You should consider if a protection is right for you. Know that:

- If you are a victim of domestic violence, filing for a protection order makes a statement that you intend to end the relationship, at least for now. That may increase danger for the short term.
- If you are a LGBTQ survivor, filing for a protection order may make your sexual orientation public. Do you risk other losses, such as your job or custody of your children if your sexual orientation or gender identity is made public?
- If you are not sure what to do or have questions, talk with a domestic violence or sexual assault advocate.

### Types of Protection Orders

Type of Order	Who Can File for One:	Court*	Based on:
<b>Domestic Violence Civil Protection Order –</b> up to 5 years, can be renewed**	Family or household members including : <ul style="list-style-type: none"> <li>• Spouses, former spouses</li> <li>• Parent, child, foster parent</li> <li>• People who have kids together</li> <li>• Intimate partners who lived together in the last 5 years</li> <li>• Same sex couples are eligible</li> </ul>	Domestic Relations Court – where victim lives, where abuser lives or has a business, or where incident(s) occurred	Causing or trying to cause injury or placing someone in fear of imminent serious harm (Courts use different requirements for how recent the incident must be)
<b>Stalking Protection Order -</b> up to 5 years, can be renewed**	Any person who is a victim of stalking. No relationship with stalker is required.	Common Pleas Court - where victim lives (if family or household member, can be filed as DV Protection Order, see above)	Pattern of conduct (2 or more events), closely related in time, that cause distress or make a victim believe the stalker will cause harm
<b>Sexually Oriented Offense Protection Order -</b> up to 5 years, can be renewed**	Any person who was a victim of a sexually oriented offense (see ORC 2950.01). No relationship with offender is required. Case does not have to be criminally prosecuted.	Common Pleas Court – where victim lives	Sexual assault or unwanted sexual contact (see ORC 2950.01)
<b>Juvenile Protection Order –</b> until abuser reaches age 19	Victim of abuse by a person who is under age 18, or the victim’s parent or other household member, or other parties the Court approves.	Juvenile Court – where victim lives	Assault, stalking, sexual offenses, threats of harm or aggravated trespass

\* Some Common Pleas courts assign all protection orders to their Domestic Relations Judges. Some smaller communities do not have separate divisions of their court. Ask your Clerk of Courts for help on where to file. Make sure you file in the correct Court to avoid having a court rule that they do not have jurisdiction in your case.

**\*\* Renewing a Protection Order:** In some courts, new violence or threats are required to renew or extend a protection order. Sometimes, the order can be renewed based on your continued fear of the abuser. A combination of past violence and recent threats of future violence should be enough for the court to renew the CPO. *A motion/petition to renew your order should be filed before the expiration date of the original one.*

## How Protection Orders Can Help

Type	Courts Can Order Respondents:
<b>Stalking Protection Orders</b>  <b>*and*</b>  <b>Sexually Oriented Offense Protection Order</b>	<ul style="list-style-type: none"> <li>To not harm or try to harm, follow, threaten, stalk, harass, or force sexual relations</li> <li>To turn over keys and garage door openers to the victim</li> <li>To stay away from the victim and/or to have no contact with the victim by phone, fax, email, voice mail, etc.; order can specify 500 feet away, or another distance</li> <li>To not enter the victim's residence, school, business or workplace or parking lots of these locations</li> <li>To not interfere with the utilities, insurance, telephone, or mail at the victim's residence</li> <li>To not hide, remove, damage property or pets of the victim</li> <li>To complete counseling or substance abuse treatment</li> <li>To turn over weapons to police, and prohibit future gun access</li> <li>To wear an electronic monitoring device</li> <li>Any other relief the court considers "equitable and fair"</li> </ul>
<b>Domestic Violence Civil Protection Order</b>	<ul style="list-style-type: none"> <li>To not harm or try to harm, follow, threaten, stalk, harass, or force sexual relations</li> <li>To move out of the household (even if the home is leased only in the abuser's name, the court may evict him or her if he or she has any duty to support the victim or the victim's children)</li> <li>To follow temporary child custody and visitation orders</li> <li>To comply with police officers who can also be ordered to help victim get his/her children back or to transfer personal belongings</li> <li>To pay temporary child/financial support</li> <li>To abide by orders setting up temporary use of assets such as a car</li> <li>To turn over keys and garage door openers to the victim</li> <li>To stay away from the victim and/or to have no contact with the victim by phone, fax, email, voice mail, etc.; order can specify 500 feet away, or another distance</li> <li>To not enter the victim's residence, school, business or workplace or parking lots of these locations</li> <li>To not interfere with utilities, insurance, telephone, or mail at the victim's home</li> <li>To not hide, remove, damage property or pets of the victim</li> <li>To complete counseling or substance abuse treatment</li> <li>To turn over weapons to police, and prohibit future gun access</li> <li>Can protect companion animals (pets) that are owned or possessed by the Petitioner.</li> <li>Any other relief the court considers "equitable and fair"</li> </ul>
<b>Juvenile Protection Order</b>	<ul style="list-style-type: none"> <li>To not harm or try to harm, follow, threaten, stalk, harass, or force sexual relations</li> <li>To not enter the victim's residence, school, business or workplace or parking lots of these locations</li> <li>To not hide, remove, damage property or pets of the victim</li> <li>To stay away; to have no contact with the victim by phone, fax, email, voice mail, etc.</li> <li>To turn over weapons to police, and prohibit future gun access</li> <li>To submit to electronic monitoring (under very specific conditions)</li> </ul>

## Enforcement of Protection Orders

Type of Order	Issued	How it is Enforced if Violated
TPO – Temporary Protection Order	As part of a criminal case (prosecution of a crime)	By arrest and prosecution. Penalties increase based on number of convictions for violations. First offense is a maximum sentence of 6 months in jail and \$1000 fine. A second conviction of violating a protection order is a 5 <sup>th</sup> degree felony punishable by up to one year in jail and/or a \$2,500 fine.
Civil Protection Orders (Domestic Violence, Sexually Oriented Offense, Stalking)	In response to a petition for a protection order	Either by a motion for contempt (up to 30 days in jail for first finding of contempt, then increases) <b>and/or</b> by arrest, prosecution and possible jail time. See penalties above for prosecution. You can pursue either or both options.

## Frequently Asked Questions

**Are law enforcement officers required to enforce protection orders?** Yes. The statute requires law enforcement officers to enforce protection orders and to use arrest as the “preferred course of action” if they have reasonable cause to believe that someone has violated a civil or criminal protection order (unless the violator is a juvenile.)

**Are protection orders enforceable statewide?** Yes. Law enforcement officers in any county in Ohio are required to enforce valid civil and criminal protection orders issued in any other county.

**Must Ohio law enforcement agencies and courts enforce protection orders issued by the courts of other states?** Yes. Under the federal Violence Against Women Act (VAWA) Ohio courts must enforce protection orders issued in other states if the other state provided notice and an opportunity for a fair hearing to the abuser.

**Can a victim who obtains a protection order be charged with violating her or his own protection order?** No, the order is directed against the abuser, and not against the victim. Some prosecutors and judges may want to punish a victim if she or he permits or encourages the abuser to have contact in violation of the protection order. In 2003, the Ohio Supreme Court held that a victim who invited her abuser into her home to attend her son’s birthday party after she obtained a CPO against him could not be prosecuted for aiding and abetting his violation of the protection order.

## Criminal Cases and Civil Protection Orders

In any criminal domestic violence proceeding, the victim, or in some cases a law enforcement officer acting on the victim’s behalf, may file a motion for a Criminal Temporary Protection Order (TPO). If the court hearing the criminal case grants the TPO, it will order the defendant to avoid any contact with the victim. Unfortunately, a temporary protection order expires the minute the criminal case ends - when the case is dismissed, the defendant is acquitted, pleads guilty, or is convicted - or upon the issuance of a CPO or Consent Agreement ordered because of the same act of violence/threat.



**IMPORTANT NOTE:** *If you have a TPO and then get a CPO at your first (ex parte) hearing, that cancels out your TPO. If you lose your CPO at the second (full) hearing, then you have no order. It is crucial to understand the possible consequences of filing for a CPO, if you also have a TPO, before the trial.*

Also, if there is a pending criminal prosecution of your perpetrator, your abuser may use the civil case to discover evidence that he or she can use for defense in the criminal case.

## Domestic Violence Protection Orders

### Meeting the Definitions of the CPO Statute

**“Cohabitation”** - For protection orders, “cohabitation” means that two adults are living together in the same household, sharing certain obligations that are like a spousal-type relationship. There is no minimum period of time you have to have lived together (but the longer the period of time, the clearer it is that you cohabited.) There must be a close personal or intimate relationship (usually involving sexual relations) for persons to be “cohabiting” under the law, and there must be:

- a sharing of “familial or financial responsibilities” (includes providing shelter, food, clothing and utilities and commingling (mixing together and sharing) assets, and,

- “Consortium” (includes mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and sexual relations)

**“Immediate and Present Danger”** - Tell the judge (in your petition and your testimony) why you are afraid *at this time* and why you fear or believe that harm is just around the corner if the abuser is not stopped. In addition to describing any recent acts or threats of violence and testifying about fear of immediate physical violence, you can also tell the judge about past acts of domestic violence. Sometimes it is hard to remember everything that has happened, but telling the court the whole history will help them evaluate your need for protection. Think about the *first abuse*, the *last abuse*, and the *worst abuse*. You can also try to remember details by thinking about what season it was, whether it was close to a holiday or birthday, or by asking others to help you remember. Some examples of “immediate and present danger” include situations where:

- the abuser has recently threatened or physically abused a family or household member
- the abuser has been previously convicted of, or pleaded guilty, to domestic violence

Other factors that may persuade the judge to issue the immediate (*ex parte*) CPO include:

- The degree of injury to you in the past and in the present
- The frequency and severity of the current and past violence, and whether it is escalating
- Any threats of retaliation made by the abuser to you or other family/household members
- The use or threatened use of a weapon
- Abuser’s prior criminal history or if there are current charges pending
- Abuser’s use of drugs and/or alcohol, and mental health including suicide threats/acts

*A single threat of imminent serious physical violence, even without a prior history of domestic violence, is sometimes enough to convince a judge or magistrate that the victim faces “immediate and present danger” warranting the issuance of an immediate ex parte CPO.*

## Frequently Asked Questions

**Is there a statute of limitations for filing a Petition for a Domestic Violence Civil Protection Order (CPO)?** - No. The statute does not require that the petition be filed within any certain period of time after the incident. Some courts issue CPOs months or even years after the acts of domestic violence occurred; others require evidence of recent incidents and “present danger” to the victim.

**Can my child(ren) also be protected parties on my CPO?** Yes. Courts can make children part of the CPO if they were directly abused, involved in or harmed during the incident, or if you can convince the court that the abuser’s current or prior behavior poses a risk to your children (for example, if he/she made a threat to kill the whole family, drove intoxicated with the children in the car, etc.)



*Note: There are differences of opinion about whether custody, visitation and stay away provisions of a CPO are legally valid and enforceable if they do not conflict with a custody or visitation order issued in a divorce or juvenile court proceeding, either before or after the CPO.*

A CPO may temporarily change a previous custody or visitation order if the children are named as persons protected by the CPO and there are stay-away or no-contact provisions in the CPO that override the custody or visitation order. If children are included in a CPO and there is a custody order in place, you may have to go back to the original custody case to get a more permanent change of those orders.

If the court refuses to put your children under your CPO because of a standing custody order, you can file an emergency action to suspend visitation at the court that handled your custody case.

**Can pets be included in my CPO?** Civil protection orders can also protect companion animals (pets) that are owned or possessed by the petitioner. The court can also order that the pet be taken from the respondent if petitioner owns the pet. So, you must be prepared to prove that you own the pet or you must have the pet already in your possession. Ownership of your pet may be shown by having the pet license in your name, having vet bills that you paid, or showing other expenses paid by you for the pet

## Stalking Protection Orders

### Meeting the Definitions of the Stalking Protection Order Statute

**“Menacing by stalking”** - Any actions that the stalker takes to frighten or cause mental distress to you—as long as there are two or more incidents reasonably close in time. Examples of stalking conduct include, but aren’t limited to these examples:

- Following the victim or repeatedly driving by his/her home
- Making harassing phone calls; sending threatening or harassing letters, texts, emails
- Hurting the victim’s pets
- Trespassing, burglarizing or vandalizing the victim’s home, business or property
- Leaving threatening notes or objects for the victim or verbally threatening the victim

**“Mental distress”** - The statute defines mental distress as *“any mental illness or condition that involves some temporary substantial incapacity”* or that would normally require mental health treatment, whether you received it or not. You can demonstrate “mental distress” by introducing evidence for things such as:

- Changing your daily routine or route you take to drive to work or school
- Having physical, mental, or emotional symptoms of distress (crying spells, difficulty concentrating, difficulty working, missing work because of the stalking)
- Changing the locks or putting locks on the windows at home
- Not leaving the house except when it is absolutely necessary or only when with others
- Going into a domestic violence or homeless shelter to escape the stalker
- Moving in with friends, or to another neighborhood, city, county or state
- Always carrying a gun, mace or other protective devices when leaving the home
- Curtailing your or your children’s activities to minimize chances of encountering the stalker

Usually, proving “mental distress” will be easier than proving that the stalker did the acts that are the basis of the stalking charges.

### Frequently Asked Questions

**If the stalker is my “family or household member,” should I seek a Domestic Violence Civil Protection Order or a Civil Stalking Protection Order?** The Domestic Violence Civil Protection Order (CPO) provides greater relief to you (see previous chart of relief.) If you are a family/household member but do not need the greater relief or do **not** want to make your relationship publicly known (sometimes a concern for LGBTQ survivors, due to homophobia), you may file for either order.



## Sexually Oriented Offense Protection Orders

### Meeting the Definitions of the Sexually Oriented Offense Protection Order Statute

**“Sexually oriented offense”** - Under Ohio law sexually oriented offenses include rape, sexual battery, statutory rape, gross sexual imposition, child enticement, and violent acts committed with a sexual motivation. While criminal protection orders may be issued with the criminal case, a civil protection order can also be sought for victims of sexual offenses. There is no requirement that a criminal case be filed in order to seek a civil Sexually Oriented Offense Protection Order. For a list of sexually oriented offenses in the statute, see: <http://codes.ohio.gov/orc/2950.01>.

## Juvenile Civil Protection Orders

Obtaining a Juvenile CPO is very similar to other protection orders, but there are some key differences:

- **Respondent right to counsel:** The Respondent (alleged juvenile perpetrator) may be entitled to appointed counsel in the Juvenile CPO case.
- **Sealing of the Record:** The court will automatically seal the records of the juvenile CPO case on the date the respondent reaches the age of 19 years unless you provide the court with evidence that the respondent has not complied with all the terms of the protection order.
- **Violations:** If the respondent violates the juvenile CPO, s/he will be charged with juvenile delinquency by reason of violating a protection order, not with the crime of violating a protection order.

## Protection Order Process

It is always best to have an attorney help you file for a protection order. See *How to Find an Attorney* in the Introduction of this Manual. Remember that Crime Victims Compensation may be able to pay legal fees for your protection order case. ALWAYS consult with an advocate at a domestic violence or rape crisis center for help with your protection order petition. Advocates are very familiar with how your local community handles these cases and can be very, very helpful. They can also help you plan for safety.

### Writing Your Petition for a Protection Order

**Finding the Forms:** The Supreme Court of Ohio has adopted and published protection order forms for use in the Ohio courts. These forms or “substantially similar forms” or other accepted forms must be used in all protection order cases in Ohio.

**For forms you fill out yourself, go to:**  
[www.sconet.state.oh.us/JCS/domesticViolence/default.asp](http://www.sconet.state.oh.us/JCS/domesticViolence/default.asp)

**To do an online interview that creates complete forms, go to:**  
[http://ohiolegalservices.org/public/domestic-violence/dv\\_forms](http://ohiolegalservices.org/public/domestic-violence/dv_forms)



*Note: If your petition asks for custody or protection for children you have in common with the abuser, you must also file a “Parenting Proceeding Affidavit” available at the links above.*

**Help from Advocates** - Victim advocates from local domestic violence programs, rape crisis programs, or prosecutor’s offices, may be able to help prepare your petition. A victim advocate may also accompany you at any court hearings, depositions, or any other proceedings in a civil protection order case. *But, a victim advocate cannot argue your case before the court, negotiate on your behalf, or act as your attorney.* See *How to Find an Advocate* at the end of the Introduction section of this Manual.

**Details** - Include a description of the recent incident(s) as well as a history of all of the violence, stalking and threats. You can attach additional pages. You may be limited to testimony of what is included in your petition. Because trauma can affect memory, it may be helpful to add this language to your petition:

- For dates of incidents, state “on or about” the date of....
- For paragraphs alleging the violence, state the abuser engaged in the following acts “including but not limited to....”

**Addresses in Petitions** - If it is not safe to give your address, you can provide an alternative address in your petition such as the shelter, a P.O. Box, or any other address where you agree to receive service of future notices. The court may require that you provide an address they keep internally.

**Ask for an Ex parte Order** - Your petition should include a request that the court conduct an ex parte hearing, meaning only you testify, and they can issue an emergency order that day.

**Formatting** - Don’t use CAPITAL letters, underlining, **bold** or exclamation points (!!) in your petition.

## Steps in a Case

**Step 1: FILING**—The victim files a petition for the protection order with the Clerk of Court.

**Step 2: EX PARTE HEARING**—The Court holds an *ex parte* hearing (meaning only one party is there) on the same day as the filing for a Domestic Violence CPO, and by the next court day for a Stalking and/or Sexually Oriented Offense Protection Order or Juvenile Protection Order. This is your opportunity to tell the judge/magistrate why you need the protection order; then the judge decides whether to issue it.

**Step 3: PAPERWORK IS SERVED ON RESPONDENT (ABUSER)** —The petition, any emergency protection order (if issued at the ex parte hearing), and notice of the full hearing must be served on the respondent by a sheriff’s deputy. This can be a more dangerous time and your safety plan should address how to stay safe during this time. If the perpetrator is avoiding being served, ask the Clerk of Courts for help in getting a “process server” (someone who is paid to get the Respondent served.)

**Step 4: FULL HEARING**— If the court grants an emergency (*ex parte*) CPO, it must then schedule a “full hearing” within a specific time frame – within seven court days if the emergency order evicts the abuser, or within ten court days if the order does *not* evict the abuser. (If there is no emergency protection order or it is denied at the first hearing, the court still must schedule the full hearing, usually within the same seven- to ten-day period after filing the petition.) Full hearings on Stalking Orders are held 10 days later.

If your abuser does not appear *after being served* with the paperwork on your case, the court will probably go ahead with the hearing. If he or she *was not served* with the paperwork, the hearing will likely be rescheduled.

At the full hearing, both the petitioner (victim) and the respondent (alleged abuser) may present their evidence proving or disproving the alleged abuse, including their own testimony, the testimony of other witnesses, and any relevant documents.

**Consent Agreements** - In some cases, you and the opposing party can negotiate a Consent Agreement, which spells out the terms of the protection order. This should ideally only be done with an attorney. A protection order issued through a Consent Agreement is enforceable like any other protection order.



**Note: Here are some pitfalls to be aware of with Consent Agreements:**

- Consent agreements mean the court does not make a “finding of fact” that the violence or stalking occurred, and the abuser can claim he or she never really engaged in any abusive behavior. This may create a better position for the abuser in a custody case or to defend against any future lawsuits for money damages stemming from the abuse. Depending on the language in the consent agreement, the weapons ban may not be activated (as it would in a standard protection order), meaning the perpetrator can legally keep guns and obtain new ones.
- Beware of proposed agreements that are not on the Standard Consent Agreement form from the Supreme Court, available at: [www.sconet.state.oh.us/JCS/domesticViolence/default.asp](http://www.sconet.state.oh.us/JCS/domesticViolence/default.asp)
- Beware of agreements that have “mutual” stay away provisions. These make it harder to enforce your protection order and they are a great tool for the perpetrator. Ohio law says that the perpetrator must separately petition for any orders that restrict you.
- Beware of agreements that say the order is only enforceable by contempt. Protection Orders are enforceable by arrest by the police and it is not in your interest to agree to anything less.

**Step 5: COURT ORDER** - The court usually issues all orders at the end of the hearing; however, they can issue their decision later. *Always* keep your protection order with you in case you need to call the police to enforce it. Provide copies of the order to other people who may need it, such as your child’s day care or school, local law enforcement, where you work (if you choose to disclose this information to your employer), etc.

## Cross or Retaliation Petitions

**It is important to know that some perpetrators make cross or retaliation filings (by either filing their own protection order, or, if you have children in common, by filing a motion for custody or divorce.)** To seek the Protection Order, the respondent must serve a separate petition or cross-petition at least 48 hours before your full hearing, and the perpetrator must present evidence at the full hearing sufficient to convince the judge to issue the order. Unless the offender takes these steps, the court has no authority to issue a mutual protection order directed against both parties.



## Confidentiality, Privacy and Technology



### In this section

- Confidentiality and Privilege
- Privacy of and Access to Records and Files
- Media Reports of Sexual Assault
- Exceptions to Confidentiality and Privilege
- Miscellaneous Privacy Issues
- Technology, Safety Planning and Evidence

## Confidentiality and Privilege

**Deciding Who and What to Tell** - Your safety may depend on whether your communications and location are disclosed. It is important to know how what you disclose can be shared and used by others. In the aftermath of domestic violence, sexual assault or stalking, you may deal with doctors, nurses, rape crisis advocates, police officers, detectives, prosecutors, other attorneys, and counselors. You may expect that information you share with these individuals will be kept private, but that is not always the case.

The experience of trauma is very personal, and deciding *who to tell* and *what to share* is important and unique to each individual survivor. It is important to know whether you are engaging in a “confidential communication,” a “privileged communication” or one that has no privacy protection.

**“Confidential communication”** is communication with the expectation of privacy. Confidential information is considered private and is not accessible to the general public. If such information is subpoenaed, it can be shared in court.

**“Privileged communication”** refers to statements made by people within a recognized, protected relationship which the law protects from forced disclosure to law enforcement or in a court case or administrative proceeding. It usually cannot be shared in court.

<b>Persons You May Talk To and Levels of Privacy</b>	<b><u>Confidential</u></b> (CAN be released by a Release or Court order)	<b><u>Privileged</u></b> (*Usually CANNOT be released by a Court order)	<b><u>Not Private</u></b> (not Confidential, not Privileged) <i>Use Caution</i>
<ul style="list-style-type: none"> <li>▪ Rape crisis advocate or domestic violence advocate</li> <li>▪ Support group counselor, Human trafficking counselor</li> </ul>	X		
<ul style="list-style-type: none"> <li>▪ Physician (medical doctor) or Chiropractor</li> <li>▪ Personal attorney (NOT the prosecutor)</li> <li>▪ Clergy (priest, minister, pastor)</li> <li>▪ Licensed Social Worker, Counselor, or Psychologist</li> <li>▪ Interpreters</li> </ul>		X	
<ul style="list-style-type: none"> <li>▪ Journalists and reporters</li> <li>▪ Police Officers, Detectives, Prosecutors</li> <li>▪ Victim Witness Advocates</li> <li>▪ Family, friends, co-workers, social media contacts</li> <li>▪ Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) meetings</li> </ul>			X

\*Whenever your mental health or medical condition is an issue in a case (like in a child custody case), the court will likely determine that your privileged information must be shared.

For more information about telling others about sexual assault, see: [http://www.oaesv.org/wp-content/uploads/2013/05/Survivor-Series\\_Disclosing-Sexual-Violence.pdf](http://www.oaesv.org/wp-content/uploads/2013/05/Survivor-Series_Disclosing-Sexual-Violence.pdf)

## Privacy of and Access to Records and Files

When information about sexual assault, domestic violence or stalking is documented, survivors should pay attention to the privacy of that documentation and who has access to it.

**Medical Records** - Medical records are protected by the Health Insurance Portability and Accountability Act (HIPAA). This law restricts access to “protected health information” in medical records. For example, when a survivor receives a forensic exam and/or treatment in a hospital, the medical record of that visit cannot be accessed by anyone other than the survivor (unless the survivor gives consent to access). Specific documentation from the forensic exam is included in the survivor’s medical file in the hospital, and thus kept private. It’s important to note, however, that *a copy of that documentation is kept with the exam kit when it is turned over to law enforcement*. If the case is prosecuted in court, then the documentation will likely become part of the court record. For more information: <http://www.hhs.gov/ocr/privacy/hipaa/understanding/consumers/index.html>

**Rape Crisis and Domestic Violence Program Records** - Generally, rape crisis and domestic violence programs adhere to strict confidentiality. Information is kept private and shared only if you give written

consent for it be shared (by signing a release), or if the program receives a court order requiring the release of the documentation. If you are receiving services from a domestic violence or rape crisis program, you should ask your advocate to explain their confidentiality policy:

- whether what you tell them is confidential and what is written in your file
- whether they make a mental health diagnosis as part of their services (some programs bill for their services using a diagnosis.)
- what the agency will do if someone subpoenas your file. (They should oppose the subpoena with a motion to “quash” and advocate for your privacy before releasing any documents.)

*If you feel your confidentiality has been violated by a domestic violence or rape crisis program, contact the Ohio Domestic Violence Network (domestic violence programs) or the Ohio Alliance to End Sexual Violence (sexual assault/rape crisis programs.)*

**Waiving Your Privacy** - Even when a communication is **privileged**, you may waive privilege and thus allow an attorney, physician, or therapist to testify in court, or to disclose information or records in discovery. Waivers can be **express** or **implied**.

- An **express waiver** is created when you sign a release.
- An **implied waiver** can happen when you voluntarily testify concerning the same subject matter and put that issue before the court, or if you file a civil lawsuit where your mental or physical condition is an issue in the case (like in a child custody case).

**Criminal Justice Records** - Generally, any *initial report* of an incident made by police is a matter of public record. Ohio law protects “investigatory information” from being made public until the end of the court case. This could include witness statements and details of the crime that only the offender would know. In sexual assault cases, the law also permits survivors or prosecutors to request that the names of the victim and offender and the details of the offense as obtained by any law enforcement officer be kept private until the preliminary hearing, the accused is arraigned in court, the charge is dismissed, or the case is otherwise concluded, whichever occurs first. Although clerks of court are not required to conceal identifying information of survivors on online court records, many do. If a survivor’s personal information is viewable online, contact the Clerk of Courts office or a rape crisis advocate for assistance in having the information removed or concealed.

**Protecting Your Privacy** - If someone tries to access your private records with a subpoena, you can file a Motion to Quash that subpoena. You can argue that the subpoena should not be permitted because the information is confidential, privileged, not relevant to the case, and/or, that the disclosure could harm you/your children, or your ability to receive trusted services from that professional if you cannot talk to them with the assurance of privacy.

#### **Additional Resources Regarding Public Records & Privacy:**

- “Request to Redact Personal Information” Form (for online information):  
<http://www.ohioattorneygeneral.gov/Files/Forms/Forms-for-Consumers/Request-to-Redact-Personal-Information-FINAL-2-24>
- Ohio law regarding the availability of public records for inspection and copying:  
<http://codes.ohio.gov/orc/149.43>
- Ohio Sunshine Laws (regarding the freedom of information):  
<http://www.ohioattorneygeneral.gov/Legal/Sunshine-Laws>

## Media Reports of Sexual Assault

Sexual assault survivors are often concerned that if they report the crime, the media will publish their name and details of the assault. While the media has no legal obligation to conceal your identity, unless you give consent, most media will not reveal your name. But they often do reveal a survivor's age, where the assault occurred, the offender's identity (if known), and details about the assault (if known). It is possible that people could figure out your identity from this information.

A reporter may contact you, particularly if the assault is considered "high-profile" or otherwise sensationalistic. You do not have to speak with any reporter, ever. Some survivors choose to reveal their identities to the media and to speak out about the crime, their pursuit of justice, and/or their healing process. If you are considering speaking to the media, consider the following:

- What do I hope to gain/accomplish by speaking out in the media?
- What information do I want the public to know, and what do I want to keep private?
- Who in my life doesn't know about the assault; how will they react if they read it in the paper?
- Are there any legal considerations I should keep in mind (such as naming the offender before he/she has been charged)? Could the offender try to take legal action against me for identifying him/her before they are charged?



*Note: Remember, anything you say to people in public, including reporters, can be used in court whether or not you want them to.*

Before speaking with the media, survivors should consult an advocate or attorney. Even the best of reporters can misquote or take out of context something a survivor says in an interview. Most interviews are edited, and the content that gets published is usually outside of your control. And, if you are prosecuting, it is a good idea to delay talking to the media until after your case, and to discuss any plans to speak publicly with the detective or prosecutor assigned to the case.

## Exceptions to Confidentiality and Privilege

There are some situations where confidentiality and privacy may have to be broken:

- If you are considering hurting yourself or someone else, some professionals may have to report
- If you are the victim of a felony, some professionals may have to tell someone
- In certain parts of child custody cases, privacy is limited (more detail below)
- In cases of child abuse and neglect and elder abuse, some people have an obligation to report this information to child protective services or the police (more detail below)

### Privacy in Child Custody Cases

**Privacy with Mediators and Guardians Ad Litem** - In child custody cases, court-appointed mediators cannot be forced to testify, but Guardians Ad Litem (GAL) will likely testify concerning their report and recommendations.

**Waivers Created by Testimony** - The key thing to remember is that by contesting child custody, you waive your privilege to medical, psychological or counseling records or testimony regarding your mental condition, and this evidence may then be subject to pretrial discovery and become admissible evidence at a trial or court hearing. If the case is a post-divorce custody matter, then possibly only the party that files for modification of the existing custody is creating that risk for herself or himself.



**Mental Health Records** – There are two ways that mental health information may be disclosed against the wishes of the client: subpoenas and court ordered assessments.

**Subpoenas** - The opposing party's attorney can try to discover your privileged information by issuing a subpoena to your therapist or doctor directly (and they can file a Motion to Compel if the person does not cooperate with the subpoena). The subpoena can ask for the disclosure of your records, and/or to require the physician or therapist to appear at a deposition or court hearing and to bring specific documents. The subpoena may also state that instead of having to appear at a deposition, the physician or therapist may provide the documents to the opposing party's attorney by a certain date. ***You or your physician, therapist, or counselor can resist disclosing requested documents by filing a motion to quash the subpoena.*** After considering the request for the records and any motions against it, the court can:

- order the release of the requested information or order you to sign a release for the records
- refuse the request
- order that part of the record be disclosed
- do an in camera (in chambers) review of the documents to limit the disclosure

If you are seeking confidential information from the opposing party, the same process applies. Remember that either party may seek confidential records from the other side, but in the end, the court will decide what information is relevant and necessary, and whether a claim to privilege has been implicitly waived by a party because the information pertains to an issue in the case.

**Court Ordered Assessments** - In custody cases, courts may order a mental health assessment which will not be privileged because it is for court purposes, not for treatment (but the party's previous mental health records would still be privileged). The results of this assessment will be shared with the court, usually in the form of a report from the mental health professional. You will be asked to sign a release for the assessment to be used in the court case. *You should read this release carefully.* Prior to a hearing or trial, you can file a motion to have the assessment not be considered in any matter in your case *until you have had the opportunity to cross examine the assessor.* If anyone tries to mention or use anything contained in the report during a hearing or trial, you should object on the grounds that it is hearsay because the assessor is not there to be cross examined.

You may also consider filing a Motion to Seal any records obtained by the court in your case so that the public or the media cannot access any of these records in your court file. You would be asking the Court to seal part or all of a particular record because it contains private, confidential or privileged information that could cause harm to people named in the report if that information were made public. For example, an opposing party in this or a future case could raise the fact that you were molested as a child or raped as an adult and make that information public, which could potentially impact other areas of your life, such as your job. Or, your children's mental health records, if made public, could affect future career or educational opportunities and many other things.

**Mandatory Child Abuse Reporting: A Common Exception to Confidentiality** - Ohio law requires certain professionals to report any suspected child abuse or neglect to the local Children Services agency (also called Child Protective Services or CPS) or to a law enforcement officer. Licensed counselors and social workers must always report that information. Attorneys, physicians, and psychologists do not have to make a report if the information is privileged (as discussed above). However, a physician or psychologist does have a duty to report suspected abuse and neglect if their patient is a minor or a physically or mentally disabled child under 21 years of age, **and** the physician or psychologist knows or suspects as a result of the child-patient's communications that the patient "has suffered or faces a threat of suffering

any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates child abuse or neglect.” The definition of child abuse is somewhat vague and is interpreted differently from county to county, but includes:

- a child is a victim of sexual activity
- a child is an endangered child
- a child exhibits evidence of any physical or mental injury inflicted by non-accidental means
- a child has an injury that differs from the parents’ explanation
- a child suffers physical or mental injury that harms or threatens to harm the child’s health or welfare because of the acts of a parent or custodian
- a child is endangered by cruel or excessive punishment or physical restraints

Some therapists, counselors or mental health professionals regard exposure to adult domestic violence as a form of child abuse or neglect and believe they have a duty to report it to Children Services or law enforcement. Also, Ohio law says that a parent can be criminally charged for “permitting” child abuse by the other parent. Even mothers who have been battered by their husbands or partners have been prosecuted and convicted for “permitting abuse” of their child by the person who also abused them.

If you are contacted by children’s services during an investigation, it is important to talk with an attorney. Statements you make could potentially result in a *criminal case* being filed against you. See more on Child Protective Services in the *Family Law* section of this manual.

**Mandatory Elder Abuse Reporting** - An Exception to Confidentiality - Any attorney, physician, psychologist, counselor, social worker, clergy member, and any hospital or community mental health employee must report abuse, neglect or exploitation of an elder adult to the county department of human services. Under this law, an elder adult is any person 60 years or older within Ohio who is disabled by the infirmities of aging or who has a physical or mental impairment that prevents him or her from providing for his or her own care or protection and who resides in an independent living arrangement.

## Miscellaneous Privacy Issues

**Using an Alternative Address in Court Documents** - Domestic violence, sexual assault or stalking victims may sometimes include an alternative address other than their real address on legal pleadings (such as a complaint, petition, answer, or certain motions.) This is often done in protection order cases. In fact, the required Supreme Court CPO forms specifically ask the CPO petitioner whether s/he wants to use an alternative address. The alternative address is usually the address of the petitioner’s attorney or of a friend or relative if s/he does not have an attorney. See the last section of this manual on Ohio’s address confidentiality program.



*Note: Once you provide an alternative address, you must stay in touch with that person/agency because you can be served with court papers at that address in the future.*

In any child custody case where a party alleges in an affidavit or pleading (complaint or answer) under oath that his or her children’s health, welfare, or safety would be jeopardized by the disclosure of identifying information, the information must then “be sealed and shall not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, and liberty of the party or children and determines that such disclosure is in the interests of justice.” In other words, a domestic violence or stalking victim can have the clerk of courts seal any information concerning the victim’s or children’s address or whereabouts if the disclosure of such information would endanger them.

**Crime Victims Compensation (CVC)** – CVC applications for reimbursement for expenses related to a crime committed against you are public and can be viewed by others.

**Talking to the Opposing Party’s Attorney** – There are many, many reasons why you should usually avoid talking to the opposing party’s attorney. It is unethical for your perpetrator’s attorney to talk to you if you have an attorney, without your attorney’s consent. If you do not have an attorney, your perpetrator’s attorney may try to talk to you, **but you do not have to talk to him or her**. If you talk to the opposing attorney, **proceed with caution**. Any statements or admissions you make in a conversation with the opposing attorney may be used against you. Also, you may—sometimes without knowing it—admit to potentially criminal behavior. For example, in explaining that you fought back against your abuser by threatening him with a gun, or that you were tracking your stalker’s behavior, you may be admitting to criminal conduct. Such an admission could result in criminal charges being filed against you even if you are the primary victim.

Last, if you are negotiating a settlement of your case with the opposing attorney, you may be pressured to agree to an unfavorable settlement. Attorneys are trained and skilled negotiators, and can usually out-negotiate non-attorneys.

**Giving Information During Testimony** - If you are under oath—such as when you testify at a court hearing or in a deposition—you must answer truthfully. You could be charged with perjury if you lie under oath. On the other hand, you do not have to admit to criminal conduct, and you can invoke your Fifth Amendment right not to incriminate yourself by refusing to answer certain questions during a police interrogation, deposition, or during your testimony at a trial or court hearing. *However, you cannot testify about a fact or incident and later invoke your Fifth Amendment right to refuse to answer other questions regarding the same fact or incident.*

## Technology, Safety Planning and Evidence

Many people rely on technology to communicate with friends and family, work from home, search for employment and apply for jobs, plan social events and activities, for school purposes, and to access medical services, social service providers, and government agencies. However, perpetrators can use these tools—access their victims’ computers, phones, social media sites, online dating sites, blogs, etc.—to track and harass victims. Also, people can share information on social media that later becomes harmful evidence in court cases such as divorce, domestic violence, child custody, and child support.

**Safety Planning and Technology** - Safety planning is a process that takes into account your current situation and helps you build strategies to reduce harm, minimize risks, and create a safer environment. Technology—including computers, cell phones and social media sites—is a crucial area to consider in safety planning. The following ideas are adapted from Safety Net: The National Safe and Strategic Technology Project at the National Network to End Domestic Violence (NNEDV):

1. **Trust your instincts.** If the abuser knows too much regarding your whereabouts, it is possible that your phone, computer, emails, and other activities are being tracked.
2. **Use a safer computer.** When you look for help, a new place to live, etc., it may be safest to use a computer at the public library, an internet café, or community center.
3. **Create a new email account with a new password from a safe computer.** Use an anonymous name and password that the abuser will not be able to guess.
4. **Change passwords and PIN numbers.** Some abusers access victims’ accounts fraudulently to track them, to impersonate them, and to cause harm. Think about any password-protected accounts you

may have, including: online banking, medical records, voicemail, etc. If your abuser knows or could guess your passwords, change them quickly and frequently.

5. **Use a donated or new cell phone.** Your billing records and phone logs might reveal your plans. Some local domestic violence programs have information about new cell phones and prepaid phone cards. Try to have a phone your perpetrator doesn't know about.
6. **Check your cell phone settings.** If you use a cell phone provided by the abuser, turn it off when not in use. Phones can be set to automatically answer without your knowledge or can be turned on remotely, in effect becoming a speaker. Most newer phones have GPS tracking.
7. **Minimize use of cordless phones and baby monitors.** These act like speakers and can be monitored. A traditional corded phone is more secure.
8. **Ask about your records and data.** Many court systems and government records are published online. Ask agencies how your records can be protected, restricted, or sealed.
9. **Get a private mailbox and do not give your physical address.** When asked for your address, give a private mailbox or PO box. Try to keep your residential address out of databases.
10. **Consider taking down your social networking pages such as MySpace, Facebook, etc.** Information posted on these sites can compromise your safety through photos that reveal your location, and through friends your abuser knows who links to your social site.
11. **Consider closing your chain store, auto repair, oil change, or other service discount cards.** The information they track is put on searchable databases.

**Identity Change** - If you are considering changing your identity to avoid being found, there are many things to consider. For more information: [www.nnedv.org/resources/safetynetdocs/identity-change.html](http://www.nnedv.org/resources/safetynetdocs/identity-change.html).

**Evidence and Technology** - Phone records, 911 tapes, and social media postings may, in some circumstances, be used as evidence in court cases, including divorce and custody cases. Such evidence can be helpful or harmful depending on the type of evidence, expectations of privacy, and the specific content of the information or comments.

**911 Tapes** - Calls placed to 911 (or other emergency numbers) may be the single most important piece of evidence available to prove domestic violence, sexual violence or stalking. The 911 call may reveal anxiety, fear and desperation, and can help others understand the violence in a better way than even direct testimony can. But the 911 tape may be "hearsay" meaning it may be inadmissible in court unless it fits into an established exception to the hearsay rule. Statements made on a 911 tape are usually admissible if they were made by the victim or an eyewitness during an emergency (such as a violent incident), the statements were a call for help, and police questioning recorded on the tape was for the primary purpose of helping police to respond to the emergency.

**Communications** - Threatening voicemail or text messages, e-mails, or cell phone pictures sent by an abuser or stalker may also be admissible evidence, but you may need to subpoena the phone or other company records in order to produce them at a court hearing or trial. If your perpetrator calls you from jail or prison, those calls are generally recorded and you may be able to subpoena them.

**Social Media** - The exchange of information about our personal lives and jobs, daily life, and disclosures of current location using GPS technology on social media networks (such as Facebook, MySpace and Twitter) can be valuable evidence later. They can offer evidence of a party's extramarital affairs, parental unfitness, or activities that are harmful to the best interests of the children. Expect the opposing party to be screening your social media postings for anything that might undermine your credibility or provide damaging evidence. And, evidence posted by the abuser on social media sites can help your case, too. Although such evidence is hearsay, it can be admissible in some cases.

## Consequences of Criminal Convictions

Criminal convictions can result in prison and fines, but they can also impact many other parts of your life, for years. These civil impacts, sometimes called “collateral” effects, can restrict your access to housing, jobs, education, and more. You can look up the civil restrictions of your conviction at:

<http://civicohio.org/>

**Sealing Criminal Records** - Persons convicted of certain crimes can ask the court to seal their criminal records. Many crimes cannot be sealed/expunged in Ohio, including violent misdemeanors and sexual offenses. If you are charged with a crime, and you are considering pleading guilty, it matters very much which charge you plead guilty to, not just in terms of penalties, but also if it can later be sealed. For details: [www.reentrycoalition.ohio.gov/docs/expunge.pdf](http://www.reentrycoalition.ohio.gov/docs/expunge.pdf) and [http://www.ohiolegalservices.org/public/legal\\_problem/criminal-matters/instructions-for-sealing-a-criminal-record](http://www.ohiolegalservices.org/public/legal_problem/criminal-matters/instructions-for-sealing-a-criminal-record)

**Removing Barriers to Getting a Job** - Certain convictions create barriers for you to get a job or a license for certain kinds of jobs. In 2011 and 2012, Ohio created two new certificates to remove barriers to employment created by criminal records, without sealing the criminal record itself (since many convictions cannot be sealed.) They are called “Certificates of Achievement and Employability” (“CAEs”) and Certificates of Qualification for Employment (“CQEs”). If you apply to get a license to do a certain kind of job, and the licensing agency has a *mandatory* rule that would normally prohibit them from giving a license based on criminal records, they must instead assess your fitness for the license if you have one of these certificates. They don’t have to give you the license, but they have to consider it.

**How to Apply** - To apply for a CQE, for more information about the civil impacts of your crime, and help with applications, see: <http://opd.ohio.gov/CIVICC>. If you were ever incarcerated in a DRC-funded institution, your application must go through DRC at: [www.drccqe.com/Login2.aspx?APPTHEME=OHCQE](http://www.drccqe.com/Login2.aspx?APPTHEME=OHCQE)

To apply for a CAE, see: <http://www.drc.ohio.gov/OCSS/aandebrochure.pdf>

*Because of all of the impacts, it is important to never, ever plead guilty to any charge without consulting a defense attorney. Once you plead guilty, you will always be considered guilty, even if you pled just to get out of jail or because an attorney told you to plead guilty.*

## Crime Victims’ Rights

Crime victims in Ohio have various rights to information regarding the criminal cases against their perpetrators and the right to provide input to the court or the State Parole Board about sentencing or parole decisions. These rights are especially important in cases of violent crimes. The parties in a criminal case are the State of Ohio or the local municipality (not the victim) represented by city or county prosecutors **and** the criminal defendant represented by the public defender or a private attorney. That is why the Ohio legislature enacted the Ohio Victims of Crime Law. Under that law, law enforcement, prosecutors, and the Office of Victim Services at the Ohio Department of Rehabilitation and Corrections (DRC) all have certain duties and must make specific disclosures to victims of crime. For detailed information about the *specific* duties of law enforcement, prosecutors and the courts to you as a crime victim, see: <https://victimsrightstoolkit.com/>

## Employment and Workplace Harassment

### In this Section

- **Missing Work for Court**
- **Privacy Rights in Job Interviews**
- **Wage and Labor Rights**
- **Legal Definition of Workplace Harassment**
- **What You Can Do About Workplace Harassment**
- **Domestic Violence, Sexual Assault and Stalking in the Workplace**

### Missing Work for Court

Ohio does not have specific protections for survivors of domestic violence, sexual violence and stalking in its employment law. However, you are entitled to miss work to attend a criminal trial if you receive a subpoena from a prosecutor. To learn more, go to: <http://codes.ohio.gov/orc/2930.18> and <http://codes.ohio.gov/orc/2151.211> (regarding Juvenile Court.)

### Privacy Rights in Job Interviews

Employers are also prohibited from asking certain questions of you during interviews and generally cannot ask about *arrest* records that have been sealed or criminal convictions that have been expunged. For details, see: <http://codes.ohio.gov/orc/2953.55> and <http://codes.ohio.gov/orc/2953.33>. Under this law, an arrest or conviction for a minor misdemeanor violation in regards to marijuana does not constitute a criminal record and need not be reported in response to any inquiries about the person's criminal record in an application for employment, see: <http://codes.ohio.gov/orc/2925.04>

There is also a movement, sometimes called “ban the box”, to promote fair hiring policies so that a criminal record does not automatically prevent you from getting a job. The National Employment Law Project has more information and maintains a list of communities where fair hiring practices are being implemented, which can be found at:

[http://www.nelp.org/index.php/content/content\\_issues/category/criminal\\_records\\_and\\_employment/](http://www.nelp.org/index.php/content/content_issues/category/criminal_records_and_employment/)

### Wage and Labor Rights

Most employees are protected by minimum wage, overtime, and wage nonpayment laws. Such laws are intended to prevent employers from exploiting low-income workers, and they provide important legal remedies for Ohio workers. For more details, see: <http://www.com.ohio.gov/laws/>, which includes information on how to file a wage-related complaint.

### Legal Definition of Workplace Harassment

An employer who engages in, encourages, or tolerates workplace harassment may be liable for negligence or unlawful discrimination by failing to take reasonable steps to protect employee safety. In some cases stalkers or domestic abusers are the perpetrators of such harassment. There are reasonable steps most employers can take to protect employee safety in those circumstances. Your employer may have a higher duty to protect you if you obtain a protection order and notify the employer of the protection order, or if the perpetrator is also their employee.



Harassment in the workplace is illegal when an employer, supervisor, or co-worker singles a person out for harassment because of the employee's race, color, religion, sex, national origin, age (40 and over), or disability (mental or physical). In some municipalities in Ohio, harassment based on sexual orientation may also be unlawful. These categories—race, religion, sex, etc.—are sometimes referred to as “legally protected classes.” Unwelcome verbal or physical contact based on your being a member of any of these legally protected classes constitutes illegal harassment when:

- The conduct is sufficiently severe or pervasive to create a **hostile work environment**; or
- A supervisor's harassing conduct results in a **tangible change** in an employee's employment status or benefits, such as termination, demotion, failure to promote, denial of pay raises, etc.

“**Hostile work environment**” occurs when the perpetrator's comments or conduct based on sex, race, or other legally protected classes unreasonably interferes with your work performance or creates an intimidating, hostile, or offensive work environment. Anyone in the workplace can commit this type of harassment—a manager, a co-worker, or a non-employee. The victim can be anyone affected by the conduct, not just the person who is the target of the conduct.

Harassment resulting in “**tangible change**” usually means retaliation against an employee who resists or complains about ongoing “hostile work environment” harassment by his or her employer, supervisor, or co-worker. Only supervisors or managers can commit this type of harassment.

The harassing behavior must be more than a few isolated incidents or casual comments. It must include a **pattern of abusive and degrading conduct**, such as:

- Leering, i.e., staring in a sexually suggestive manner
- Making offensive remarks about looks, clothing, body parts
- Touching that makes you feel uneasy, such as patting, pinching, intentional brushing against
- Telling sexual or lewd jokes, hanging sexual posters, making sexual gestures, etc.
- Sending, forwarding or soliciting sexually suggestive letters, notes, emails, or images

Other non-sexual actions which may result in a hostile work environment include:

- Use of racially derogatory words, phrases, epithets
- Gestures, pictures or drawings which would offend a particular racial or ethnic group
- Comments about an individual's skin color or other racial/ethnic characteristics
- Making disparaging remarks about an individual's gender that are not sexual in nature
- Negative comments about an employee's religious beliefs (or lack of religious beliefs)
- Expressing negative stereotypes regarding an employee's birthplace or ancestry
- Negative comments regarding an employee's age when referring to employees 40 and over
- Derogatory or intimidating references to an employee's mental or physical impairment

## What You Can Do About Workplace Harassment

If you think you are a victim of illegal workplace harassment, here are some things you can do:

- Complain to your manager or supervisor (other than the individual who is harassing you) and follow any available grievance procedures to seek relief from workplace harassment
- If the harassment does not stop after you pursue internal company procedures, you may want to pursue legal action. An attorney is crucial if you decide to sue the person or employer
- You can file an employment discrimination charge with either the federal Equal Employment Opportunity Commission (EEOC) or the Ohio Civil Rights Commission (OCRC). For more details, or

to file a complaint online, see: <http://www.eeoc.gov/> or <http://crc.ohio.gov/> To find a local office, see: <http://crc.ohio.gov/AboutUs/RegionalOffices.aspx>

## Domestic Violence, Sexual Assault and Stalking in the Workplace

Domestic violence, sexual assault and stalking can follow victims to work, such as violence in the workplace, harassment by threatening phone calls, absences because of injuries, or decreased productivity because of extreme stress. Employers are becoming more aware of the costs of domestic violence, sexual assault and stalking in the workplace and the need to have policies in place that support victims and other employees. And, occupational health and safety laws generally require employers to maintain a safe workplace, which may include a violence-free environment.

There are no employment protections in Ohio law at this time for survivors of domestic violence, sexual assault or stalking. Before telling your employer you are experiencing any of these, think about how they are likely to respond. Will they be concerned? Helpful? Is there a chance they may fire you because of it? If you're not sure, ask other safe people, or ask someone in management what would happen IF someone had these concerns and asked for accommodations at work.

If you are a victim or survivor of domestic violence or stalking, here are some things you can do, if you decide that they are safe for **you**:

- Talk with your employer or supervisor and ask them to take protective measures
- Seek a protection order that directs the abuser to stay away from your job and call the police if it is violated
- Provide a picture of the perpetrator and a copy of your protection order, if you have one
- Consider removing your name and number from automated phone directories
- Ask your employer for a different or safer parking space
- Park near the building entrance if possible and/or request an escort to and from your car
- Ask to change or vary your schedule so that you can vary when you arrive and leave work, or work a different shift than your abuser thinks you do
- Ask that co-workers use precautions such as screening phone calls and people that come to the office and post a picture of your abuser
- Ask that any calls or visits from the perpetrator at your job be reported to management
- Ask that no one gives out any information about you (such as schedule, phone numbers, etc.)
- If you need time off, the Family and Medical Leave Act (FMLA) may require employers to give you leave to cope with the situation, but that leave may be unpaid depending on policy at your job

If the perpetrator is another employee or staff person, you can ask your employer to:

- Take immediate, appropriate disciplinary action, up to and including termination
- Reinforce policies that prohibit harassment, and emphasize the consequences of breaches
- Not attempt mediation or internal conflict resolution, unless you want it
- If the offender has a grievance, suggest appropriate means of addressing the problem (such as complaint procedures or mediation), but not to collude with misuse of the grievance process
- Contact the police if necessary

If problems continue after you file a complaint and pursue internal company or agency remedies, consider legal action. Consult with an attorney if possible. You can file a complaint with EEOC or the Ohio Civil Rights Commission. See details in the following chart.

	Equal Employment Opportunity Commission (EEOC)	Ohio Civil Rights Commission (OCRC)
How to Contact	<p><b>Federal Government Employers:</b>  <a href="http://www.eeoc.gov/federal/fed_employees/index.cfm">www.eeoc.gov/federal/fed_employees/index.cfm</a></p> <p><b>Private Sector Employers and State and Local Government Employers:</b> <a href="http://www.eeoc.gov/employees/howtofile.cfm">www.eeoc.gov/employees/howtofile.cfm</a></p> <p>or call 1-800-669-4000/ 1-800-669-6820(TTY)</p>	<p><a href="http://crc.ohio.gov/">http://crc.ohio.gov/</a></p> <p>To find a local office:  <a href="http://crc.ohio.gov/AboutUs/RegionalOffices.aspx">http://crc.ohio.gov/AboutUs/RegionalOffices.aspx</a></p>
How to Make a Complaint	<p>How to file a complaint: <a href="http://www.eeoc.gov/">http://www.eeoc.gov/</a></p> <p>For examples of situations that may fall under EEOC, see:  <a href="http://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm">http://www.eeoc.gov/eeoc/publications/qa_domestic_violence.cfm</a></p>	<p>All charges of discrimination must be filed within 6 months of the date that discrimination occurred.</p> <p>How to make complaints:  <a href="http://crc.ohio.gov/FilingCharge.aspx">http://crc.ohio.gov/FilingCharge.aspx</a></p>



*Note: For information on Unemployment compensation, see the Financial and Money Issues section of this manual, under Public Benefits.*



## Family Law



### In this section

- **Dissolution, Divorce, and Legal Separation**
- **Child Custody and Parenting Time**
- **Working with Guardians ad Litem and Custody Evaluators**
- **Mediation and Working with Mediators**
- **Co-Custody Agreements and Same Sex Couples**
- **Same Sex Marriage in Ohio**
- **“Grandparent”/Relative Visitation**
- **Child Protective Services & Domestic Violence**
- **Child Support and Paternity**



*The Supreme Court of Ohio has adopted many legal forms to help file for all kinds of family law matters which may be used in any county in Ohio. To access these forms, go to:*  
<http://www.supremecourt.ohio.gov/jcs/cfc/drforms/default.asp>

## Dissolution, Divorce and Legal Separation

In Ohio there are two ways to end your marriage: dissolution and divorce. If you and your spouse agree on everything, you can file for a dissolution together. If you do not agree on everything, one spouse has to file for divorce. The end result of a divorce or dissolution is the same – your marriage is ended. If you do not want to end your marriage, but just want to separate, you can file for a legal separation. These are civil cases, meaning one spouse must file the case to get started. Each party is responsible to get their own attorney or proceed without one.

**Dissolution** - Dissolution can work when the parties mutually agree to terminate their marriage. The spouses must jointly sign and file a Petition for Dissolution with the court, which must include:

- *Petition for Dissolution:* Stating that you and your spouse have lived in Ohio for at least six months before filing. There is no need to prove “grounds” or a reason for the dissolution.
- *Separation Agreement* (signed and submitted by both spouses) explaining how you will:

- Divide all property (everything you or your spouse owns)
- Allocate Spousal support/Alimony (whether or not there will be any support paid)
- Handle child custody, visitation arrangements, and child support and health insurance
- Handle your name; if you want your maiden name/prior last name back

The court must hear the case in 30 – 90 days after filing the petition. At the hearing, the court will:

- review the separation agreement
- ask about the parties' assets and debts and any parenting issues
- decide whether the parties understand and are satisfied with the separation agreement
- grant a decree of dissolution and approve the separation agreement, if the court approves the settlement and finds that the parties agree and desire to end their marriage.



*Note: You and your spouse must agree on **all** issues to file for a dissolution. If you do not, then you must file for a divorce. **Persons who engage in domestic violence are usually not good candidates to try to negotiate a dissolution.***

**Divorce** - To start a divorce, one spouse files a complaint for divorce. The spouse that files first is called the “**Plaintiff**” but does not get have any special benefits because he or she filed first. The other spouse is called the “**Defendant.**” The divorce complaint must include:

- your address and your spouse's address
- that you have been a resident of Ohio for at least six months before filing (you can file in the county in which your spouse resides, but you must have been an Ohio resident for six months before filing)
- the grounds/reason for the divorce (select one or more from the list below) – it is a good idea to list at least one fault ground and at least one no fault ground
- whether or not you and your spouse have children, and if so, their names and dates of births
- if you own marital or separate property (not just land, but things)
- what you want the Court to consider when issuing the divorce, including giving you back your maiden/prior last name

The person filing must allege and prove one or more of the following fault or no fault grounds:

- adultery (cheating on you)
- gross neglect of duty (like failure to support the other spouse)
- one spouse was already married to another person when you got married (bigamy)
- willful absence of the spouse from the plaintiff's home for one-year before you file
- extreme cruelty (for example, sexual violence, domestic violence)
- the other spouse is incarcerated in a state or federal prison at the time of the filing of the divorce
- fraudulent contract (lies made to the other spouse before the marriage)
- habitual drunkenness
- the parties have for one year, without interruption, lived separate and apart (no-fault grounds)
- incompatibility of the husband and wife, if alleged by one spouse in the divorce complaint and not denied by the other spouse (no-fault grounds)

**Serving the Complaint** - Once the divorce complaint is filed with the court, the Clerk serves the other spouse (usually by certified mail) a copy of the complaint and a summons ordering them to file a written answer within 28 days. If you don't know where your spouse lives, you can serve them by “publication,” by filing an affidavit saying that you do not know where the spouse lives and cannot find out. If service is made by publication, you will be able to get a divorce, but the court will not be able to order spousal or child support or to divide up any marital property not located in Ohio.

**Answering** - The defendant has 28 days after service of the complaint and summons to file an answer to the complaint. If the Defendant does not respond within 28 days, they must ask the Court to give permission to file the response. The defendant may file a counterclaim requesting a divorce, stating the grounds the defendant believes apply, or may just respond and ask the Court to not grant the divorce. The plaintiff should file a reply to a counterclaim.

**Settling** - Most divorce cases are eventually settled by the parties drafting and signing an agreement or by an in-court settlement. A proposed agreed decree of divorce is prepared, signed by the parties and submitted to the court for approval. If approved at the final divorce hearing, the agreement is made effective by the court signing and filing the divorce decree. If the parties cannot agree to resolve all of their disputed issues, the disputes are presented to the court in a trial or by affidavits. The **plaintiff** will have to prove the grounds for divorce that are alleged in the divorce complaint. If the **defendant** files a counterclaim for divorce based on different grounds for divorce, the defendant also has to prove those grounds. If the court finds that one or more grounds for divorce have been proven by either spouse, the court must then grant the divorce.

**Marital Property** - The court must divide up and allocate the parties' marital property equally, unless the court explains in writing why an equal division would not be fair. If the court does not divide the assets equally, it must consider certain factors in making an equitable "fair" division such as how long you were married; how much each spouse owns and owes in debt; if the person with the children gets to live in the house and for how long; if the property can be sold and what it would cost to sell; and if it can be divided up without destroying it. Property is presumed to be marital, unless one spouse can prove otherwise to the Court, and may include:

- All property you obtained during the marriage by either or both spouses, including houses, personal property, intangible property (like bank accounts) and retirement plans and benefits
- Increases in the value of separate property due to either spouse's contributions of labor or marital funds
- Any money saved or deposited from either spouse's wages or salary during the marriage
- Retirement funds, businesses or land owned, and asset valuation are considered when dividing up property and awarding spousal support.

**Separate Property** - The court will usually allow the parties to keep their "separate property." The spouse claiming separate property will have to prove that it is separate and may have to prove that it was not mixed with marital funds. Separate property may be:

- inherited property or an inheritance
- property owned before the marriage or things obtained after separation
- a gift to one spouse during the marriage
- certain types of money damage awards to a spouse for personal injury



*Note: Just because one spouse's name is on a title (for a house or car, for example), does not mean it is separate property. See the descriptions above.*

In cases involving financial misconduct by one of the spouses (such as hiding assets, destroying marital property, or wasting or fraudulently disposing of marital funds) the court may award one spouse's separate property to the other spouse in order to be fair.

**Spousal Support (Alimony)** - In many cases, the court does not award any spousal support at all. In those cases where spousal support is awarded, the court will usually order it for a limited period of time. During this time period, the "obligee"—the spouse receiving spousal support—should become

self-supporting by finishing his or her education, getting job training, or finding employment. The court may order either the husband or the wife to pay spousal support. In rare cases, courts award permanent spousal support. These cases typically involve long marriages (20+ years), older parties, and/or a disabled or homemaker spouse who had few career opportunities during the marriage. The test for awarding spousal support is what is “appropriate and reasonable” and support should not be used to punish or reward a party. The court should focus on the circumstances of the parties and whether they are or can become self-supporting. In determining whether spousal support is reasonable and appropriate, and if so, the amount and duration of spousal support, the court must consider 13 statutory factors. For more details, see: <http://codes.ohio.gov/orc/3105.18>.

**Termination or Modification of Spousal Support** - Spousal support usually only lasts until the receiving spouse dies, remarries, moves in with another partner or when the time period for paying and receiving spousal support expires. The court may have the authority to modify spousal support if there is a “change in circumstances” of either spouse (like changing or losing a job, or moving in with a new partner who pays the bills).

**Legal Separation** - A legal separation is a court order that requires the parties to live separate and may also order spousal support, child support, a division of marital property and debts, child custody, and parenting time (visitation). The legal grounds for obtaining a legal separation are the same that must be proven in a divorce. Unlike a divorce or dissolution, the parties remain married after a legal separation, and cannot remarry until they get a divorce or dissolution. Some people file for a legal separation for religious reasons or to maintain health insurance or other types of support.



*Note: In Ohio, some people file an action for legal separation because they do not meet the six-month residency requirement for filing a divorce or dissolution action.*

The parties may enter into a separation agreement and the terms of the separation agreement are then incorporated into the decree of legal separation. If there is no separation agreement, the court, after hearing testimony and taking evidence, will determine whether to grant the legal separation and make appropriate orders.

## Child Custody and Parenting Time (Parental Rights and Responsibilities)

When parents of a minor child are *unmarried*, the mother is the sole residential parent and legal custodian of the child until a court issues a custody order. The father must file to get rights to see the child(ren). Child support can be ordered without granting the father any rights. The Juvenile Court has jurisdiction to hear and decide child custody cases between unmarried parents, or between a parent and a nonparent (such as a grandparent or other relative).

When parents are married, both have equal legal rights and authority to make decisions about the care, residence, discipline, and support of the children. Only by going to court can a married parent gain sole or primary legal and physical custody of their children. The Domestic Relations Court has jurisdiction to determine child custody and visitation matters in cases between married parents.

**Leaving the State Before Establishing Custody Orders** – It is very, very risky to leave the state before getting custody orders, especially if you are married. If you leave without doing so, the other parent may file for custody and get an order in your absence. And, you should never leave the state once custody orders have been made without getting permission from the court. Doing so could result in the



other parent getting custody switched to them. For information about inter-state custody questions, you can call the Legal Resource Center on Violence Against Women at 800-556-4053 or visit their website at: <http://www.lrcvaw.org/survivors.html>.

Words that you may hear or see in an order:

- **custody** – the ability to make decisions for and about your child; it may also mean the person who has physical possession of the child most or all of the time
- **residential parent** – the parent with whom the child lives for the purposes of benefits, school attendance, and where the child will usually spend more time during the week
- **non-residential parent** – the parent who is not the residential parent, usually the parent who has less time during the week with the child
- **shared parenting/custody** – both parents are residential parents and will make decisions jointly for and about the child, a shared parenting agreement should clearly state the time each parent has with the child and how decisions are made
- **visitation** – a parent or non-parent's time to have physical possession of the child
- **parenting time** – the days/times that a parent has the right to physically have the child
- **child support obligor** – the parent responsible for paying child support
- **child support obligee** – the person receiving child support



*Note: Custody and time with your child can be different. **It is important to read and understand all orders from the Court and/or what you are asking the Court to give you.** If you are unsure, ask the Court to explain or consult a lawyer. Don't sign anything until you fully understand it.*

**Shared Parenting vs. Sole Residential Parent Orders** - "Shared parenting" is where the parents both share decision-making for the children, but does not necessarily mean that the child spends an equal amount of time with each parent. Decisions include where the child will attend school, whether to apply for government benefits, approving school and other extracurricular activities, asking a school for special education services, raising the child in a particular religion, consenting to medical care for the child, and a wide range of other matters concerning the care and discipline of the child. Some shared parenting plans may give both parents equal authority over certain matters while making one parent primarily responsible for other matters. Parents under a court ordered shared parenting plan are expected to talk to each other before major decisions are made about the child.



*Note: One or both parties must ask for shared parenting and submit a shared parenting plan in order for the Court to award shared parenting. See the Supreme Court of Ohio forms for an example.*

**Best Interest of the Child Test** - When a court decides a custody case, it must determine, "What is in the best interest of the child?" The primary focus is on the child's best interest, not on what the parents want or how the parents have treated each other. The court must decide whether it would be in the child's best interest to be placed with one parent or the other, or whether a shared parenting arrangement would be in the child's best interest. The court must consider all the statutory factors and other relevant factors in deciding the allocation of parental rights and responsibilities. The court must weigh any conflicting factors in light of the evidence, and decide what is in the child's best interests based on all the facts and circumstances in the case. In determining the best interests of a child for custody purposes, the court must consider factors listed at ORC 3109.04 (f) which include:

- the parents' wishes

- the child's wishes (please note: It is against the law for you to try to get a written or recorded statement from the child about where he or she wants to live)
- the child's interaction with parents, siblings and others who significantly affect the child
- the child's adjustment to home, school and community
- the mental and physical health of all concerned
- which parent will promote court-ordered time between the child and the other parent
- whether a parent has made court-ordered support payments
- whether a parent has been convicted or pled guilty to abuse, neglect or domestic violence
- whether a parent has purposely denied the other parent court-ordered time with the child
- whether a parent has moved or plans to move from the state
- whether a parent has been convicted of a crime that resulted in harm to another family member
- *when seeking shared parenting*, how close the parents live to each other
- *when seeking shared parenting*, the ability of the parents to cooperate and make joint decisions
- *when seeking shared parenting* any history of domestic violence, child abuse or parental kidnapping by either parent

The court may also consider other factors, including whether one parent has been the child's primary caregiver, taking care of most of the child-raising responsibilities such as feeding, toilet training, and disciplining, teaching, watching over, and playing with the child. A parent's "immoral" or bad conduct is relevant only if it directly harmed the child. Be prepared for the other parent to bring up any negative things in your past, and be prepared to answer those. For example, alcohol or drug problems are relevant to the court when deciding custody matters. If you have a history of substance abuse, it is important that you present evidence to the court that you have been or are receiving treatment for substance abuse. Testimony from your treatment providers may be helpful.

The court cannot give preference to a parent/relative just because they have more money.

It is important to present evidence to the court about all the factors that support your case. Also try to minimize any factors that hurt your case. For example, unless there is a real danger of child abuse or abduction, you should not deny or interfere with the other parent's visitation. If you believe that your child would be in real, physical danger if you sent him/her with the other parent, go to court and ask for an emergency custody order.

The court may interview a child in the judge's private chambers to determine the child's wishes and concerns. This is called an *in camera* interview. This is usually done without the presence of the parents or their attorneys. The court must talk to a child in chambers if a parent asks the court to do so and the court determines the child has sufficient reasoning ability to express his wishes and concerns. If the judge or magistrate does interview the child in chambers, he/she must consider the child's wishes and concerns in making its best interests determination, but that is only one factor the court must weigh along with all the other factors.

**Modification of Custody** - A court cannot change custody unless there has been a "***change in circumstances***" in the custodial/residential parent or the child that arose since the last order. The court must also find that a change is necessary for the best interest of the child. The changed circumstances must relate to the child, the residential parent, or either of the parents if there is a shared parenting arrangement. The changed circumstances of the nonresidential parent should not matter. For instance, if the nonresidential parent gets a better job or completes substance abuse treatment, that change in the nonresidential parent's circumstances probably will not constitute a change of circumstances for custody modification purposes.

The court cannot change the child's residence unless one of the following applies:

- Both parents agree to a change
- The child has become integrated into the home of the parent seeking the change (when the child, with permission of the residential parent, spends more and more time at the home of the parent seeking the change)
- The harm likely to be caused by a change of environment is outweighed by its benefits. The law recognizes the importance of stability for a child and of the potential harm to the child if there is a change of custody.

In a domestic violence situation, it is especially important to put in the original order how changes will happen so that you are not open to pressure from your abuser to make changes whenever he or she wants them. If you do not agree to a change, stick to the original order (if it is safe to do so).



*Note: It is not easy to change custody or shared parenting. So make sure that you do your best to make an agreement or get an order that you can live with at the beginning.*

**Parenting Time/Visitation Rights** - When a court designates one parent as the residential parent, it typically awards parenting time (visitation rights) to the other parent. The court must “ensure the opportunity for both parents to have frequent and continuing contact with the child” unless doing so “would not be in the best interests of the child.” If the court decides it would not be in the best interests of a child for the non-residential parent to have parenting time, the court must make specific “findings of fact and conclusions of law” (an explanation of its decision).

The court must apply a “best interests of the child” test in determining parenting time. Each court in Ohio has a “standard parenting time schedule.” Courts may order a different parenting time schedule if it would not be in the child's best interest, or if the parties agree to a different schedule.

In domestic violence cases, the court *may* order:

- exchanges of a child to occur in a protected setting
- visitation supervised by another person or agency and for the abuser to pay the fees for it
- no overnight visitation
- the abuser to complete an intervention program or counseling as a condition of the visitation
- the abuser to not possess or consume alcohol or drugs during or 24 hours before the visitation
- a bond from the abuser to ensure the return and safety of the child
- that the address of the child and the victim to be kept confidential
- any other condition that is necessary to provide for the safety of the child, the victim of domestic violence, or any other family or household member

The court will not automatically restrict the abuser's visitation rights or limit his or her parenting time to supervised visitation just because you ask. It will only do so in cases where there is evidence of harm or danger to the child, and even then any restrictions may be temporary. But courts do often order that the exchange of the child take place at a safe/neutral site, such as a supervised visitation center, a police station lobby, a public place (like a store or restaurant lobby that has cameras), or a relative's home to protect the domestic violence victim and ensure a safe exchange of the child.

**Managing Visitation** - Dealing with an abuser around visitation is often difficult. Abusers may use the visitation time to try to have contact with you, or may violate the terms of the visitation, requiring you to have frequent contact. Some survivors have found it useful to only negotiate via email (if you can)

regarding changes in visitation. There are also websites you can use so that all of your email contacts are recorded, cannot be altered, and these sites can create a certified copy, should you need one for a court hearing. One such free service (of many) is Talking Parents at <http://www.talkingparents.com/>



*Note: Having a safe site for exchanging the children is very important in domestic violence cases because of the high danger even after you split up. The period of time immediately following the parties' separation is often the most dangerous time for a domestic violence victim (and the children). Please be safe and insist that the exchanges only happen in safe places such as a police department (not a parking lot), where the abuser cannot get you alone.*

**Custody and Domestic Violence** - Exposure to domestic violence can be harmful to children and includes the whole experience of living in a home where there is ongoing domestic abuse, not just situations where children are also directly abused. Children may see domestic violence, hear yelling, objects breaking, and crying. They may also be physically injured when hit by thrown objects, when struck by blows meant for the abused parent, or when trying to intervene to stop the violence. Children may see damaged property, the abuser's arrest, or even be forced by the abuser to participate in the violence or to clean up after a domestic violence incident. There is also a high correlation between domestic violence and child abuse meaning people who abuse their partners are more likely to abuse children.

Children exposed to domestic violence may have more problems with anxiety, self-esteem, depression, anger, and temperament than other children. They are more likely to display aggression in their relationships with others and to exhibit behavioral problems. They have a higher risk of suicide, drug use, and juvenile delinquency or criminal behavior during adolescence or adulthood. A child's relationship with the non-violent parent and other support people is key to his or her healing.

If your children have been exposed to domestic violence, you should present evidence to the court about the domestic violence and its effects on your children. In some cases, it may be helpful to present expert testimony, from a psychologist, therapist, or your local domestic violence program, to further educate the court about the effects of domestic violence on children. The court should consider and give significant weight to the family's history of domestic violence in deciding what parenting arrangement is in the best interest of the children.

**Allegations and Evidence of Abuse, Neglect, Maltreatment, Exposure to Domestic Violence** - Domestic violence, child abuse, and child neglect are relevant factors for the court to consider in making its "best interest of the child" determination. Child abuse and neglect include many types of child maltreatment such as: physical abuse, sexual abuse, substance abuse, medical or educational neglect, failure to support one's children, or living in dangerous or unsafe housing.



*Note: The court cannot consider child abuse or neglect allegations without **credible evidence**. Evidence may be testimony by you or other witnesses, physical and documentary evidence, and/or expert testimony by a doctor or therapist. The evidence must be persuasive; judges and magistrates are often skeptical when these allegations arise in custody cases. Making "false" or weakly supported child abuse allegations can hurt your case and damage your credibility with the court.*

If you are involved in a custody case where your children have been exposed to domestic violence or suffered abuse or neglect, you and your other witnesses should address the following topics:

- How long has the domestic violence been going on?

- Describe incidents of violence in detail with dates, times, and places if possible. Were you injured? Who, if anyone, witnessed it or saw you soon after? Did the children witness it?
- Has the violence increased in the last few years or months?
- Does the abuser have access to a weapon?
- Has the abuser threatened to kill you or himself or herself or the children?
- Have the children been abused? Describe incidents in detail, with dates, times, and places.
- How have you tried to protect the children from abuse?
- Have the children made any statements about the abuse, had nightmares, or difficulty in school? How have they been impacted?

Physical and documentary evidence is also important. Such evidence might include:

- **Copies of medical and dental records including certified copies of hospital records.** Since medical records are usually confidential, you will probably have to sign a release for your medical records or write a letter to your doctor or hospital requesting the records.
- **Photos.** Bring to court any pictures of injuries caused by the other party. You don't have to remember who took the picture, but be able to state when the picture was taken and that it is a fair and accurate representation of the injury or scene.
- **Copies of police reports and 911 calls.** Contact the precinct where you filed any police reports to learn how to get copies. Local victim services organizations may also be able to help you.
- **Communications from the abuser.** Letters, cards, answering machine, voicemail messages, Facebook/other social media messages, and/or text messages containing threats or other statements by the abuser. Make sure to bring a tape recorder or your cell phone to court to play the message. Print the text messages out or get screen shots because not all courts will accept that information without taking the cell phone.
- **Your writings.** Diaries, journals, or letters you have written describing the abuse.
- **Legal Documents.** Copies of protection orders, petitions, criminal charges or convictions, and other court documents. If you do not have copies of these documents, get certified copies from the clerk's office where the orders were filed with the court.

Other related evidence about the children may be helpful to your case. Some examples are:

- copies of the child's school or daycare records
- copies of counseling records, if the children are in counseling
- medical records of the children
- pictures of your home
- evidence of proposed visitation arrangement such as a letter from the individual or group that agrees to supervise visitation of your children

Finally, be prepared to defend yourself against evidence raised by the opposing party in your custody case. For example, the abusive parent might raise your mental condition or claim that you are lying or are crazy. If you are in therapy, consider having your therapist or counselor testify on your behalf. If you have had a problem with drug or alcohol abuse in the past, inform the court about the treatment you have received and how long you have been drug or alcohol-free. To prove you will be able to support your children, bring to court pay stubs, letters from employers, or bank statements. If you are looking for a job, describe your job search efforts.

Prepare your evidence and be prepared for court. Have a friend, advocate, or (if possible) an attorney help you prepare your evidence and practice your testimony. The judge or magistrate will appreciate your preparation and you will be able to more effectively present your case to the court.

## Working with Guardians ad Litem (GALs) and Custody Evaluators

Courts sometimes appoint a guardian ad litem (GAL) and/or a custody evaluator to investigate the families, prepare a report, and make recommendations to the court about future parenting arrangements. Their reports and recommendations can significantly influence the outcome of a case. It is important to understand their roles and duties and how you should interact with them.

**Custody Evaluators:** Custody evaluators may be social workers, mental health experts, or other professionals who are court employees who are often part of a special court unit called “Court Services,” “Family Services,” or the like. Or, the court may appoint an outside expert—usually a psychologist or mental health expert—to interview the parents and children, conduct psychological tests, and more generally investigate what goes on in your family. In some jurisdictions, the court may give the parties the opportunity to submit the names of proposed custody evaluators.

**Guardians ad Litem (GALs):** GALs play an important role in many child custody cases. Either parent can request the appointment of a GAL for their child, or the court may appoint a GAL to represent the best interests of the child. Most courts appoint an attorney as a GAL, but some courts may appoint a non-attorney GAL or a Court-Appointed Special Advocate (CASA) volunteer as a GAL. A GAL’s role is to investigate the family’s circumstances and recommend child custody and visitation arrangements that are in the best interest of the child. Courts vary on how GALs are paid, but in many counties, you will be required to pay the GAL a fixed amount as a deposit and then an hourly fee, just like an attorney would charge on a case. Some counties have funds to pay for the GAL when the parties cannot, but ask if you need to file a poverty or indigency affidavit to qualify (check for this form at the Clerk of Court’s office).

**Rules for GALs:** After being appointed to a case, GALs must conduct a neutral investigation and, after completing their investigation, must submit a written report, including recommendations, to the court. Their written reports must be made available to the parties or their attorneys before the final hearing. GALs and custody evaluators must behave ethically and conduct thorough and impartial investigations. The rules that GALs must follow can be found at:

[www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/Superintendence.pdf#Rule48](http://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/Superintendence.pdf#Rule48)

**Investigation:** The GAL typically will conduct interviews with the parents, children, and other relevant family members, caregivers or teachers who have frequent contact with the child. They should interview both the parties and other persons who can provide relevant information regarding the parents and children. Other sources of information may include family members, friends, neighbors, former partners, doctors, clergy, teachers, counselors, and victim advocates. They should also review records such as police reports, child protection reports, court files, medical records, and school records. The GAL may also investigate any complaints that the parents have about one another. For example, if one parent complains that the other parent does not get the child to school on time, the GAL may look at the child’s attendance records, and perhaps ask teachers or counselors.

**What to Expect:** When a GAL is appointed to represent the best interests of your child(ren), make sure that you contact him or her *immediately*. You will be asked to set up an appointment at your home or at the GAL’s office. There are some things you can do to inform a GAL about your case and to help ensure they make well-informed and appropriate custody recommendations.

**Be Prepared:** Be prepared to present detailed information about your child’s life, such as the child’s daily schedule, special needs the child has, the names of the child’s doctors or counselors, and the



names of other people who have had regular contact with the child. Be able to explain what you know/what your child has told you about his/her interactions with the other parent.

Where there is a history of domestic violence in the family, try to clearly explain what happened between you, the batterer, and the children. Describe the most serious/dangerous domestic violence incidents and the overall history of domestic violence. Also explain what you did to protect the children from the domestic violence. Give the GAL or custody evaluator copies of any photographs, police reports, or other “evidence” that the domestic violence happened.

Be prepared to talk about your child’s needs, experiences and your parental strengths. Take an active role in providing information to the evaluator or GAL, and explaining why you took any actions that the other parent may make a big deal about. While you can’t control the GAL’s final recommendations, you can provide information they need to make the best recommendations in your case.



*Note: The GAL is not your attorney. What you say to him or her is not privileged or confidential. The other party can access everything that you give the GAL, even the notes that are taken about your conversations.*

The court will consider the recommendations of the GAL in determining the best interest of the child. You can cross-examine the GAL at trial about his/her investigation and recommendation. The court must still weigh and consider all the evidence concerning the best interest of the child and may ultimately reject the GAL’s recommendations. *However, courts give great weight to the GAL. It is important to not alienate this person; she or he will potentially have a huge impact in your case.*

**Psychological Testing and Domestic Violence:** Be careful about psychological testing in domestic violence situations. Such testing often misdiagnoses a domestic violence victim’s response to trauma as mental illness. There is no psychological test that can accurately determine whether someone is an abuser or has been abused. Also, standard psychological tests which are designed to measure personality, psychopathology, intelligence, or achievement do not address most issues relevant to raising children or parents’ child-rearing attitudes and abilities.

**Problem GALs:** GALs sometimes fail to perform effective and impartial investigations or make appropriate recommendations to the court. Many GALs do not fully understand the dynamics of domestic violence and can even be insensitive to the plight of domestic violence victims. In extreme cases, a parent may ask the court to remove a GAL and appoint a new GAL, but that rarely happens. The court must have a complaint procedure by which you may submit written comments and complaints regarding the performance of GALs practicing before that court. If you feel a GAL who is an attorney was unethical in your case, you can file a complaint with the Supreme Court. See *Problems with Attorneys and Judges* in this manual for more information.

## Mediation and Working with Mediators

In Ohio, a court hearing a custody case may order the parents to “mediate” their differences about parenting rights. The court must consider a history of domestic violence or child abuse when it decides whether or not to order mediation. If there was a criminal conviction, the court may order mediation only if the court determines it is in the best interests of the parties to order mediation and makes specific written findings of fact to support its determination. If the court orders mediation, it may order one or both parents to pay the costs of mediation. As with all court costs, you can ask to not pay at all or to pay less by filing a poverty affidavit. You can always voluntarily mediate any issues involved in your divorce or custody case.

**What is mediation?** Mediation occurs when, through talking with a mediator, the parties try to reach agreement on issues. The mediator may be an attorney, psychologist, or other professional who has training in mediation skills and domestic relations laws.

**What does mediation look like?** One or more sessions are scheduled. The mediator guides the discussion of all the issues to be covered in mediation and tries to help the parties reach agreement on each issue. You may be in the same room as the other party, or you may be in different rooms where the mediator talks to you and relays information. At the end of the session(s), the mediator will file a report with the court. The mediator cannot share what happens during the session, only whether or not there was an agreement, and if so, what you agreed to.

**What happens if I reach an agreement in mediation?** If you reach an agreement on all or some of the issues, you can sign the agreement. Ask the mediator whether he or she will file the agreement or if you need to. If you have an attorney, you can wait to sign the agreement until your attorney reviews it and advises you to sign it. The court will review the mediation report and any agreement signed by the parties. If it approves the agreement, the court will make it an order of the court, meaning that the mediated agreement has the same legal effect as a court order issued after a contested trial.

If you don't reach an agreement, that is okay. No one can force you to reach an agreement. If you don't reach agreement on any issues, the mediator will just write a short statement for the court that says you participated and that no agreement was reached.

**Possible benefits** of resolving a case by mediation:

- your case may be resolved more quickly and more cheaply than through litigation
- parties may have less anger and bitterness because there is no clear "winner" or "loser"
- agreements often have greater mutual satisfaction of both parties (if you are able to freely discuss your wishes in the mediation and the other party does not coerce you in any way)
- keeps the children out of the case
- it is often scheduled around your availability

**Risks of mediation** in cases involving domestic violence:

- Mediation works best when parties have equal power in the relationship, information about the family's financial resources, the ability to protect their own interest, and the willingness to work together for a fair outcome. Those conditions rarely exist in domestic violence situations.
- Abusers usually try to maintain power and control, make all the decisions, monopolize speaking time, and use intimidation tactics to control all aspects of their partners' lives. It is no different in mediation, where the abuser will try to get you to agree to things that increase his/her access to you – frequent phone calls (supposedly about the children), more short visits (to make you see him/her more often), and forcing you to agree or suffer the consequences of not agreeing with the abuser every time a decision needs to be made about the children.
- Abusers are likely to use mediation to further manipulate, control and intimidate their partners, because of the setting and absence of "authority" figures like a judge or law enforcement.
- Mediation requires the parties to "cooperate" in the mediation sessions, but abusers are unlikely to cooperate. Some will try to convince the mediator that they are very reasonable and try to make you look unreasonable by asking for or demanding things that have a "hidden" meaning that the mediator does not understand.

**Mediation in cases involving domestic violence:** All Ohio mediators in domestic relations cases must have received training on domestic violence (unlike GALs.) If mediators are aware of any history of domestic violence, they should use communication skills to try to balance power, help the victim express

his or her views, and try to gain full communication and information disclosure by the parties. The mediator can interview the parties in separate rooms and then communicate each party's views and proposals to the other party, so there is no contact between the two parties. If you are a domestic violence victim, your victim advocate may accompany you and be present during any or all mediation sessions. Although victim advocates cannot give legal advice, they can lend you emotional support and help you get through the process.

**Staying Safe in Court-Ordered Mediation:** Remember that to comply with an order for mediation, all you have to do is show up – sometimes you can even “appear” by phone. Mediation programs usually have screening forms that will ask about whether you feel safe participating. You can say no and the mediator may tell the court that mediation will not work for your case. If you do go to mediation, get there early so that you can be around staff when the other party arrives. Ask if you can sit in a different room and have the mediator go back and forth between your room and the other party's room. Finally, remember that mediation only lasts as long as both parties participate. You can just say that you do not want to mediate and ask that the mediation be terminated.

## Co-Custody Agreements and Same Sex Couples

The laws in Ohio about unmarried same-sex couples with child custody disputes are continually evolving. As a result of the United States Supreme Court's June 26, 2015 decision in *Obergefell v. Hodges*, same sex couples in Ohio can now legally marry. But many same-sex couples in Ohio may choose to remain unmarried and will not enjoy the rights and duties of marriage. The partner who is not the biological parent of a child in a non-marital relationship does not have any parental rights. However, if there is a co-custody agreement, Ohio courts may enforce that agreement, if it is in the best interest of the child. Custody and visitation matters for same sex couples are handled in Juvenile Court.

The Ohio Supreme Court has ruled that unmarried gay or lesbian non-biological parents only have a claim to shared custody if they can show that the biological parent “purposely relinquished” the right to exclusive custody by making an express agreement to that effect with his or her partner. The agreement does not have to be in writing, but it is best to put it in writing and file it proactively with the court. Include language that you want to share custody – to raise the child(ren) together, make decisions together, and any other key decisions that you have made like schooling, religion, etc. Keep a signed copy in a safe place that your partner does not have access to (at the bank, at work, in a lock-box, or with a lawyer). *However, if you are the biological parent in a relationship with an abusive partner, you may want to avoid signing and filing a co-parenting agreement. You may be creating rights for your abuser that he or she would otherwise not have.* The partner (non-biological parent) may sue for “companionship” (the equivalent of visitation) time in Juvenile Court. In addition, if the biological parent is unfit to parent, the non-biological parent may seek and obtain full custody of the child by proving it is in the child's best interest. This is a very high standard to meet.

## Same Sex Marriage in Ohio

Same-sex couples may now legally marry in Ohio, and all Ohio governmental entities and courts must now recognize the validity of same-sex marriages that have been performed in other states. As a result, same-sex couples are now able to file joint state and federal income tax returns, and their surviving same-sex spouse may inherit property from the other spouse. Adoption rights are also expanded. A same-sex stepparent spouse may now legally adopt the biological spouse's child under the same terms and conditions as any other stepparent adoption in Ohio.

However, there are still some unresolved legal issues or questions regarding the impact of the Supreme Court decision on same-sex couples who legally marry or are weighing the pros and cons of marriage versus unmarried cohabitation. These unresolved issues include retroactive tax refunds, division of property, and adoptions which will likely be settled by litigation in the years to come.

## “Grandparent”/Relative Visitation

Grandparents and other relatives can seek visitation rights with the children for a variety of reasons. A court may grant reasonable visitation with minor children to grandparents, relatives, or other persons if:

- there is a pending divorce, dissolution, legal separation, annulment or child support proceeding
- the court has continuing jurisdiction over the proceedings listed above
- a parent has died and left a minor child
- an unmarried woman has a minor child (even if she gets married later)
- a father, who is not married to his child’s mother, either has acknowledged paternity or has been found to be the father of the child

The court will consider the “best interest of the child” in deciding whether to grant any third party requests for visitation in these cases. Relevant factors in making that determination may include the parents’ wishes, blood and social relationships, past interactions with the child, geographical distance, and the schedules of the parties.

## Children’s Services/Child Protective Services (CPS) and Domestic Violence

In this section, child protective services agencies are referred to as CPS, although they may be called Children’s Services, CSB or Child Protective Services in your community. These agencies are based in each local county and have their own ways of responding to situations where children are living in homes where there is domestic violence. Some agencies will open cases where children witness violence but are not a target. Others will only get involved if there is direct child abuse or neglect.

**Role of Children’s Services Agencies** - Children’s Services agencies may become involved in family situations when they become aware of serious domestic violence occurring in a home. They may launch an investigation and then offer support services to the battered parent and the children (and possibly to the batterer). In some cases, CPS may file a complaint in juvenile court alleging child abuse, neglect, or dependency and take legal steps to protect the children. In a worst case scenario, they may remove the children and place them in foster care or with relatives, sometimes on the grounds that the battered parent cannot protect the children from negative impacts of being exposed to domestic violence.

In many Ohio counties, CPS may use either a “**traditional response**” or “**alternative response**” (which may be called traditional or alternative “tracks” in your community.) All Ohio counties will have both types of responses available to them soon, and it is important that you understand the difference. In some cases, (depending on the nature of the concerns being investigated), you may be able to request one type of response over the other.

CPS agencies screen all incoming complaints of child abuse or neglect. Cases that are assessed as low-to-moderate risk (of danger to the children) may be assigned to either an “**alternative pathway**” or a “**traditional pathway**.” If a case has been assigned a “traditional pathway” it means CPS workers will investigate and decide if they think children have been abused or neglected and make a finding such as “substantiated” (meaning they found abuse), or “indicated” (meaning they suspect abuse), or

“unsubstantiated” which generally closes the case after investigation, but ongoing services are possible. If a case is opened, they can:

- ask you to do a voluntary case plan
- file a case with an involuntary case plan
- seek court involvement to remove the child from the parents and home

Under the “**alternative pathway**” the agency still conducts interviews and seeks information, but does not make findings about an alleged incident (substantiated, indicated, or unsubstantiated). Workers using alternative response should:

- Involve the family in identifying their needs and build on their strengths.
- Provide battered parents with the appropriate supports, including help with safety planning, referrals to domestic violence shelters and programs, and referrals to legal aid programs and victim advocates for help in getting civil protection order.
- Promote the strengths of the non-offending parent (battered parent) and, whenever possible, leave the children in the care of that parent.
- Hold perpetrators, not victims, accountable for domestic violence. This means that batterers should face legal consequences for their actions, but they may also receive appropriate batterers’ intervention counseling and treatment.

Cases assigned to an “alternative pathway” may still require participation in a case plan if safety concerns exist, but there is no formal finding about child abuse, no court case, no change of custody or parental rights termination. If you refuse to participate in the case plan, CPS may reassign the case to a traditional response pathway.

Why this is important to understand:

- While Alternative Response is meant to be a more cooperative approach with the family, it is possible one parent or the other may not be agreeable to an Alternative Response assignment. Either parent might demand a Traditional Response if they believe a finding that substantiates or un-substantiates child abuse gains them legal leverage in a custody case. Parents might also assume “substantiated” or “indicated” findings will require family members to participate in court-ordered services (substance abuse treatment or mental health services). Some batterers may request traditional response pathway to prolong threats and control over family members.
- In Alternative Response, since there is no court involvement, there is usually less risk of a removal and placement in foster care or termination of parental rights.
- Alternative Response is not available where the report to CPS involves allegations of child sexual abuse or might result in criminal charges for felony child endangerment (serious injuries, broken bones, severe neglect, etc.)
- In Ohio, there is currently no known option being used in the state (by CPS and Courts) to permanently terminate or sever only one parent’s rights to their children. Typically a court will terminate either both parents’ parental rights or neither. You should know that termination of a parent’s rights is *permanent*, and different than other custody decisions made by courts.

CPS practices and attitudes still vary widely from one county to another. Some child welfare workers may be less knowledgeable about domestic violence or less sympathetic to victims than others. It is always possible that CPS may take more drastic measures, such as filing a juvenile court complaint and removing the children from the care of the battered parent. It is also possible that a judge in a court

may decide cases differently than workers expect. So, survivors and their advocates should always be careful in their dealings with CPS workers.

**Juvenile Court Abuse, Neglect, and Dependency Cases** - If Children's Services Files a Case - If CPS files a juvenile court complaint, it is really important to consult an attorney. If there is a pending juvenile court child abuse or neglect proceeding and a CPS case plan in effect, you should comply with the case plan requirements and take advantage of any support services. If you are referred to counseling or substance abuse treatment, or ordered to attend parenting classes, and fail to go, CPS may seek removal of the child and place the child in foster care. In the most extreme cases, CPS may even seek termination of all parental rights (including those of the battered parent) where the parents are uncooperative in getting necessary services and counseling. If CPS files to permanently terminate your parental rights, you are entitled to your own free attorney appointed by the Court. If and when CPS files a complaint in juvenile court alleging child abuse, neglect or dependency, the juvenile court will then have exclusive jurisdiction of all matters relating to the custody of the children who are the subject of the juvenile court proceeding. Even if a divorce is pending or is filed after the complaint filed by CPS, juvenile court takes over or "trumps" all matters related to the children.



*Note: If you do need an attorney in an action filed by CPS, be sure to ask for **your own attorney**, separate from the other parent of your children.*

**CASAs/GALs** - In almost all juvenile court cases of abuse, neglect, or dependency the court appoints a Guardian Ad Litem (GAL) or a Court Appointed Special Advocate (CASA) to investigate, prepare a report and recommendation, and to advocate for the best interests of the child. If the GAL/CASA's custody recommendation differs from the child's wishes, the court must appoint an attorney to represent the child and another person (usually an attorney) to serve as the child's GAL. In these cases, the child will then have two court-appointed legal representatives—a GAL and the child's own attorney. The GAL advocates for the child's best interests while the attorney advocates for the outcome desired by the child. The court will hear arguments or testimony from the GAL, the child's attorney, the parents' attorneys, the parties themselves, and possibly from relatives or other interested parties before deciding the case.



*Note: The CPS system is large, varies from county to county, can be helpful or make things more difficult, has varying levels of expertise in domestic violence cases, and has the legal authority to seek to terminate your parental rights. And things you disclose to a CPS worker can result in a criminal case against you (for example, child endangering.) For all of these reasons, you should **proceed with caution** if you are thinking about voluntarily calling CPS into your family's life.*

## Child Support and Paternity

Child support is the money one parent pays to the other parent (or a third party custodian) for the support of their children. Child support is for the child and has nothing to do with whether or not the parents are getting along or visiting with their children. A court will order child support only when parents are separated or the child is in the care of a third party custodian. Child support is ordered by a Juvenile or Domestic Relations Court or through a Child Support Enforcement Agency (CSEA). Even if you agree with the other parent to support, it must be approved by the court. When the court makes a child support order, it must: (1) establish the paternity of the father; (2) establish a child support order; (3) make sure that the child support order is enforced; and (4) when appropriate, seek a modification of the child support order.



**Paternity Establishment** - Paternity – a legal decision that a man is the father of a child – can be established in several ways: the execution of a voluntary acknowledgment of paternity affidavit, the issuance of a CSEA administrative paternity order, or a court order establishing paternity. Paternity can be established at any time before the child's 23rd birthday regardless of where the parent lives. The "Acknowledgment of Paternity Affidavit" (JFS Form 07038) must be signed by both parents, notarized and filed with paternity registry. The form is usually given to the parents at the hospital at birth, but can also be completed and signed at the health department or county CSEA. By signing the form, both people agree that they are the biological parents of the child.

If there is no affidavit, you can either file a paternity suit in juvenile court or ask the county CSEA to do an administrative determination of paternity. If there is doubt about how who the father is, the court or the CSEA will order all parties (including the child) to submit to DNA tests and will issue a paternity order based on the results. A court order of paternity may be issued by the domestic or juvenile court. However, the CSEA administrative process is easier, quicker, less expensive (usually free), and does not require either parent to have an attorney. A CSEA order has the same legal effect and is just as binding and enforceable as a court order of paternity.



*Note: Some Ohio counties are issuing parenting time orders (custody and visitation) in Child Support cases. Some counties are making participation in the CSEA parenting time orders program **voluntary, meaning if you do not feel it is safe for you or your child(ren), you do not have to agree to the parenting time program.** Opting out of this program at the Child Support office does not prevent your abuser from filing for parenting time through Domestic Relations or Juvenile Court.*

**Establishment of a Child Support Order** - Both parents have a legal responsibility to support their children financially. A child support order sets the amount and frequency of support payments parents are required to make. Either a court—a juvenile court or domestic relations court—or a CSEA can issue a child support order. If there is a pending divorce, dissolution of marriage, or legal separation case, the domestic relations court will determine child support and may issue a temporary child support order during the pendency of the proceeding. A juvenile court may order child support in any child custody proceeding or in an action brought by a parent seeking child support only. Otherwise, the county CSEA usually takes the lead in establishing a child support order. The CSEA can seek a child support order even where the other parent does not live in Ohio.



*Child support duties are separate from visitation. You cannot stop paying child support because you are not visiting, and you cannot deny visitation because the other parent is not paying child support.*

The person who is ordered to pay child support is called the "**obligor**" (usually the non-residential parent). The person who receives child support under the order is called the "**obligee**" (usually the residential or custodial parent). In "shared parenting" cases, one of the parents is designated the residential parent/obligee for child support purposes.

The child support schedule and the applicable worksheet of the Ohio Child Support Guidelines are used to calculate the amount of child support. Child support is based on the income of both parties and the cost of health insurance and daycare (for just the children of the relationship). Child support calculations are complicated – the courts, CSEA, and attorneys use computer programs to determine the "guideline" amounts. Check your local court for a computer with the program on it if you have to figure out the numbers on your own. In general, courts are required to issue a minimum child support order of at least \$50 per month. However, courts can order less or order no support at all if the obligor is institutionalized, has a documented physical or mental disability, or under other appropriate

circumstances. Although not required to, CSEAs will also usually issue at least a minimum support order of \$50 per month.

If the child is receiving Social Security or veterans' benefits as a dependent of the obligor, that amount must be deducted from the calculated amount of child support. In some cases that will mean that the child support amount will be zero because the child's dependency benefits exceed the guideline's amount of support.

If a parent's job changes or he or she has no income at all, a court or a CSEA can "impute" income to a parent who is voluntarily unemployed or underemployed – meaning they assume that the parent could be making a certain amount of money and issue orders based on that income. This can be done if you can prove that the parent is voluntarily under/unemployed (making less than he or she is able to).

When child support is ordered, the court or CSEA will also order that the employer take the child support right out of the obligor's check or automatically withdraw it from his or her bank account. Low-income benefits such as Supplemental Security Income (SSI), Ohio Works First (OWF), or Veterans Pension benefits are not subject to deductions for child support. Even if there is no income withholding or deduction notice, child support payments must be paid to either the State Office of Child Support or the County CSEA.



*Note: Any money sent from one parent to another or the custodian of the child without going through CSEA is legally deemed to be a "gift" and will not count as child support payments under the child support order.*

**Health Insurance and Cash Medical Support Orders** - The court or CSEA will order one or both parents to provide health insurance coverage for the children, if such coverage is available at a "reasonable cost" (equal to or less than five percent of the parent's gross income.) State law also requires any child support order to take into account medical support for the children in one of two different ways:

- The child support order must be adjusted to take into account the cost of health insurance for the children when insurance is carried for the children.
- If reasonably affordable health insurance is not available to either parent or if a parent does not comply with a health insurance order, the court or CSEA will order the obligor to pay "cash medical support" in addition to regular child support.

The purpose of a cash medical support order is to provide money for the uncovered health care costs of a child, whether paid for by the other parent, another person, or Medicaid, and is charged only when private health insurance coverage is not being provided for the children. When the children are on Medicaid, the obligor pays cash medical support to the State of Ohio. When the children are not covered by Medicaid, the obligor pays cash medical support to the obligee. The amount of cash medical support is calculated at five percent of the obligor's "adjusted gross income." However, indigent obligors do not have to pay any cash medical support. Specifically, if the obligor's adjusted gross income is less than 150% of the federal poverty level for a one-person household, the parent cannot be ordered to pay cash medical support.



*Note: Even if the other party has private health insurance and is going to cover your children on the policy, if you qualify for a medical card, you can keep it as your secondary insurance (this can help with co pays, for example).*

**Child Support Enforcement** - When the obligor is more than one month behind, he or she is in “arrears.” The CSEA is responsible for enforcing child support orders at no charge. Child support orders can be enforced across state lines. The CSEA can enforce child support orders and collect arrears by:

- issuing new income withholding or deduction notices to collect the arrearage
- issuing a seek work order (an order to find a job) against the obligor
- taking the obligor’s tax refund and using it to pay off the arrearage
- locating the obligor’s money and then taking it to pay the child support obligation
- suspending the obligor’s work or professional license, or driver’s license
- having the prosecutor charge the obligor for criminal nonsupport, which can be a felony
- filing a motion for contempt against the delinquent obligor (one of the most commonly used enforcement tools) and asking the court to fine and/or jail the obligor (inability to pay is an available defense to a contempt motion)

**Modification of Child Support** - The amount of child support may be changed when there is a substantial change of circumstances. Either parent may request a change by filing a motion to modify child support at court or by requesting a CSEA administrative review. It is easier to request a CSEA administrative review because you do not need an attorney and it is free. Either the obligor or the obligee may request a CSEA administrative review once every 36 months from the date of the most recent child support order. A review may be requested sooner if:

- a party who had a reduced child support obligation because he or she was unemployed or under-employed before is now fully employed
- a party has become involuntarily (not by choice) unemployed or been laid off for more than thirty days or has become permanently disabled, reducing his or her earning ability
- either party has been institutionalized or incarcerated and cannot pay support for the child’s entire childhood (and doesn’t have any property to sell to cover it)
- either party has experienced a 30% difference in income for 6 months that is likely to continue
- support for one or more children needs to terminate
- health insurance availability/cost or daycare cost has changed
- a party is going into or returning from active military duty

**Communication with CSEAs and Courts** - Both parties under a child support order must notify the CSEA of any address changes or of any changes that would terminate the child support order, such as a child’s death, marriage, incarceration, enlistment in the armed services, a change in the legal custody of the child, or emancipation. The obligor must promptly notify the CSEA if and when the obligor loses his or her job, or obtains new employment. These CSEA notice requirements must be included in the child support order (even if it is part of a divorce). Failure to notify the CSEA of these changes may be contempt of court and be punishable by the court.

**Safety and Good Cause Waivers** - If you or your child are a victim of domestic violence or sexual violence and you do not want CSEA to try to collect child support (for example, if you are afraid that CSEA may release your address to your abuser, or fear that if CSEA goes after your abuser for child support he or she will retaliate against you) you can ask for a good cause waiver that allows you to not cooperate with child support enforcement. If your child was conceived as a result of sexual assault, you can ask for this waiver to be permanent. In domestic violence cases, you can ask the CSEA to place a “Family Violence Indicator” on your file. If they agree, they can waive your requirement to cooperate with child support enforcement and they then cannot send your address or related information to anyone else. For example, if the child support obligor is your abuser and requests an administrative

review of the existing child support order, the CSEA must remove your address from any notices it sends to the obligor concerning the review or any hearings. To request the “Family Violence Indicator,” tell the CSEA and provide documentation of the domestic violence from third parties such as the police, courts, domestic violence shelters, attorneys, medical professionals, or “other persons with knowledge of the domestic violence.” If you cannot get any written documentation from a third party, the CSEA must accept your own written statement, unless the CSEA has a reasonable basis to find your allegation not credible. For more information on waivers, see: <http://codes.ohio.gov/oac/5101:12-10-32v1>

*Note: Some CSEA workers are mandatory reporters of child abuse and may call Children’s Services (CPS) based on information you provide about domestic violence in your family.*

**Resources and Forms** - CSEA assistance is available free of charge. CSEA staff is usually very knowledgeable and used to working with people who do not have attorneys. There is more information available at the CSEA office and on the Job and Family Services website at: <http://jfs.ohio.gov/ocs/index.stm>

## Finances and Money

### In this section

- **Bankruptcy**
- **Consumer Issues**
- **Crime Victims Compensation**
- **Property Outside of Divorce**
- **Public Benefits**
- **Taxes**

### Bankruptcy

Bankruptcy is a legal procedure that enables you to obtain relief from the heavy burden of debt and make a “fresh start.” Filing for bankruptcy is a big decision that has an impact on your life for many years. If at all possible, you should get legal advice from an attorney before taking this action. Bankruptcy petitions are filed in the federal U.S. Bankruptcy Court. The person filing a bankruptcy petition is the “debtor.” Married persons may file a joint bankruptcy petition. Consumer bankruptcies are filed under either Chapter 7 or Chapter 13 of the Bankruptcy Code and are thus known as “Chapter 7” or “Chapter 13” bankruptcy proceedings. There are substantial filing fees, but you may pay the filing fee in installments or apply for a waiver of the filing fee.

**Automatic Stay** - The filing of a bankruptcy petition—under either Chapter 7 or Chapter 13— usually automatically “stays” (holds off) most or all collection actions against you and your property. Creditors normally receive notice of the filing of the bankruptcy petition from the Clerk of Bankruptcy Court. As long as the stay is in effect (and creditors have notice of the bankruptcy filing), creditors generally cannot initiate or continue any lawsuits, garnish wages, make telephone calls demanding payments, or refer debts to collection agencies. The automatic stay also provides a period of time during which all court judgments, collection activities, foreclosures, and repossessions of property are suspended. The “automatic stay” remains in effect until the Bankruptcy Court grants the debtor’s bankruptcy discharge or dismisses the bankruptcy petition. *However, child support and spousal support (alimony) obligations and payments are not covered by the automatic stay.*

**Bankruptcy Discharge** - The primary purpose of a bankruptcy case is to “discharge” (forgive) a debtor’s debts and to give the debtor an opportunity to make a fresh start. If a debt is discharged in bankruptcy,

the creditor may no longer pursue any legal actions or other efforts to collect the discharged debt from the debtor.

**Chapter 7 Bankruptcy Cases** - Most consumer bankruptcies are Chapter 7 bankruptcies. Debtors who file Chapter 7 bankruptcy petitions must have no ability or realistic prospect of repayment of their debts within a reasonable time. Typically, the Chapter 7 debtor makes no payments on their debts—except for any “reaffirmed” debts or certain non-dischargeable debts—during the bankruptcy proceeding or after getting their bankruptcy discharge. However, some debts—such as debts for certain taxes, fraud, willful or malicious injury to persons or property, student loans, GAL fees, or spousal or child support—will not be discharged. The debtor remains liable for those debts even after going through a Chapter 7 bankruptcy and obtaining a bankruptcy discharge.

You will have to surrender to a “bankruptcy trustee” any so-called “non-exempt” assets. The trustee may then sell those assets and distribute the proceeds to your creditors. However, in most consumer Chapter 7 cases all of the debtor’s assets are exempt, meaning you do not have to turn over any assets to the bankruptcy trustee. The maximum amounts of assets that are exempt changes periodically. See the link at the end of this section to get current maximum assets allowed. Some examples of the kinds of assets that you may be able to keep under Chapter 7 bankruptcy include *portions of*:

- equity in your residence
- household furnishing, appliances, and firearms, clothing and other personal items
- some cash or bank accounts
- work tools, professional books, some jewelry
- pension benefits and a life insurance policy

**Chapter 13 Bankruptcy Cases** - The primary purpose of a Chapter 13 bankruptcy proceeding is to reorganize your financial affairs to a court-approved Chapter 13 plan, usually to save homes from foreclosure or cars from repossession. There are many other good reasons to file Chapter 13, including:

- You get three to five years to catch up on missed payments while making regular current payments on mortgages and car or other loans
- You get to keep most if not all of your property as long as you make the payments called for under their Chapter 13 plan

Chapter 13 is only available to individuals who have regular income (such as wages or monthly government benefit checks) above living expenses and where debts do not exceed prescribed limits. A budget and proof of earnings are submitted to the Court and the Chapter 13 standing trustee. The budget must be reasonable and fair. The Court must approve the debtor’s repayment plan, which it usually does if it complies with the applicable provisions of Chapter 13. In Chapter 13 cases you propose a plan to pay creditors monthly payments over a three to five-year period. Usually the total amount to be paid to creditors under a Chapter 13 plan is considerably less than the total amount owed to the creditors, and some debts may be eliminated without paying anything on them.

If the debtor fails to make payments required under the plan, and fails to seek or gain court approval of a modified plan, the debtor may convert the case to a Chapter 7 bankruptcy. If you fail to make your Chapter 13 payments or succeed in converting to Chapter 7, the bankruptcy court will dismiss the case. In the event of dismissal, creditors may sue the debtor or resume pursuit of other collection remedies to the extent a debt remains unpaid. Otherwise, after the successful completion of the Chapter 13 plan, you receive your bankruptcy discharge.

**What to expect and how to prepare** - Bankruptcy is not necessarily an “all or nothing” game. You can file bankruptcy to get a discharge of some debts and retain others. For example, you could file bankruptcy to get rid of your medical bills and credit card debts while “reaffirming” your home mortgage and auto loans. You should be careful to think about what debts you may want to reaffirm before you file for bankruptcy. It is important that you provide all the basic required information, particularly all your debts, possessions and assets. In a bankruptcy, a trustee gets appointed to take over your property, meaning the trustee has the right to access your property. The trustee will only take over your property if that property exceeds the bankruptcy “exemptions.”

**After the filing of a Chapter 7 petition**, you will have to appear at a brief, informal hearing. A trustee presides over the meeting. Trustees usually treat you respectfully and with dignity. After the hearing, the trustee must file a report to the court. This is the report in which the trustee declares that s/he has reviewed the assets of the debtor, inquired about them and concluded that there is nothing to liquidate for the benefit of the creditors. In the vast majority of filings, this is the case. After this stage, the case moves on to the bankruptcy judge and a discharge hearing is scheduled. The last phase is when the judge orders the discharge of the debt and the case is closed. The whole process usually takes about four months.

**In Chapter 13** the debtor must make payments to the Chapter 13 trustee under his or her proposed Chapter 13 plan within 30 days after the filing of the plan. Payments must be made to show the bankruptcy judge that you can handle the payments under the plan. The trustee will send you a list showing what money was collected from you and paid out to creditors. After the debtor has made all payments called for in the plan and the trustee has disbursed the money to creditors, the debtor will be sent a discharge order. The debtor no longer owes any money except for reaffirmed or non-dischargeable debts.

Filing for bankruptcy is a big decision that affects your credit for years, and as a result, can affect your ability to get a job, buy or rent housing, get loans, etc. The decision to file for bankruptcy should be carefully considered, with an attorney if at all possible. For more details, help, and forms, see: [www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/FilingBankruptcyWithoutAttorney.aspx](http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/FilingBankruptcyWithoutAttorney.aspx)

## Consumer Issues

In domestic violence and stalking situations, an abuser or stalker may threaten or try to “ruin the credit” of his or her victim. He or she may try to do so, for example, by abusing joint credit accounts or by identity theft. There are certain steps you can take to prevent such action or to repair the damage done.

**Protecting Your Assets** - Any joint open-ended lines of credit—such as joint credit cards—should be immediately closed. If possible, you should take or secure all of the credit cards issued on the joint account to prevent further use. If there are outstanding charges on the account, the card issuer will not close the account until all outstanding charges are paid, but as a joint account holder the victim can put a freeze on new charges. If the abuser is merely an authorized user on your account, you should immediately advise the card issuer to remove the abuser from the account.

**Utilities** - If you leave home, remove your name from the utility service(s) at that address. Only give your new address to close friends and to those agencies or companies that need to know it.

**Bank Accounts** - When people have joint bank accounts, either party can withdraw all of the money. Consider immediately withdrawing all or at least those funds you consider to be yours. Otherwise, the



abuser may withdraw all the money. A court may later decide who is entitled to the money in the account but it will be hard to retrieve any money that is already spent. If you withdraw all funds, but are not sure how much will be considered yours, it is wise to not spend the funds until the court decides the division of the cash.

When you close a joint bank account, you should promptly redirect all **automatic deposits** (paychecks, government benefits, etc.) and **automatic withdrawals** (utilities, other bills)—so they are no longer sent to the closed account. Even if you do not close that account but open a new one in your name, redirect your automatic deposits so that they go into your new account.

**Repairing Credit** - It is important to know your credit score and history. You can get this for free at [www.creditkarma.com](http://www.creditkarma.com) and at [www.annualcreditreport.com](http://www.annualcreditreport.com).

If you are looking for a job or rental housing, employers and landlords may ask to check your credit score. If you are hiding from your perpetrator, *remember that these credit checks will appear on your credit history*. If your perpetrator can access your credit report (which is not difficult if they have enough of your personal information), s/he can see where you are seeking a job or housing. It may be better to tell an employer or landlord that you prefer to provide your credit report to them.

If you have a bad credit history, whether or not it is as a result of your abuser, you have a right under federal law to correct or explain any incorrect information in their credit reports. For example, a credit report may list an unpaid debt as belonging to both the abuser and you, when only the abuser is liable for the debt. You can send a written dispute letter to each credit bureau that has reported inaccurate information and to the creditor who supplied that information to the credit bureau. Credit bureaus must investigate the questioned entry and correct any erroneous information. The creditor who supplied the information to the credit bureau also must correct and update their information. If the credit bureau does not correct the challenged information, you can send the credit bureau an explanation of why an entry in your credit report is inaccurate. The credit bureau must include in your credit report a letter that states you disputed owing a particular debt because it was actually incurred by the abuser and/or that your signature was forged on the loan or credit agreement.

**Identity theft** perpetrated by an abuser or stalker is also a real possibility. Identity theft happens, and victims of domestic violence may be especially vulnerable to identity theft because abusers often have access to personal information that would facilitate identity theft.

- To see information from the Federal Trade Commission (FTC) to help you protect yourself from identity theft, see: <https://www.ftc.gov/faq/consumer-protection/report-identity-theft>
- For information on how to repair or minimize the damage from identity theft, see: <http://www.consumer.ftc.gov/features/feature-0014-identity-theft>
- The FTC also has a special Identity Theft Hotline (1-877-IDTHEFT)

If an abuser or stalker uses your credit card without permission, you have several options to limit your liability. Federal law limits a cardholder's liability for unauthorized use of a credit card to \$50. If your card is stolen, the credit card lender can charge you a maximum of \$50 no matter how much was charged on your card. But you must report within specific time frames, so report thefts right away.

Lenders must also follow certain "billing error" procedures to resolve disputes about any charges on a credit card bill. Follow the procedures spelled out on the back of your bill. Once you have raised a dispute, the credit card company must investigate and report back to you in writing within two complete billing cycles or 90 days, whichever comes first. In many cases, the dispute will be resolved by

the merchant cancelling the charge. If the dispute is not resolved in your favor, you may withhold payment for that specific charge, provided you first make a good faith effort to resolve the problem with the merchant directly and then notify the credit bureau. After that, the credit card company will not pursue the cardholder on the disputed debt, but the merchant may sue you to collect on that debt. For more information, see: <http://www.consumer.ftc.gov/articles/0149-debt-collection>

There are other important state and federal consumer protection laws that target unfair, deceptive, or abusive consumer practices. Consumers may file a complaint with the Ohio Attorney General's Office utilizing their online complaint process at: <http://www.ohioattorneygeneral.gov/Individuals-and-Families/Consumers/File-a-Complaint>

## Crime Victims Compensation

The Ohio Victims of Crime Compensation Program—Administered by the Ohio Attorney General's Office—helps victims with certain out-of-court pocket expenses caused by criminal acts. To be eligible for crime victim compensation, you must report the crime to law enforcement and cooperate with law enforcement in its investigation.

Who may be eligible	Who is not eligible:	What payments can cover:
<ul style="list-style-type: none"> <li>Those injured during a violent crime</li> <li>Dependents of people killed in crimes</li> <li>Anyone responsible for a crime victim's finances, such as a parent or guardian*</li> </ul>	<ul style="list-style-type: none"> <li>The offender</li> <li>Anyone who engaged in a violent felony or drug trafficking within 10 years prior of the crime that caused the injury or during the pendency of the claim, or who was convicted of any felony in these time periods</li> <li>A claimant who has been convicted of a child endangering or domestic violence offense within 10 years prior to the crime that caused the injury or during the pendency of the claim</li> <li>Any victim who CVC judges to have contributed to the crime committed against them</li> </ul>	<ul style="list-style-type: none"> <li>Medical and related expenses</li> <li>Counseling for immediate family members of victims of homicide, sexual assault or domestic violence</li> <li>Wages lost because of the crime</li> <li>Crime scene cleanup for personal security such as doors and windows</li> <li>The cost to replace items taken as evidence or damaged as a result of medical treatment or assessment</li> <li>Payment for hearing aids, eyeglasses or other vision aids, dental appliances, teeth or other dental aids, canes, walkers, wheelchairs and other mobility equipment</li> <li>Lost wages and travel expenses for family members of a deceased victim to attend court proceedings and burial expenses</li> <li>Financial support for dependents of a deceased victim</li> </ul>

*\*(Please note: Minors must file within 2 years of their eighteenth birthday or 2 years from the date of the complaint, indictment or any other action taken against the alleged offender, whichever is later)*

**How to apply:** You can apply online for crime victims' compensation

at: <http://www.ohioattorneygeneral.gov/VictimsCompensation.aspx/?from=nav>

For more information and assistance, you may call 614-466-5610 or toll-free 800-584-2846. A victim advocate can also assist you in submitting the application. A private attorney can recover some fees through CVC to assist you with the application, as well as fees for your protection order case, under some conditions.

**Appealing Denial Decisions:** The decision on your case will come in the form of a “Finding of Fact and Decision” letter from the Ohio Attorney General’s office. Included with the letter will be a “Request for Reconsideration Form.” You should fill this form out if you do not agree with the ruling. The completed form and any supporting documentation that you wish to be considered must be returned to the Attorney General’s office **within thirty days of the decision**.

Your reconsideration request will be reviewed by a second attorney in the Attorney General’s office and a decision will be mailed out to you. If you are not satisfied with the result, this is the point where it is especially important to talk to an attorney if you can. You may submit a “Notice of Appeal from the Attorney General’s Final Decision” form with the Court of Claims of Ohio. This form must be received by the Court of Claims of Ohio **within 30 days of the final decision date**. The form can be found on the website for the Court of Claims of Ohio, [www.cco.state.oh.us](http://www.cco.state.oh.us), under “Victim Cases Forms.” Your application and supporting documents will be reviewed by a panel of commissioners. Their decision will be mailed to you. If you are not in agreement with their response you can fill out a “Notice of Judicial Appeal from Decision of a Panel of Commissioners” found on the same website and file it with the Court of Claims of Ohio **within 30 days**. At this point your application will be reviewed by a judge. The judge’s decision is final.

*You have the option to receive free attorney assistance at anytime during this process. You can find out more about that opportunity by calling (614) 387-9860 or (800) 824-8263.*

## Property Outside of Divorce

If direct negotiations or requests through third parties don’t work to recover your property from someone you were never married to, you can seek money damages by filing your case in Small Claims Court. Claims are limited to \$3,000 in Small Claims Courts and there is no jury. Small Claims Court is sometimes the only avenue for LGBTQ survivors to divide property in domestic violence cases. To seek to recover personal property other than money damages, you can file a complaint (called a complaint for “replevin”) in either municipal court (for property up to \$18,000 in value) or in Common Pleas Court.

- The Ohio Judicial Conference has put out a guide for people in small claims cases which is very helpful, at: <http://www.supremecourt.ohio.gov/jcs/interpretersvcs/forms/english/5.pdf>
- More helpful links are also available at:  
<http://www.clelaw.lib.oh.us/public/misc/FAQs/Claims.html> and  
[http://www.ohiolegalservices.org/public/legal\\_problem/courts-hearings/representing-yourself-in-court/small-claims/qandact\\_view](http://www.ohiolegalservices.org/public/legal_problem/courts-hearings/representing-yourself-in-court/small-claims/qandact_view)

## Public Benefits

There are various public benefits programs available to low-income Ohioans, whose income and/or assets are at or below certain limits. Most public benefit programs in Ohio are administered by county departments of job and family services (CDJFS), which are under the supervision of and subject to rules adopted by the Ohio Department of Job and Family Services (ODJFS). This manual provides information on Ohio Works First, Unemployment Compensation, and Social Security. There are other programs such as those administered by the Department of Veterans Affairs and the Ohio Development Services Agency administers several low-income utility assistance programs, see: <http://development.ohio.gov/> For more information on benefits, see: <http://www.thebenefitbank.org/> For a full overview of public benefits, see: [www.odvn.org](http://www.odvn.org), look under Information for Survivors.

**Ohio Works First (OWF)** - Ohio Works First provides time-limited cash assistance to eligible families through Ohio's Temporary Assistance to Needy Families (TANF) program, which emphasizes employment, personal responsibility and self-sufficiency. Applications are processed at county departments of job and family services (CDJFS), and cash assistance is provided to eligible families for up to 36 months. For child-only cases—that is, assistance based on the children—there are no time limits for cash assistance. After a 36-month time limit, cash assistance is not available unless the CDJFS approves an extension. A family may apply for a hardship extension at any time after its 36-month time limit has ended. A family may apply for a good cause extension after a 24-month waiting period following the 36-month time limit. Each county agency develops its own policies for hardship and good cause extensions. For eligibility information, see: <http://jfs.ohio.gov/factsheets/owf.pdf>

**Family Violence Option** - Under the OWF Family Violence Option, the CDJFS is required to offer a *temporary waiver* of the certain OWF requirements that would make it more difficult for you to escape the domestic violence or would unfairly penalize you. They can temporarily waive the time limits on benefits, the work participation requirements, and/or the child support cooperation requirements for domestic violence victims and these temporary waivers can be renewed. You can voluntarily tell your caseworker that you have been subjected to domestic violence, but the CDJFS is also required to screen OWF applicants and recipients to identify persons experiencing domestic violence. In addition to waiving program requirements, they must refer victims to counseling and supportive services. *If you request the Family Violence Option Waiver and are denied, you may appeal that decision. You can do that with or without an attorney. It is important to know that some counties may also make a referral to child protective services as a result of your disclosure of family violence.*

**Your Right to a State Hearing** - You can ask for a state hearing if you disagree with the CDJFS' decision to deny, reduce or terminate your OWF, disability assistance, Food Stamps, Medicaid benefits or to deny you the Family Violence Option Waiver. If you want a hearing, CDJFS must receive your request 90 days from the date they mailed their notice of decision to you. If the 90th day falls on a holiday or weekend, the deadline will be the next workday. To continue receiving your benefits during your appeal, you must request a state hearing within 15 days.

You can represent yourself at the state hearing. However, you can also have an attorney. See How To Find An Attorney section of this manual to locate resources. If someone is helping you with your case, CDJFS will need a signed "authorized representative" notice from you saying it is okay for that person to represent you in the hearing process. If you lose your administrative appeals, you can also pursue an appeal through the Ohio courts.

**Unemployment Compensation** - The purpose of Unemployment Insurance is to offer basic protection against economic insecurity. The program helps unemployed workers while they look for work. You should file your application as soon as you become unemployed. For information on eligibility and applications, see: [http://jfs.ohio.gov/unemp\\_comp\\_faq/index.stm](http://jfs.ohio.gov/unemp_comp_faq/index.stm) or call 1-877-644-6562 or TTY at 1-888-642-8203. You may be ineligible for unemployment benefits if you were fired for just cause, for things like fighting, extensive absences, or dishonesty. To be eligible for unemployment benefits, an employee who quits his or her job must have "just cause" for quitting. Just cause for quitting differs from just cause for discharge in that it need not be connected with work. Just cause to quit your job may include:

- **domestic violence**
- health problems
- unsafe working conditions
- wage reductions
- loss of transportation non-payment of wages or salary
- experiencing harassment at work
- excessive workloads
- an increased distance to work after the employer's relocation

*Domestic violence—for example, where you have to move to a safe but far away place to escape the violence or where the employee is being subjected to threats or harassment at work by the abuser—may constitute just cause for quitting and thus allow you to qualify for unemployment benefits.*

If you apply for unemployment benefits and your application is denied, you have the right to appeal the denial of benefits by pursuing appeals through ODJFS, the Unemployment Compensation Review Commission (an administrative hearing) and ultimately through the Ohio courts. Your employer has similar rights to appeal if they object to your receiving unemployment benefits.

**Social Security Benefits** - The Social Security Administration (SSA) administers both Supplemental Security Income (SSI) program (for indigent persons who are blind, disabled, or over 65 years of age) and the Federal Old Age, Survivors and Disability Insurance benefits program (OASDI, commonly known as “Social Security”). Unlike SSI or most other types of public benefits, Social Security benefits are not based on your income. They are earned benefits, accrued by workers who pay payroll taxes into the Social Security Fund.

There are two categories of OASDI retirement benefits—direct or “primary” benefits and “secondary” or “family” benefits. A worker becomes entitled to collect Social Security retirement benefits when she or he reaches the age of 62 and has worked in employment covered by the Social Security system for a required number of years or quarters. And, if a worker becomes permanently disabled and has the required number of quarters of work, she or he will be eligible for disability benefits. Family benefits are payable to legal children, a spouse, or a former spouse of a worker who has a sufficient number of years or quarters of coverage under the Social Security system. A “legal” child is a biological child, an adopted child, or a step-child, who is a minor child and unmarried. A current spouse must have reached the age of 62 years, or have a minor child in his or her care that is entitled to family benefits.

A divorced spouse may also be entitled to Social Security family benefits based on the other former spouse’s work history and eligibility. Benefits are payable to a divorced spouse who is 62 years of age or older and was married to the primary working spouse for at least 10 years before the effective date of their divorce. Also, a widow or surviving ex-spouse of a covered worker may be entitled to receive Social Security family benefits. The ex-spouse must have been married to the worker for at least 10 years to be eligible for secondary benefits based on the deceased worker’s earnings record.

It is important to understand the relationship between Social Security benefits and present or future divorce proceedings. Under both federal and state law, Social Security benefits are a spouse’s “separate property.” Thus, the divorce court has no jurisdiction to divide the benefits or award offsetting property to the other spouse. However, the timing of the divorce may determine whether a spouse is entitled to any Social Security family benefits based on the other spouse’s earnings record and Social Security eligibility. For example, if the husband earned significant Social Security benefits based on his work history, the wife may want to delay getting a divorce until after the marriage has lasted ten years so that she can become eligible for former spouse’s Social Security benefits.

**Family Law and Public Benefits** - A divorce, legal separation, or child support case may affect a spouse’s or former spouse’s eligibility for means-tested public benefits (based on your means/ income) or trigger a reduction in those benefits. For example, your receipt of spousal support or child support payments will likely trigger a reduction in your household’s means-tested public benefits or may even make you ineligible for them. Child support payments will reduce—although not dollar for dollar—a child’s SSI benefits (and SSI benefits will reduce child support.) In addition, the transfer of certain assets from one spouse to the other spouse through property division in a divorce may put the recipient above



the allowable resource limits for certain means-tested programs. This is especially important if you want to maintain your and your children’s eligibility for Medicaid after the divorce or child support case.

## Taxes

Tax issues sometimes arise in divorce, dissolution, and legal separation cases. Tax law is complicated, with many rules and many exceptions to those rules. It is important to consult, when possible, with a tax advisor, income tax preparer, or attorney. The following chart provides information on what kinds of expenses are deductible related to divorce and child support.

Expense	Yes	No	Comments
Spousal Support/Alimony	X		Payments made pursuant to a court order and that are payable in installment payments—are generally deductible by the payer on his or her federal income tax return and count as taxable income for the recipient.
Cash payments made based on property division orders in divorce, dissolution or legal separation		X	These are not spousal support, and are neither taxable to the payee nor deductible by the payer.
Child support payments		X	These are neither taxable to the payee nor deductible by the payer. If a payment is deemed to represent both child support and spousal support, for tax purposes the payment is first treated as child support with the balance (over and above the child support amount) treated as spousal support.
Attorney fees in a divorce or legal separation case		X	Generally, are nondeductible. But spousal support payees may deduct attorney fees related to the establishment or modification of their spousal support order.

**Claiming Dependents** - One issue that often arises in child support-related cases is which parent is entitled to claim the tax dependency exemption for the parties’ minor child(ren). Under Ohio law, whenever a court issues, modifies, reviews, or reconsiders a child support order, it must also designate which parent may claim the children as dependents for income tax purposes. If the parties agree, the court must designate that parent as the parent who may claim the children as dependents. If the parents do not agree, the court may order that the nonresidential parent is entitled to claim the dependency exemption **only if** the court determines that it is the best interest of the child **and**, where there is an existing child support order, that parent’s child support payments are substantially current for the year in which the children will be claimed as dependent. In determining whether it is in a child’s best interest to allow the nonresidential parent to claim the dependency exemption for that child, the court must consider:

- any net tax savings
- the relative financial circumstances and needs of the parents and children
- the amount of time the children spend with each parent
- the eligibility of either parent for the federal Earned Income Tax Credit (EITC) or other tax credits
- any other relevant factor concerning the best interest of the children

In most cases the court will award the dependency exemption to the parent who is in the higher income tax bracket because that will result in the greatest net tax savings. However, in some cases the residential parent (usually the mother) is able to persuade the court that, because of her financial circumstances, she would be better able to meet the children’s needs and it would thus be in the children’s best interest to give her the right to claim the dependency exemption on her tax return.

Under federal tax law, the “custodial parent” is entitled to claim the dependency exemption for the parties’ minor children unless the custodial parent releases the claim to the exemption by signing a



written declaration—on IRS Form 8332—that she or he will not claim the child as a dependent. (The tax code defines the “custodial parent” as the parent with whom the child spends more than 50% of the time.) So, if an Ohio court awards the dependency exemption to the nonresidential parent, the residential (custodial) parent must sign the release (IRS Form 8332) and deliver it to the nonresidential parent. The residential parent can be found in contempt of court if she or he fails to release the dependency exemption to the nonresidential parent as ordered by the court.

**Earned Income Tax Credit** - *The Earned Income Tax Credit (EITC) is treated differently than the dependency exemption.* The parent with whom the child spends more than half of the year is entitled to the EITC. The court cannot award the EITC to the other parent, and the parent entitled to the EITC cannot transfer it to the other parent.

**Joint Tax Returns and “Innocent Spouse” Rule** - Most spouses file joint income tax returns during their marriage. Joint tax liability is created by signing and filing a joint return. Each spouse is liable for the taxes owed for a tax year in which a joint return was filed even if the income was attributable to only one spouse. Obtaining a divorce does not relieve a party from joint tax liability created by a joint return that was filed for any year before the year the divorce was granted.

Although a divorce decree can order one of the spouses to pay any joint tax liability and to hold the other spouse harmless on that liability, that order will not relieve the other spouse of liability to the IRS. If the spouse ordered to pay the taxes arising from the joint tax return fails to do so, the court may find that person in contempt, and the IRS may still go after either or both ex-spouses.

**Innocent Spouse Relief** - Under the IRS Innocent Spouse rule, an “innocent spouse” may escape liability if the tax on the joint return was understated because the other spouse (1) omitted an item of gross income, or (2) claimed a deduction, credit or property evaluation for which there was no basis in fact or law. For example, the IRS may relieve a wife or ex-wife of tax liability on a joint return if she did not know of her husband’s or ex-husband’s embezzlement of funds or was unaware of his business or family finances. You can also seek relief under this rule if you were forced or coerced into signing a return, or if your spouse forged your signature on the return.

To obtain innocent spouse relief you must file an IRS Form 8857—Request for Innocent Spouse Relief—with the IRS. In deciding whether to grant innocent spouse relief, the IRS will consider various factors such as:

- whether the alleged innocent spouse participated in the business affairs or bookkeeping of the other spouse’s business
- whether the guilty spouse concealed his/her income from the alleged innocent spouse
- whether there were unusual or extravagant expenditures made as compared to the couple’s reported income
- whether the couple’s standard of living improved significantly during the year for which innocent spouse relief is sought.

If the alleged spouse did significantly benefit from the improper income omissions or claimed deduction or credits, such as enjoying a much higher standard of living or benefitting from lavish household expenditures—the IRS will probably deny the request for innocent spouse relief.

Remember that tax issues are complicated. If the IRS threatens or begins collection activity, you should seek legal help. Some legal aid programs in Ohio have a free low income taxpayer clinic that assists low-income taxpayers with a wide range of tax problems, including innocent spouse applications.

If your signature was forged on the return, it may have also been forged on any checks issued by the IRS. You may want to talk with law enforcement if you believe a check was issued and your signature was also forged on it.

**VITA (Volunteer Income Tax Assistance)** - The VITA Program generally offers free tax help to people who make \$51,000 or less and need assistance in preparing their own tax returns. IRS-certified volunteers provide free basic income tax return preparation with electronic filing to qualified individuals in local communities. They can inform taxpayers about special tax credits for which they may qualify such as Earned Income Tax Credit, Child Tax Credit, and Credit for the Elderly or the Disabled. VITA sites are generally located at community and neighborhood centers, libraries, schools, and malls. You can find a site near you between January and April by going to: <http://www.irs.gov/Individuals/Find-a-Location-for-Free-Tax-Prep> or by calling 1-800-906-9887.

## Housing

### In this Section

- **Landlord Liability for Tenant Safety**
- **Negotiating with Landlords**
- **Housing Assistance and VAWA Protections for Tenants**
- **Fair Housing Laws and Domestic Violence**

Finding and keeping decent, safe, and affordable housing can be difficult for survivors of domestic violence, stalking or sexual assault. Some federal and state housing programs—such as public housing, subsidized housing for the elderly or disabled, Section 8 housing projects, and Section 8 vouchers—make low-cost rental housing available to some low-income families.

### **Landlord Liability for Tenant Safety**

Landlords have some legal responsibility to protect their tenants from would-be assailants and thieves, including domestic abusers, rapists and stalkers. In addition to a landlord's potential liability for negligent acts or omissions, a landlord may have specific legal duties under local building codes and city ordinances. Landlords in Ohio and other states have been successfully sued by tenants who were seriously injured by criminals. Landlords are especially likely to be held liable when a crime occurs on rental property where a similar assault or other crime occurred in the past, a tenant complained, the landlord failed to respond, and access for the criminal wrongdoer was made easier as a result (for example, an intruder gets in through broken security door to building).

### **Negotiating with Landlords**

**Negotiating Reasonable Requests to Stay in a Rental Unit** - If you have been sexually assaulted, stalked or battered and want to stay in your rental unit and need help from your landlord to do that, you should make your requests in writing. Some examples of request which may be seen as reasonable include:

- improving lighting around the rental unit
- changing locks, or adding locks to doors and windows, including deadbolt locks
- promptly responding to complaints and potentially removing employees or other tenants who have been violent or harassing to you

- sharing information with you about any other reported criminal acts on the property

**Negotiating Out of Leases for Safety Reasons** - Tenants who are victims of domestic violence, sexual assault or stalking may decide to move to a safer apartment or home, go to live with parents or relatives, or even flee to another state to escape the violence or threats. Implementing an effective safety plan may require moving to a safer location, possibly one unknown to the abuser. That may be difficult to do if you have a lease. Ohio currently has no laws that provide protections to tenants who need to break a lease for safety reasons. If you break your lease during the lease term—by giving notice, moving out, and/or no longer paying any rent—you may be liable to your landlord for the rent for the remaining months on your lease even though you are no longer living in the rental unit.

But, it may be possible for you to negotiate a release from your lease:

- **Remove one tenant from lease** - If you and your abuser are co-tenants, the landlord may be willing to take your name off the lease because they can still hold your co-tenant/abuser liable for the remaining rent.
- **Release from lease** - If there has been violence and/or physical damage to the rental property, the landlord may be willing to release you from the lease out of their own self interest, so that they can rent the home or apartment to another tenant and avoid further property damage or disturbances (although the landlord may still charge you for damage caused by your co-tenant/abuser). Or, your landlord may also be sympathetic to your plight and willing to help you out if you have been a good tenant over a long period of time. Or, if rents of comparable units in the area are rising, the landlord may be more willing—and better able to afford—to agree to the early termination of your lease because they can quickly rent the unit at the same or a higher rent.
- **Liability** - You can remind your landlord that they could be held liable for failing to take reasonable steps to protect your safety, and that they can avoid such liability by letting you out of your lease. You may have to sign off on a promise not to sue your landlord in exchange.
- **Transfer** - You may ask your landlord to move you to a safer, similar unit if they have other properties.
- **Opt out provision** - Some leases have an opt out provision, which may say that you can terminate your lease early by paying a specific number of months' rent. Usually in opt out provisions, you pay the lump sum. Whenever you break a lease, your landlord is legally obligated to try to offset the loss by trying to rent the unit. If they succeed, they may owe you some of that money back. If they do not, you are still out of the lease without an eviction on your record.
- **Sub-Leasing** - Sub-leasing means you sign another lease with someone else to lease your unit from you for the remainder of your lease.



*Note: Make sure that any agreement to terminate the lease early or change your lease obligation is put in writing and signed by the landlord.*

Ultimately, it is up to your landlord to agree to the early termination of your lease, and some landlords may refuse to do so regardless of your circumstances.

If you do have to move out of your rental unit and you stop paying rent before the end of your lease term, you will not necessarily be liable for all of the remaining rent. The landlord has a legal duty to try to reduce his/her lost rent by making reasonable efforts to find another tenant to pay the rent for the remaining months of your lease. Any amount paid by a new tenant decreases the amount you owe. If the landlord can find a new tenant right away, you may not owe any additional rent.

## Housing Assistance and VAWA Protections for Tenants

There are various state and federal housing assistance programs that help provide decent and affordable housing to low-income individuals and families. Victims and survivors of domestic violence, stalking, or sexual assault who live in certain federally subsidized housing—public housing and Section 8/Housing Choice housing—also have certain legal protections against discriminatory evictions or denials of admission to such housing.

**VAWA Protections** - The federal Violence Against Women Act (VAWA) provides important protections for victims of domestic violence, sexual violence, dating violence, and stalking in public housing, the Housing Choice Voucher Program, Project-Based Section 8 housing, Section 202 Housing for the Elderly, Section 811 Housing for the Disabled, and any other federally subsidized housing. A landlord in any of these programs may not do any of the following because you are a victim of domestic violence, sexual assault, dating violence or stalking:

- Deny you assistance from public housing or Section 8 housing (or a Section 8 voucher).
- Terminate your participation in the housing program.
- Evict you. An incident of domestic violence, sexual assault, stalking, or dating violence cannot be used as “good cause” or “serious or repeated violations of the lease” for purposes of eviction, even if there is damage to the unit, or complaints about noise. Such incidents are also exempted from the so-called “one-strike rule,” which requires eviction of a tenant for one incident of drug or criminal activity. The landlord may evict the abuser or perpetrator if that person is a co-tenant, so long as the victim is allowed to remain.

A landlord may still legally evict a tenant-victim if allowing him/her to remain poses an “actual and imminent threat” to other tenants (not just the victim) and/or staff. However, the landlord must be able to prove an actual threat of harm to other persons, not just allege generalized harm, and that will be difficult for the landlord to prove. Many landlords improperly overuse this “threat” exemption. A victim may be evicted for other breaches of the lease (such as nonpayment of rent or failing to recertify income eligibility) if those breaches are unrelated to the violence.

You should *carefully* review your lease/rental agreement and any other documents and agreements that govern your public housing subsidy to see if they provide benefits or protections for victims and survivors beyond the basic VAWA requirements. Under VAWA, Public Housing Authorities are encouraged to develop specific leases and policies to protect victims. These may include admission preferences for victims; special voucher allocations for victims; transfer policies (allowing a victim to transfer to another, safer unit under the jurisdiction of the public housing authority (PHA); and provisions for “portability” of a victim’s Section 8 voucher to another PHA beyond what is required).

**Emergency Transfers** - Public housing authorities and landlords of other federally subsidized housing programs must adopt **emergency transfer plans** that allow tenants who are victims of domestic violence, dating violence, sexual assault or stalking to transfer to another available and safe unit if:

- you request the transfer; and either
- you reasonably believe you face imminent harm from further violence if you stay in your unit, or
- you were sexually assaulted on the premises during the 90 day period preceding the request for transfer

However, landlords may require tenants to produce proof that they are a victim of domestic violence, sexual assault, stalking, or dating violence. Proof includes police reports or other police records, court

records, a protection order, or other documentation by an attorney, medical professional or social service provider. Although not mandated by HUD, a landlord may require a tenant to use the prescribed HUD form—Form HUD-50066 for public housing and Section 8 vouchers or Form HUD-91060 for Project-Based Section 8 communities—to provide the requested documentation. If the tenant fails to provide the required proof, he or she can lose the protections VAWA provides.

**Section 8 housing vouchers** - are generally “portable”—they can be used to move into other Section 8 housing in other areas of the state or country. If you are evicted, but still have your Section 8 voucher, you may still be able to use the voucher to obtain affordable rental housing elsewhere. However, if you are evicted because of a major lease violation or other serious misconduct, you may lose the voucher.

**Only a PHA, not the landlord, can terminate a housing voucher, and there are different legal procedures for evictions and for terminations of a housing voucher.** Even when there are valid grounds for eviction, a tenant or his/her attorney may be able to negotiate with the PHA for a voucher to move to another location.

For more information on housing protections under the Violence Against Women Act (which protect male victims also) see: <http://www.nnedv.org/policy/issues/housing.html> and

<http://nnedv.org/pages/3853-the-violence-against-women-act-reauthorization-of-2013-housing-protections-section-601.html>.

## Fair Housing Laws and Domestic Violence

Tenants of private landlords (those that are not federally subsidized) are not protected against discriminatory evictions by the Violence Against Women Act (VAWA). But, they *are* protected by state and federal fair housing laws which say you cannot discriminate against someone regarding their housing because of their race, color, sex (gender), religion, national origin, or familial status (having minor children), whether or not it is intentional. And, there are some cases which have found that when a landlord discriminates against victims of domestic violence, this might be the same as discriminating based on sex, because domestic violence impacts women far more often than men. You can raise a fair housing violation as a defense and counterclaim when they are trying to evict you, or sue the landlord for housing discrimination in state or federal court. A victim of housing discrimination can also file a discrimination charge with the Ohio Civil Rights Commission (OCRC) or the federal Department of Housing and Urban Development (HUD). Your community may also have a Fair Housing Center that can help; see: <http://portal.hud.gov/hudportal/HUD?src=/states/ohio/working/fheo/fhagencies>

## Immigration

### In this section

- **Divorce and Immigration Status**
- **Filing a VAWA Self Petition**
- **Waiver of the Joint Filing Requirement for Removal of Conditions**
- **U Visas for Crime Victims**
- **T Visas for Human Trafficking Victims**
- **I-864 Affidavit of Support**
- **Medicaid Eligibility of Non-U.S. Citizens**

Immigrant survivors often feel trapped in abusive, controlling relationships or human trafficking (forced labor or prostitution) because of immigration laws, language barriers, social isolation, and lack of

financial resources. Immigrant survivors of sexual assault also may face these barriers when trying to decide what to do. Abusers often use their partners' immigration status as a tool of control. It is common for a batterer to exert control over his or her partner's immigration status in order to force him or her to remain in the relationship. The federal law called the Violence Against Women Act (VAWA) provides important protections for victims of abuse who are not citizens or permanent residents of the United States.

## Divorce and Immigration Status

Normally, if you are a spouse, child or parent of a U.S. citizen or a spouse or child of a legal permanent resident, and you want to obtain legal permanent resident status (commonly called a "green card"), a U.S. citizen or legal permanent resident has to file a "relative petition" (Form I-130) on your behalf with the United States Citizenship and Immigration Service (CIS). They may need to go with you to an interview with immigration authorities. For example, if you are married to a U.S. citizen or legal permanent resident, your spouse must file a petition on your behalf for you to obtain legal residency in the United States (subsequent filing of form I-485).

If your marriage is less than two years old, at the time of acquiring legal permanent resident status, you will normally get what is called "conditional permanent residence" (commonly referred to as a "conditional green card"), valid for 2 years. You and your spouse will later have to file a joint petition (Form I-751) to "remove the conditions" on residence, so that you can obtain a permanent green card, valid for 10 years. The I-751 petition should be filed 90 days prior to the expiration of the conditional 2-year green card.

If you obtain a conditional green card and get a divorce before you and your spouse apply together to remove the conditions on your residency, you will have to apply for a waiver of the joint filing requirement.

Also, foreign born people who are married for less than two years to a U.S. citizen may have to prove to immigration officials that their marriage is genuine and not a "sham marriage." If the Immigration and Customs Enforcement (ICE) agency conducts an investigation and uncovers fraud, ICE will pursue criminal penalties for marriage fraud and start removal (deportation) proceedings.

Therefore, **the timing of any divorce action is important.** If you seek and obtain a divorce within the first two years of marriage to your U.S. citizen, you may trigger an ICE investigation and if fraud is suspected, may eventually face criminal charges or deportation.

## Filing a VAWA Self-Petition

Normally, you cannot apply for legal permanent resident status or for a removal of conditions on your green card without the assistance and cooperation of your spouse, parent, or child who is a U.S. citizen or legal permanent resident. However, in relationships involving domestic and sexual violence, these requirements are erased and allow the domestic violence victim to submit a self-petition. For example, a wife may feel trapped in an abusive relationship because of fear of the immigration consequences of leaving or antagonizing her husband. The Violence Against Women Act (VAWA) provides a potential escape route for battered spouses and their family members.

VAWA allows certain non-citizen victims of abuse to obtain legal status on their own, without involving the abuser. If you are a battered spouse, child, or parent, you can "self-petition" (with Form I-360) with



the U.S. Citizenship and Immigration Service (CIS) for legal permanent residence without the assistance or knowledge of your abuser.

**The following categories of individuals are eligible to self-petition:**

- **Spouse:** if you are, or were, the abused spouse of a U.S. citizen or permanent resident. You may also include on your petition your unmarried children who are under 21 if they have not filed for themselves.
- **Parent:** if you are the parent of a child who has been abused by your U.S. citizen or permanent resident spouse. You may include your children on your petition, including those who have not been abused, if they have not filed for themselves. You may also file if you are the parent of a U.S. citizen, and you have been abused by your U.S. citizen child.
- **Child:** if you are an abused child under 21, unmarried and have been abused by your U.S. citizen or permanent resident parent. Your children may also be included on your petition. You may file for yourself as a child after age 21 but before age 25 if you can demonstrate that the abuse was the main reason for the delay in filing.

**Eligibility Requirements for a Spouse** – Eligibility requires that you entered into the marriage in good faith, not solely for immigration benefits, have resided with your spouse, and are a person of good moral character and you meet these factors:

- You are married to a U.S. citizen or permanent resident abuser, -or-
- Your marriage to the abuser was terminated by death or a divorce (related to the abuse) within the two years prior to filing, -or-
- Your spouse lost or renounced citizenship or permanent resident status within the two years prior to filing due to an incident of domestic violence, -or-
- You believed that you were legally married to your abusive U.S. citizen or permanent resident spouse but the marriage was not legitimate only because your spouse was also married to someone else.

**-AND-**

- You have been abused in the U.S. by your U.S. citizen or permanent resident spouse or were abused by your U.S. citizen or permanent resident spouse abroad while your spouse was employed by the U.S. government or a member of the U.S. uniformed services, -or-
- You are the parent of a child who has been subjected to abuse by your U.S. citizen or permanent spouse.

**Eligibility Requirements for a Child** – Eligibility requires that you are the child of an abusive parent (as described below), have resided with that parent, have evidence to prove your relationship, and can prove evidence of good moral character (if you are over the age of 14), and you must prove:

- You are the child of a U.S. citizen or permanent resident abuser or were the child of a U.S. citizen or permanent resident abuser who lost citizenship or lawful permanent resident status due to an incident of domestic violence, and,
- You have been abused in the United States by your U.S. citizen or permanent resident parent, - or-
- You have been abused by your U.S. citizen or permanent resident parent abroad while your parent was employed by the U.S. government or a member of the U.S. uniformed services

### **Eligibility Requirements for a Parent** - Eligibility requires that you prove:

- You are the parent of a U.S. citizen son or daughter or were the parent of a U.S. citizen son or daughter who lost or renounced citizenship status related to an incident of domestic violence or died within two years prior to filing, and,
- You have been abused by and resided with your U.S. citizen son or daughter, and,
- You are a person of good moral character

### **Filing Process**

- You must complete the Form I-360, Petition for “Amerasian,” Widow(er), or Special Immigrant, and submit all supporting documentation
- You must file the form with the Vermont Service Center, 75 Lower Welden, St. Albans, VT 05479, (800) 375-5283
- If you meet all filing requirements, you will receive a notice (Prima Facie Determination Notice) valid for 150 days that you can present to government agencies that provide certain public benefits to certain victims of domestic violence

**What You Get if Your VAWA Self-Petition is Approved:** Depending on each case, once your self-petition is approved, you may be able to apply for some of the following things:

- **Deferred action:** This means that Immigration will probably not try to remove (deport) you until you are able to apply for legal permanent residence.
- **Work authorization:** This means permission to work legally in the country – it is often called a “work permit.”
- **Some public benefits:** Please consult with your local legal aid office or an attorney who is familiar with public benefits for immigrants to determine what benefits you might qualify for.
- **Legal permanent residence status**

**When You Can Apply for Legal Permanent Resident (LPR) Status Under VAWA:** If your self-petition is approved, the amount of time you will need to wait to apply for legal permanent residence (LPR-also known as “adjustment of status”) depends on the family immigration system. The family immigration system is a set of immigration laws that allow someone to obtain an immigration benefit through family relationships.

You can apply immediately for LPR status if you are the spouse of a U.S. citizen, an unmarried child (under 21 years old) of a U.S. citizen, or the parent of a U.S. citizen who is over 21 years old.

When other beneficiaries of I-130 relative petitions (spouses and children of LPRs) are able to apply will depend on something called the “family preference system.” Because there is a limit in the number of people who can immigrate under certain categories each year, there is generally a waiting period before spouses and children of LPRs can apply for legal permanent residence. How long the wait is will depend on a number of factors such as the nationality of the self-petitioner, his/her relationship with the LPR, and his/her “priority date.” “Priority date” means the date when the petition (I-130) was received by U.S. Citizenship and Immigration Service (CIS). If the abuser filed a family petition on your behalf before you filed the self-petition, the priority date may be the date of that earlier filing.

Also, if your self-petition or a relative petition on your behalf has been approved and you are applying for legal permanent residence status, you will have to demonstrate that you are not “inadmissible.” There are “inadmissibility grounds,” which are reasons why people cannot be “admitted” into the U.S.

(for example, criminal and fraud related grounds). Even in the case of some aggravated felony convictions, there may be exemptions or waivers available to you.

## Waiver of the Joint Filing Requirement for Removal of Conditions

You may be eligible to apply for a “battered spouse or child waiver” if you have conditional legal permanent residence as a spouse (and in certain circumstances as a child) of a U.S. citizen and your spouse has abused you. With a battered spouse or child waiver, the abuser does not have to file a joint petition with you. You can get a waiver of the joint filing requirement if you can show you were married in good faith, but:

- your spouse is now deceased or your marriage was terminated by divorce
- you were battered or were a victim of extreme cruelty committed by the U.S. citizen, spouse or parent; -or-
- removal would result in extreme hardship

## U Visas for Crime Victims

A U Visa is a visa granted to victims of domestic violence, sexual assault or other qualifying crimes, who cooperate, or can show they were willing to cooperate, with the police and prosecutors in the investigation and prosecution of those crimes. The U Visa allows temporary legal status and work eligibility in the United States for up to four years. It is an especially important remedy for unmarried victims of domestic violence, who do not have the option to “self-petition” for legal permanent resident status.

To get a U Visa you need to show that you:

- are a victim of a qualifying crime in the U.S., and,
- have suffered "substantial physical or mental abuse" as a result of the crime, and,
- You must have the police/sheriff's department, or the prosecutor's office, or a judge or other law enforcement agency certify on a form that you were helpful (or possibly willing to be helpful) to *them in the investigation and/or prosecution of the crime.*

“Qualifying crimes” include domestic violence, rape, sexual assault, incest, kidnapping, false imprisonment, extortion, torture, felonious assault, witness tampering, perjury, and obstruction of justice. If you meet the requirements above, you may be able to get a U Visa even if the perpetrator was never prosecuted, was acquitted or the criminal charges were dismissed.

If you have been convicted of a crime or if you committed immigration violations—such as entering the United States illegally or making false statements to immigration officials, you may be ineligible for a U Visa. However, you can ask the Citizenship and Immigration Service (CIS) to waive those grounds of inadmissibility. Immigration officials may or may not approve your request for a waiver. If you are inadmissible under the crime-related grounds, immigration officials will consider the number and seriousness of your criminal offenses.

When you apply (with Form I-918) for a U Visa, you may also apply for your spouse and your unmarried children under age 21. Victims of domestic violence or other qualifying crimes who are under 21 years of age may apply for their own parents, or for brothers and sisters who are under 18.

If you want to remain in the United States permanently, getting your U Visa is only the first step. Three years after getting the U Visa, you may apply for legal permanent residence (a green card). At the end of four years, the U Visa expires. If you do not apply for permanent residence before the U Visa expires, you will be legally required to return to your native country.

## **T Visas for Human Trafficking Victims**

T Visas allow certain victims of human trafficking to remain in the United States if they agree to assist law enforcement in prosecution of the perpetrators of crimes. A limited number of T Visas are available each year. T Visas are available to persons who:

- have been subject to severe trafficking (the use of force, fraud, or coercion for sex trafficking or involuntary servitude, debt bondage, or slavery), and,
- are physically present in the U.S., and,
- the Attorney General and the Secretary of DHS agree have complied with a reasonable request by Federal, State or Local law enforcement authorities to assist in the investigation or persecution of such trafficking or in the investigation of crimes where acts of trafficking are at least one central reason for the crime, and,
- would suffer extreme hardship involving unusual and severe harm upon removal

## **I-864 Affidavit of Support**

The I-864 affidavit is a powerful, but not well known, legal tool for immigrant spouses and children to obtain financial support from the spouse/parent who sponsored their immigration to the U.S. (and in sponsoring you, promised to financially support you.) Many sponsoring spouses—and in particular domestic violence abusers—think they can threaten, mistreat or abandon their immigrant spouse without any financial consequences.

If you are a spouse of a U.S. citizen or legal permanent resident who sponsored you for immigration to the United States, you may be able to file a lawsuit to enforce your spouse's I-864 affidavit of support, obtain a judgment, and collect the money owed under the judgment by garnishing his or her wages or by other collection remedies. You can also raise this issue in a divorce proceeding. You can ask the court to issue a spousal support order awarding you spousal support equal to or greater than the amount owed under the affidavit of support. If your spouse also sponsored your children, you can also ask the court to award child support equal to or greater than the amount owed under the affidavit of support.

Divorce does not end the sponsor's obligation of support. The obligation for financial support is generally in effect until you become a U.S. citizen, you work 40 quarters, or if you or the sponsor dies.

If you do not have a copy of your spouse's I-864 affidavit you can obtain a copy from your spouse by serving him with a discovery request in your divorce case, or you can get a copy from the CIS by sending them a Freedom of Information Act (FOIA) request for your immigration file.

## **Medicaid Eligibility of Non-U.S. Citizens**

Depending on the date an immigrant arrived in the United States, they may be eligible for Medicaid assistance.

- Immigrants who arrived before August 22, 1996, may be eligible for Medicaid as long as other eligibility guidelines are met.
- Immigrants who arrived on or after August 22, 1996, are not eligible for Medicaid unless one of the following exceptions is met. To be eligible, an immigrant must be:
  - a refugee who has been granted asylum or a refugee who has been granted status as a victim of a severe form of human trafficking, or,
  - a refugee whose deportation is being withheld, or,
  - a permanent resident who has worked 40 quarters under the Social Security Act, or,
  - a veteran or has been in military active duty status (includes spouse and dependents)

Children of non-U.S. citizens who are U.S. citizens can get Medicaid if they meet the eligibility requirements. If a non-U.S. citizen applies for Medicaid for a U.S.-born child, they do not have to give their Social Security number or proof of their citizenship status. But, the child's Social Security number (or proof you have applied for a number for the child) must be provided.

**Getting an Immigration Attorney** - Immigration laws and procedures are very complicated. There often are waivers and exceptions to legal requirements. As a result of VAWA, there are also special protections and exceptions for victims of domestic violence and other qualifying crimes. However, it is almost impossible to navigate the immigration system without an attorney. An immigration lawyer can obtain the records you need, prepare the necessary paperwork, and present your case to the immigration authorities. Free legal assistance may be available from legal aid programs or local immigrant and refugee service providers. For a list of legal resources, see: [www.odvn.org](http://www.odvn.org), under Information for Survivors. For forms and guidance, also see: <http://www.uscis.gov>

Immigration forms are free and available from the U.S. Citizenship and Immigration services. You can download them from:

[https://egov.uscis.gov/crisgwi/go?action=offices.detail&office=VSC&OfficeLocator.office\\_type=SC&OfficeLocator.statecode=VT](https://egov.uscis.gov/crisgwi/go?action=offices.detail&office=VSC&OfficeLocator.office_type=SC&OfficeLocator.statecode=VT), or you can order them by phone at 1-800-870-3676.



*Note: You never need to pay someone for copies of these forms. They are free.*



## Language Interpreters



### In this section

- **Interpreters and Attorneys**
- **Interpreters and Courts**

For limited English proficient (LEP), Deaf, or hard of hearing people, the inability to communicate with attorneys and in court proceedings can have serious consequences. If you require a language interpreter, you have specific rights to interpreters in different settings and those may depend upon whether you are deaf/hard of hearing or speak a foreign language.

## Interpreters and Attorneys

**For people who need a foreign language interpreter:** Legal aid offices, prosecutor's offices, and programs that serve low income individuals and households *who receive federal funds* must provide access to language services. Title VI of the Civil Rights Act of 1964 requires all recipients of federal funds to adopt language access policies and procedures, and the failure to do so is "national-origin discrimination."

Although private attorneys are not legally required to provide foreign language interpreters to anyone who contacts their office, legal ethics may require attorneys who give you legal advice or represent you to provide foreign language interpreter services because of the attorney's duty to provide competent legal representation.

**For Deaf/hard of hearing persons:** There are stricter requirements for providing language access to Deaf, hard of hearing, and deaf-blind clients under the federal American with Disabilities Act (ADA) and the Rehabilitation Act of 1973. Legal aid programs, prosecutor's offices, *and* private attorneys *must provide* language access and appropriate interpreter services to clients and potential clients who are deaf or hard of hearing. They may not charge you, as the client, for the costs of interpreters.

It is inappropriate and likely unethical for any provider to ask you to use a friend, your child, or a family member to serve as your interpreter or to ask you to communicate by writing notes back and forth. While these people may interpret for you in day to day activities, *for many reasons*, it is not in your interest for a non-professional interpreter to provide any interpreting when you are discussing legal matters and issues related to what happened to you.

Attorneys *must* use interpreters who can accurately interpret what is said by the attorney and the client, who will protect the confidentiality of the client's communications, and who have no conflict of interest with the client. Using relatives or friends as interpreters may be a conflict of interest, and in family law matters or domestic violence situations using a relative as an interpreter may be dangerous. Especially if a person is an abusive spouse or partner, or a relative of the abuser, he or she may not provide a complete and accurate interpretation of what the client is saying.

## Interpreters and Courts

Many courts must provide language interpreters to persons who speak a foreign language to comply with Title VI because they—or a court system to which they belong—receive federal funding. The Supreme Court of Ohio has also adopted court rules requiring all Ohio courts—in both civil and criminal cases—to appoint foreign-language or sign language interpreters for all court hearings and trials. These rules say that the court may not charge a party or witness any fees or charges for the services of a court interpreter. A court is required to appoint a **foreign language interpreter** when:

- A party or witness who is limited English proficient or non-English speaking requests a foreign language interpreter and the court determines the services of the interpreter are necessary for the meaningful participation of the party or witness; or
- Without a request from a party or witness for a foreign language interpreter, the court concludes the party or witness has limited English skills and the services of the interpreter are necessary for the meaningful participation of the party or witness.

A court shall appoint a **sign language interpreter** in either of the following situations:



- A party, witness, or juror who is deaf, hard of hearing, or deaf-blind requests a sign language interpreter; or
- Without a request from a party, witness, or juror for a sign language interpreter, the court concludes the party, witness, or juror is deaf, hard of hearing, or deaf-blind and decides the services of the interpreter are necessary for the meaningful participation of the person.

When appointing an interpreter the court must “use all reasonable efforts” to avoid appointing an individual as a foreign language or sign language interpreter if he or she:

- is compensated by a business owned or controlled by a party or a witness
- is a friend or a family or household member of a party or witness
- is a potential witness
- is court personnel employed for a purpose other than interpreting
- is a law enforcement officer or probation department personnel
- has a legal interest in the outcome of the case
- is not able or willing to protect a party’s rights or ensure the integrity of the proceedings
- has or may have a real or perceived conflict of interest or appearance of impropriety

If no certified or provisionally certified foreign interpreters are available, the court may appoint a foreign language interpreter who demonstrates proficiency in the foreign language and is prepared to interpret the court proceedings. If no sign language interpreter certified by the Supreme Court is available, a court may appoint a sign language interpreter who holds an alternative certification from the National Association of the Deaf or the Registry of Interpreters for the Deaf.

If you request a court interpreter and the court fails to appoint a qualified interpreter, you can appeal an unfavorable decision on the grounds that the court failed to appoint a qualified interpreter. You can also report the violation to: Bruno G. Romero, Program Manager—Interpreter Services Program, at the Supreme Court of Ohio, at 65 South Front Street, Columbus, OH 43215-3431. For more information, see: [www.supremecourt.ohio.gov/JCS/interpreterSvc/](http://www.supremecourt.ohio.gov/JCS/interpreterSvc/)

## Legal Procedures and Tips for Representing Yourself

### In this Section

- |                                |  |  |
|--------------------------------|--|--|
| • <b>Jurisdiction</b>          | • <b>Discovery and Subpoenas</b>           | • <b>Objections and Appeals</b>  |
| • <b>Local Court Rules</b>     | • <b>Filing Actions, Cases and Motions</b> | • <b>Civil Actions for Money Damages – Suing the Perpetrator or Others</b> |
| • <b>Researching Your Case</b> | • <b>Evidence</b>                          | • <b>General tips</b>  |
| • <b>Filing for Contempt</b>   | • <b>Testifying</b>                        | • <b>Special Warnings</b>  |
| • <b>Continuances</b>          |  |  |

Legal procedures can be very complicated and how they are used may vary widely depending on the court, the type of legal case, local court rules, whether a judge or magistrate is hearing your case, and other factors. See: <http://www.supremecourt.ohio.gov/LegalResources/Rules/> for a list of the rules. Pro Se litigants (people representing themselves) are to be treated by courts as if they are attorneys and have knowledge of rules, statutes and case law, forms, etc. so it is very important to know the rules.



*Note: You may be asked to participate in mediation in many kinds of cases. See the Mediation section under Family Law in this manual for helpful information.*

## Jurisdiction (Which court can hear your case)

There are two types of jurisdiction:

- subject matter jurisdiction (authority to make orders about certain kinds of matters or cases)
- personal jurisdiction (authority to make orders that certain people have to follow)

A court may have subject matter jurisdiction over a case, but not have personal jurisdiction over the person to issue a binding order against a particular party. Here are some examples of which court has subject matter jurisdiction:

- **Municipal or County Court** has jurisdiction to hear lawsuits for money damages for up to \$15,000 and to hear all residential landlord/tenant eviction cases
- **Domestic Relations Court** hears divorces, dissolutions, legal separation and domestic violence CPO cases (in some communities, they also hear other kinds of protection order cases)
- **Common Pleas Court** hears stalking and sexually oriented offense civil protection order cases
- **Juvenile Court** hears all child abuse, neglect, and dependency cases, all juvenile civil protection order (CPO) cases, child support-only cases, and child custody cases involving a parent versus a nonparent and between unmarried parents

If more than one court has jurisdiction, the first court that the case is filed in gets to decide if it will keep the case. A party can raise the issue of lack of subject matter jurisdiction at any time during a case.

Once you have filed your case, you must make sure the court gets personal jurisdiction over the other party. That usually means that you must serve the papers on your landlord, spouse, child's parent, or whoever the other party is by sheriff, process server, or certified mail.



**What this means for judgments in cases involving you:** *If you were sued but were not given notice of the case and proceedings, and if you can prove the opposing party knew where to serve you with notice, you may have a basis to ask the Court to set aside the decision or judgment. You would ask the Court to do this making the argument that the Court did not have **personal jurisdiction** in the case because you were never provided notice of the case.*

## Local Court Rules

Most courts have adopted local court rules that tell you how cases are handled—like the timing of motions, how to get a continuance, procedures, discovery, and how to prepare for court. Local rules may also tell you how to get pro bono (free) mediators and/or guardians ad litem. Some courts also include a schedule of court fees and costs in their local rules. You must follow these rules. Local court rules should be accessible on your local court's web site, at the county law library located at your local courthouse, or at <http://www.supremecourt.ohio.gov/JudSystem/trialCourts/default.asp>.

## Researching Your Case

If you are going to represent yourself, read every section of this manual related to your case type. Also study any materials that are listed in the internet links throughout this manual. Don't rely on what happened in friends' or family members' cases to guide what to expect in your case. Here are some resources to research your case:

- Legal libraries at the court or a law school (the librarian may also be a good resource)
- To research case law, a good resource is Google Scholar - <http://scholar.google.com/>
- For domestic violence cases, see if your library has Ohio Domestic Violence Law (Adrine, R. and Ruden, A.)
- To look up Ohio statutes, go to: <http://codes.ohio.gov/orc>

## Filing for Contempt (When your order or agreement is violated)

**What happens if someone disobeys a court order?** One common tool is to file a motion for contempt (also called a motion to show cause) against the person who is violating the court order. An affidavit must be attached to the contempt motion explaining what the party did or did not do in violation of the order. The motion will be served on the person accused of violating the court order, and the court sets a hearing. You must present “clear and convincing evidence” to convince the court that the other person violated the order. The court will either find the person in contempt of court or find that she or he is not guilty of contempt. The penalties for being found in contempt can be a jail sentence and/or fine and an order to pay court costs and attorney fees. In civil contempt, the person in contempt is given a chance to “purge” the contempt by doing something else first, like making up missed parenting time, starting to pay child support, or handing over documents.

There are two main defenses that are raised in a contempt action – inability to comply (“I don’t have the money to pay for child support even though I tried”) or if compliance was likely to put a child in danger (“I couldn’t send the child with the other parent because she or he was high on drugs”).



*Note: A violation of a protection order is both a criminal offense (handled by a prosecutor) and contempt.*

## Continuances

Any party may file a motion for a “continuance” asking the court to reschedule a court hearing. You should have a good reason—sometimes called “good cause”—for requesting a continuance. Good cause should be something more than preferring a different day or being scheduled to work. Some courts are stricter and less likely to grant continuances than other courts. If you have already gotten a continuance, the court is less likely to grant another one. However, a case may be continued several times by the court because it is encouraging an agreement instead of a trial. Continuances are also sometimes granted to allow a party time to find an attorney. For example, in a domestic violence CPO case, the Respondent is usually granted one continuance if she or he asks for time to find an attorney. The continuance should not harm the CPO petitioner as long as the court keeps the emergency *ex parte* CPO in place until the next court date.

You should only ask for a continuance if you really need one. You can oppose an unreasonable request by the other party if it is just to delay the case or make the case more difficult for you.

## Discovery and Subpoenas

Before a case goes to a final trial or hearing, try to learn more about the opposing party’s legal claims and evidence. By learning more about the opposing party’s evidence, you can better negotiate, prepare for trial, and get the evidence you need to respond to what the other party is going to say. The opposing party may also have important documents or information that support your legal claims or weaken their case. You have the right to ask for those through the discovery process. There are various methods of

discovery. A party may use multiple methods of discovery in the same case. The methods of discovery set forth in Ohio court rules are:

- **Deposition**—when a witness or party is asked to answer questions under oath before a court reporter
- **Interrogatories**—written questions sent by one party to the other party to be answered in writing under oath, or notarized
- **Request for admissions**—a request to a party that he or she admit or deny certain facts
- **Request for physical or mental examination**—a request that the court order a party whose health or condition is at issue be examined by a doctor or psychologist
- **Request for production of documents**—a request to a party to hand over certain documents
- **Request for inspection**—a request by a party to look at tangible items (other than writings) in the possession or control of the other party
- **Subpoena**—an order for a witness to appear in court or at a deposition
- **Subpoena duces tecum**—an order for a witness to turn over certain documents to a specific party or to bring them to a scheduled deposition or hearing

In a **deposition**, the attorney asks the person being deposed—called the deponent—questions and the deponent answers the questions under oath. The deposition testimony can be recorded or typed by a court reporter. It is like testifying in court, except that there is no judge or magistrate present—only the parties, their attorneys, and the deponent. Deponents can be required to bring with them particular documents if they are listed in the Notice to Take Deposition or subpoena.

**Written interrogatories** are written questions that are served on an opposing party. They must be served electronically and on paper. The party served with interrogatories must answer the questions in writing under oath (with that party's notarized signature) and serve those answers on the opposing attorney or party within 28 days of having received service of the interrogatories.

A **request for production of documents** is also served on an opposing party, who must then produce the documents for inspection and copying by the requesting attorney or party within 28 days after service of the request for production. A request for production of documents may seek any relevant documents, including financial records, emails, social media postings, and text messages.

A **request for physical or mental examination** is a request asking the court to order a party to undergo a physical or mental examination. The court may, for good cause shown, order that party to submit to a medical, psychiatric, or psychological examination and evaluation. If the court agrees that a mental or physical examination of a party is necessary, the court will usually appoint a neutral doctor or medical expert to conduct the examination. This method of discovery is sometimes used in child custody cases where the mental or physical condition of a parent is at issue in the case. The court should determine who will pay for the exam and how long the person has to complete it.

**Requests for admissions** are factual statements served on an opposing party with a request that the party admit or deny each statement. The party upon whom the request for admissions is served must answer and serve his or her answers within 28 days of having received the request for admissions. If she or he ignores the request for admissions and/or fails to timely respond to them, the alleged facts will be deemed to be true and can be admitted into evidence as conclusive proof at trial.

**What kinds of evidence or information can you get in discovery?** You can get almost anything in discovery if it could reasonably lead to information that you could use in court. In child custody cases, for example, relevant discoverable information may include any information or documents relating to

parental fitness or the care of the children. Confidential and “privileged” information—such as what was said by the parties during mediation sessions or certain medical records—may be protected from discovery. However, even privileged records and information—such as mental health treatment records—might be subject to discovery if it is an issue in the case.

**Objections** - You can object to or file a *motion for a protective order* with the court regarding a specific, individual discovery request if it is irrelevant, seeks privileged information, or is unduly burdensome, oppressive or harassing. The judge or magistrate may then limit the scope of discovery or place other restrictions on the discovery. But, you must still respond with your objection or request for a protective order within the timeframes above, or you can be sanctioned.

**What happens if a party is uncooperative and unresponsive to discovery requests?** When that happens, the party seeking discovery can file a “motion to compel” discovery. If the court grants the motion to compel and the party still refuses to comply with the discovery request, the party seeking discovery can file a “motion for sanctions” asking the court to impose sanctions against the noncompliant party such as excluding certain evidence favorable to that party, dismissing certain claims or defenses raised by that party, or granting a continuance to the party seeking discovery to further prepare for trial, as well as requiring the noncompliant party to pay the other party’s attorney fees and reasonable expenses incurred in enforcing their discovery requests.

**Navigating the discovery process**—either seeking discovery or responding to discovery—can be a difficult challenge for a pro se party. Without an attorney, parties may be unable to conduct effective discovery and have difficulty responding to discovery requests. They may also be easily intimidated or confused during depositions. Failure to respond to discovery can trigger sanctions. Whenever possible, pro se parties should seek legal advice or assistance on how to conduct or respond to discovery. There are also library books that can provide guidance and sample questions.

**Civil protection orders** are also an exception to the general rules because discovery is severely limited. In order to conduct any discovery in a CPO case, a party must first obtain approval of the court and must conduct the discovery before the full hearing on the CPO petition (usually scheduled 7–10 days after the filing of the CPO petition). In addition, the court must ensure that a deposition of the victim by his or her abuser’s attorney takes place in a safe location and may order that the abuser not be present during her deposition. The court may take other protective measures and, in some cases, may prohibit any discovery by the abuser.



*Note: It is extremely important to respond to any request for discovery. You must respond within the timeframes specified to not be in contempt. Even if your response is that you object to the request for the information, you must respond.*

**Subpoenas** - Subpoenas are used to compel/force witnesses to appear and testify at a court hearing, trial, or deposition. A party to a case can simply be served by mail with a notice, but a non-party witness must be personally served with a subpoena by a sheriff/process server, or served by certified mail by the Clerk of Court, to be enforceable.

The more common use of a subpoena is to force a witness to appear and testify in court if he or she is unwilling to voluntarily testify for whatever reason. Even willing witnesses may have to receive a subpoena to testify in order to be excused from work, school, or other obligations, or to make it appear to the opposing party that they are not taking sides and are only testifying because they have to.

Disobeying a subpoena can have serious consequences, including arrest and punishment for contempt of court. A witness may file a “motion to quash” the subpoena before the court date, and then the court will decide if you can have the information or testimony or not.

If you think you will need one or more witness subpoenas, you should contact the clerk of courts at least a week before the court hearing or trial and arrange for service of any necessary subpoenas on your intended witnesses. You may have to give a deposit of funds to the Clerk, and you may have to provide the subpoenaed witnesses with mileage reimbursement and/or a witness fee to actually compel their attendance in court. Be sure to only subpoena those witnesses for a court hearing that will be helpful to your case because the other side can also question them if they testify at your request.

## Filing Actions, Cases and Motions

Whenever you file anything with the court – an answer, a motion, subpoena, petition, etc., you must provide copies of that action to several parties. Make sure you get copies to:

- the opposing party or their attorney
- Clerk of Courts
- Judge/Magistrate
- GAL and/or CASA
- any other parties on the case

When you file certain actions, there may be a filing fee. If you are unable to pay the fee, you can file something called a “poverty affidavit” or “affidavit of indigency” to ask the court to waive the fee. The judge will later decide whether or not to waive the filing fee, but by filing the affidavit, you can get your action filed if you cannot pay the filing fee. If the court later decides that it will not waive the fee, you *will be responsible for paying it*. If you are ever told by a clerk that they court will not grant your affidavit asking for filing fees to be waived, it is important to insist they allow you to file the affidavit and ask that the judge rule on it. Then, if you feel your request was improperly denied, you can object.

## Evidence

It is important to provide evidence to the court in your case, if it is available. It is equally important to not make allegations you cannot prove, as this may make the court not believe any of your testimony.

**What is Evidence?** - Evidence is anything you use to prove your claim. It can be oral testimony of you or your witnesses, a photograph, a letter, documents or records from a business, and a variety of other things. All evidence that is properly admitted will be considered by the judge or magistrate hearing your case.

For example:

- In a request for change of custody, the child’s school records could be introduced as evidence that the child’s grades have dropped or he or she has missed a significant amount of school while living with the other parent
- In a domestic violence or stalking civil protection order case, a photograph of any injury you suffered or a threatening letter written by your abuser may help your case.
- In a divorce case, a copy of tax return documents or documents showing who has title to a car may be introduced as evidence

**Why Use Physical Evidence?** - Some evidence is more believable and trustworthy than what a person says. For example, in a domestic violence case, if you say that your ex-boyfriend has left you threatening messages but he testifies that you are lying, the judge may not know whom to believe. However, if you submit a tape recording of one of these messages the judge will be more likely to



believe you. Evidence may make something easier to understand. “A picture is worth a thousand words.” Some things are hard to explain in words, but a drawing or photograph is descriptive and clear.

**How Do I Present Evidence to the Court?** - Each court is different, but in most courts, there are many things you must do before the court will even look at the evidence you have. The rules for using each type of evidence are different. Once you follow these rules, your evidence will be “admitted.” The judge or magistrate may then weigh and consider that evidence in making his or her decision.

### Steps to Follow to Admit Evidence

- Before you ever go to court, think about the evidence you want to use to prove your case. Mark each piece of evidence with an exhibit number (label them “Exhibit 1,” “Exhibit 2,” etc.). Bring at least 3 copies of each document.
- Bring these marked Exhibits with you to court. When you want to show the court one of the Exhibits, do the following things:
  - Show the Exhibit to the other party or the other party’s attorney.
  - Then “lay the foundation” for the evidence, showing that the evidence is relevant to your case and authentic (not a forgery). Explain why and how the Exhibit is connected to your case.
  - Either you or your witness must testify about the Exhibit.
  - Ask the court to admit the Exhibit into evidence. The other party or attorney may object to the Exhibit. Try to answer these objections as best you can. The judge will then decide.
  - If there are no objections from the other party, or the judge has ruled in your favor, ask the court to “admit the Exhibit into evidence.”

### Laying the Foundation for Photographs

- Explain why a photo is connected to your case. For example, “This photo shows the injury I suffered after my ex-boyfriend (or girlfriend) punched and kicked me.”
- Explain how you know what is in the photo. For example, “I had my sister take this photograph of me two hours after the incident occurred and then I printed it out.”
- Explain that the photo is timely. For example, “As you can see, the photo is dated and was taken on the same day the incident occurred, which is also the same day the police arrested him or her.”
- State that the photo “fairly and accurately” shows what was being photographed at the time. For example, “This photo is a fair and accurate depiction of how my face and side looked two hours after the incident and for the next two weeks.”

*TIP: Color photographs are better than black and white for showing details and physical injuries.*

### Foundation for Letters

- Explain why the letter is connected to your case. For example, “This is the letter that I received from my ex-partner/spouse shortly before she or he beat me up.”
- Explain when and how you got the letter. For example, “This letter was shoved under the door to my apartment some time before 6 p.m. on Wednesday, January 2, 2013. I found it on the floor when I came home from work that day.”
- Prove that the signature is that of a party to the case. Ways to prove this:
  - Explain to the court that you are familiar with the other party’s signature, how you came to know that person’s signature, and that it is your opinion that the signature on the letter is the other party’s signature.

- Call a witness who is familiar with the party's signature, and ask the witness, "Do you know the other party in this case? Are you familiar with the party's signature? How?"
- Then show them the letter and ask, "Is this the other party's signature?"
- Call the person who signed the letter. Show the witness the document, and ask the witness if that is his or her signature. (Only do this if you think they will admit to it).
- Explain that the letter is in the same condition now as when you received it. ("The letter was kept in a safe place and nothing has been changed since I received it.")

*TIP: If the other party objects to the letter, or to your reading the letter, saying that it is hearsay, respond by saying "The letter shows the letter writer's state of mind."*

### **Laying the Foundation for Documents and Records from Businesses, Agencies or Schools**

- Explain how the document or record is related to your case.
- Call a witness from the business/agency/school that produced the record, ask the witness what his or her responsibilities are at the business/agency and how he or she is involved in record keeping.
- Show the witness the record and ask him or her if it is a record from the business/agency/school.
- Ask the witness:
  - Was the record made by a person with knowledge of the acts or events appearing on it?
  - Was the record made at or near the time of the acts or events appearing on it?
  - Is it the regular practice of the business/agency to make such a record?
  - Was the record kept in the course of a regularly conducted business activity?

*TIP: If the record is certified (a statement is attached to the record stating that it is a record from a public agency or has an agency seal on it), you do not need to do anything before you use it for your case. Just make sure the Court knows it is certified.*

### **Using Witnesses to Provide Evidence – If you plan to have witnesses testify:**

- Chose persons who are the most neutral (least personally involved in your case)
- Chose persons with the least "baggage" (if your witness has a criminal history, the other side will use that to try to discredit their testimony)
- Chose persons who have direct knowledge of what you are trying to prove (they saw or heard it, not heard about it later)
- Instruct your witness to be truthful
- Explain what you will be asking your witness about, but never tell them what to say
- Make sure your witness knows that the other party or their attorney will also have a chance to ask them questions

## **Testifying**

Seeing the person who harmed you in court can be very stressful. Here are some tips for **managing** trauma reactions and stress:

- remember to breathe
- look at your advocate, support person, judge/magistrate, not the perpetrator
- you do not have to look at the perpetrator, even if she or he is without an attorney and asking you questions directly in the trial
- take your time
- bring a favorite or comforting object that you can hold in your hand or pocket discreetly

### General tips for testifying:

- Tell the truth.
- Stick to the facts and answer only the question you are asked. If you need to provide more information, the judge/magistrate will let you know. Do not talk at length.
- Speak loudly and clearly so the judge can hear you.
- Avoid using words if you aren't sure what they mean.
- If you don't fully understand a question or don't know the answer to it, say so. Don't guess.
- If you can't remember a detail, tell the court you cannot remember.
- If someone says "objection," immediately stop talking until the judge/magistrate decides if you should answer the question. When the judge/magistrate says "sustained" you do not have to answer, when the judge/magistrate says "overruled" you must answer.
- Be serious in the courtroom and always address the judge/magistrate as "Your Honor."
- Your abuser's attorney may say things that are upsetting, or may even try to make you angry. Focus on staying calm.

### Common mistakes – Here are some common mistakes some survivors make during testimony:

- Saying "it wasn't that bad." The court has to evaluate what happened, not how bad this incident was compared to other experiences you may have had. Don't minimize the incident(s).
- Blaming yourself with statements like "I was mad, too" or "I hit him or her, too" or "I had a lot to drink that night."
- Focusing on issues not before the Court. No matter how upset you may be about other things, like your partner cheating on you, focus on the issue that the court is hearing. For example, if you bring up child support in a protection order hearing, the court may think you are not really concerned about your safety.
- Saying "I'm not afraid, because....."

## Objections and Appeals

If you receive an outcome in your case which you believe is wrong or unfair, you may have the ability to object to it or to appeal it. You need a *legal* basis to appeal or object to a decision – something more than the fact that you do not like the decision the court made. Objections and appeals are often made based on the claim that the judge didn't consider key evidence, or made an error in how he or she ruled on the evidence. Some things to know about objecting and appealing:

- You generally have 14 days to object to decisions by magistrates and 30 days to appeal decisions by judges.
- These cases are usually done on paper with no additional hearings, although some Courts of Appeals may require you to argue your case.
- You must include a copy of the transcript of the hearing with your objections or appeal. These can be costly but are required; you may ask the court to waive the costs of the transcript.



*Note: You should include with your objections or appeal a motion that the Court "stay" the orders, meaning you are asking the court to not enforce the order until your objection or appeal is considered.*

## Civil Actions for Money Damages – Suing the Perpetrator or Others

You always have the option of consulting with a private attorney to pursue a potential civil legal action against the offender or any other party involved in the case. This option exists whether or not you

participate in prosecution or the outcome of a criminal case. You may also have the basis to bring a lawsuit against an individual or institution who through their actions or inactions, contributed to the crime committed against you or its negative impact on you. It is extremely important to proceed with caution, and with legal advice. Some of the common Ohio time limits for starting civil cases are: 21 years to recover real estate; 8 years to sue on written contracts; six years to sue on oral contracts; two years for actions for personal injuries or property damage; and one year for libel, slander, malicious prosecution, false imprisonment, and professional malpractice. Most other types of lawsuits are subject to a four-year limitation. For details see: [www.clelaw.lib.oh.us/public/misc/FAQs/Limitations.html](http://www.clelaw.lib.oh.us/public/misc/FAQs/Limitations.html)

## General Tips

### Be On Time

- If you are late, your case can be dismissed or decided without hearing your side.
- If you are late, call the Court, ask to speak with the bailiff or secretary of the judge assigned to your case. Ask the secretary to tell the judge why you are late and when you expect to arrive.

### Dress Neatly

- You do not need fancy clothes; just make sure you are neat and clean.
- Tank tops, short skirts, shorts, ripped jeans, or baseball hats are not acceptable. T-shirts or hats with messages are also not acceptable for Court.

### Be Respectful

- How you act is as important as how you look. You must be respectful to everyone in the Court, including the judge, Court staff, and the other party in your case.
- Do not speak while others are speaking. Do not get into an argument with the other side. If you disagree with what the other side is saying, wait until he or she is done and then tell the judge.
- Speak to the judge only when you are told it is your turn. Address the judge as “your honor.” Never interrupt the judge.
- Try to control your emotions as much as possible, especially anger.

**Do Not Bring Children with You to Court** - It is *only* okay to bring your child if the judge or magistrate has already told you that he or she needs to talk with your child on that day. In all other cases, find someone to look after your child.

**Bring a Support Person** – It can be helpful to bring a support person with you. Choose someone who will not get involved in any conflict with the opposing party or his or her people at court. Choose someone who will not be called as a witness in your case (because that person may have to sit outside in the hallway until they are called.)

**Ask to Testify from the Attorney Table** – If you are uncomfortable going up to the witness stand, you can ask the court if you can testify from the attorney table.

**Feelings** – You may feel overwhelmed or frightened. It is ok to cry, but not excessively. You may get angry. It is never helpful to become angry during your court proceeding.

**No Cell Phones** - Turn your phone off when you enter the courtroom. Ringing phones are very distracting and make some judges very mad, which will not help your case.

## What to Expect When You Arrive at the Courthouse

If necessary, check in at the clerk's office to find out which courtroom to go to. You may also need to check in with the Judge/Magistrate's Bailiff, Court Officer or Secretary before or as you enter the courtroom. Go into the courtroom and sit quietly until your case is called. You may have to wait for some time; be patient.

**When Your Case is Called** - Go to the table or podium for lawyers in front of the judge and stand facing the judge. The judge will tell you when to speak. The stages of the case generally proceed like this:

- **Present Your Case** - The judge asks you to present your case. You tell the judge what you are requesting and why you are requesting it. You present your evidence including having any witnesses testify.
- **Cross Examination** - After each of your witnesses is finished, the other side will have a chance to ask your witness questions (called cross examination). After they finish, you are allowed to ask your witness to clarify any information that may have come out in a confusing way in response to the other side's questioning.
- **Opposing Side Presents Case** - Next, the other side will present his or her case. If you disagree with something the other side says, do not interrupt. You will have an opportunity to ask each of the other side's witnesses questions when he or she is finished talking. Once they are done putting on each of their witnesses, you get to cross examine them, as they did you and your witnesses.

Decisions are not always given right away. In some cases, you will later receive the judge's decision in the mail. ***Make sure the court has a good address for you.*** *If the court is asking you to disclose where you are or will be living (upon release) and you are concerned for your safety, let the court know that. Ask if you can give your address in chambers, to a bailiff, or if you can provide a mailing address where you can receive future notices from the court.*

## Special Warnings

**Negotiating and Signing Agreements** – Never sign something you don't agree to or don't understand. Once you have entered into an agreement at Court, it will be difficult – if not impossible – to change that agreement in the future.

**Never plead guilty without talking to an attorney** – If you are charged with a crime, you may feel pressure to plead guilty, especially if you are in custody. If you cannot afford an attorney, you are entitled to a court appointed attorney when you are charged. Never, ever plead guilty without consulting with your defense attorney. Criminal convictions can affect almost every part of life (job, housing, custody, etc.).

**Do not try to communicate with the judge about your case before your case is called** -The law prevents the judge from talking to one party if the other party is not present (unless the party was served and is not present for court). This one-sided conversation is called an "ex parte communication" and it is illegal. Any letter, motion, or request you send to the court will be ignored by the judge (because it is an ex parte communication) unless you send a copy of that letter or request to the opposing party, and certify in writing on the document to the court that you have done so. For example, if you write a letter to the judge requesting that the court date for your divorce be changed, you must send a copy of this letter to the opposing party (or his or her attorney) and let the judge know that you have done this. Otherwise the judge will not even read your letter.

**Ask court staff for help but do not ask for legal advice** - Court staff (such as Clerks) can answer questions about court procedures, court rules, and the meaning of certain legal terms. Court staff are not attorneys and cannot provide legal advice. They are employees of the court and must treat both sides in a case fairly. It is unfair and illegal for them to help one party and not the other.

**Other Resources** - For more information on various legal topics, go to the websites of Ohio Legal Services: [www.ohiolegalservices.org](http://www.ohiolegalservices.org) or the Ohio State Bar Association: [www.ohiobar.org](http://www.ohiobar.org)

There is also help from a document called Keys to the Courtroom at:  
<http://www.fcmcclerk.com/resources/pdf/KeysBrochure2.pdf>

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## Problems with Attorneys and Judges

### In this Section

- **Problems with Lawyers**
- **Problems with Judges**
- **Filing a Complaint Against an Attorney or a Judge**
- **Recovering Money From Your Lawyer**
- **Disqualifying a Judge or Magistrate**

Your attorney's principal duties are to advise you of your legal rights, provide competent legal assistance and representation, and speak on your behalf in any court or administrative hearings. The Rules of Professional Conduct from the Ohio Supreme Court govern how attorneys carry out these duties. See: [www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf](http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf)

### Problems With Lawyers

All Ohio lawyers take an oath to effectively represent their clients and to avoid any conflict of interest. Ohio lawyers must follow ethical standards that are described in the Supreme Court of Ohio Rules of Professional Conduct. For example, an Ohio lawyer is not allowed to:

- knowingly mislead or lie to a client, opposing counsel, or a court
- reveal a client's confidence or secret without the client's permission, unless they are ordered to do so, or required to do so by law (such as knowing your intent to commit fraud or a crime)
- misuse or take money or property that belongs to a client
- settle, file or dismiss a case without the client's permission
- repeatedly neglect a client's legal problems after the lawyer has agreed to represent the client

**If Your Attorney Will Not Contact You** – If you have an attorney who will not contact you, meet with you or return your calls, you can:

- File a motion for change of counsel (if your attorney is court-appointed) stating that your attorney has not contacted you and for how long, and document your attempts to reach your attorney, and be sure to serve a copy to your attorney and the other parties in the case



- File a motion in your case that your attorney should have filed, and notify the Court you are filing the motion “pro se” because your counsel will not communicate with you and be sure to serve a copy to your attorney and the other parties in the case
- Terminate your attorney agreement and secure other counsel (if your attorney is privately paid) by sending a signed letter to your attorney explaining why you are ending the agreement
- Consider filing a complaint (see below)

## Problems With Judges

The conduct of Ohio judges is regulated by the Supreme Court of Ohio Code of Judicial Conduct. Judges must obey their oaths of office and the rules set forth in the Code of Judicial Conduct. For example, an Ohio judge must perform his duties fairly and impartially, competently and diligently, and without bias or prejudice. An Ohio judge is not allowed to:

- harass a party or attorney
- discriminate based on race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation
- permit family, social, political, financial, or other interests or relationships to influence his or her conduct or judgment
- deny a person or that person’s lawyer the right to be heard
- communicate with a party or their attorney without the participation of the other party or that party’s attorney (called “ex parte” communication), except for scheduling or administrative purposes
- fail or refuse to hear and decide a case or fail to do so in a timely manner

Judges must disqualify themselves in any case in which they have a personal bias or prejudice concerning a party or their lawyer, are related to a party to the proceeding, or when they or their immediate family or household member has an economic interest in the outcome of a case.

## Filing a Complaint Against an Attorney or a Judge

If you have an ethics complaint against an Ohio lawyer or judge, you may file a written complaint. This process is free for the person filing, and is designed so that you do not need an attorney. An investigation is then made to determine if the lawyer or judge acted unethically or failed to perform their duties as a lawyer or judge. You may file a complaint with one of the following organizations:

<b>An approved local bar association</b> For information on an approved local bar association near you, call the Board of Commissioners on Grievances and Discipline: 614.387.9370	<b>Office of Disciplinary Counsel</b> 250 Civic Center Drive, Ste. 325 Columbus, OH 43215-7411 Tel. 614.461.0256, 800.589.5256 Fax: 614.461.7205	<b>Ohio State Bar Association (judges)</b> 1700 Lake Shore Drive P.O. Box 16562 Columbus, OH 43216-6562 614.487.2050 or 800.282.6556
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## Recovering Money From Your Lawyer

**Losses Due to Negligence** - If you suffer money damages or out-of-pocket losses as a result of your lawyer’s mistakes or negligence, you may have a legal malpractice claim. If you wish to file a malpractice lawsuit against a lawyer, you should promptly consult with another lawyer because there is a one-year statute of limitations for malpractice lawsuits.

**Theft** - If your lawyer has illegally taken your money or property, you may be eligible to recover your loss by filing a claim with the Client's Security Fund of Ohio, located at the Supreme Court of Ohio, 65 South Front Street, 5<sup>th</sup> Floor, Columbus, OH 43215-3431, 1-800-231-1680 or 614-387-9390. You may file your claim on your own without the assistance of a lawyer.

**Disputed Fees** - If you have a fee dispute with your attorney, you may be able to require your attorney to participate in arbitration (binding mediation) to settle the dispute. You can contact the local bar association or the Ohio Bar Association to see if this option is available to you.

## Disqualifying a Judge or Magistrate

If a judge or magistrate is clearly biased or prejudiced in favor of or against a party to a case, the party may file a motion asking the judge/magistrate to disqualify him or herself from the case. This is called a "Motion for Recusal." If the judge/magistrate refuses to disqualify him or herself, a party may then ask the Supreme Court of Ohio to remove the judge from the case by filing an Affidavit of Disqualification with the clerk of the Supreme Court of Ohio.

An Affidavit of Disqualification filed with the Supreme Court should list specific allegations supporting the claims of judicial bias or prejudice. It should also include the name of the judge, the name of the court in which the proceeding is pending, the case caption (the parties' names and case number), and the your or your counsel's name, address and telephone number. An original plus three copies are required for filing, but there is no filing fee for submitting an affidavit of disqualification.

Motions for Recusal and Affidavits of Disqualification are rarely granted. Therefore, you should only consider filing a Motion for Recusal of a judge when there is overwhelming evidence of judicial bias or prejudice. Filing a Motion for Recusal may also backfire by antagonizing the judge. Even when a judge seems to be acting unfairly in your case, it may be unwise to file a Motion for Recusal.

## School and Title IX Protections

*This section includes content used with permission from the Victim Rights Law Center, at [www.victimrights.org](http://www.victimrights.org) and from the American Civil Liberties Union at [www.aclu.org](http://www.aclu.org).*

Title IX (Title 9) is a federal civil rights law that prohibits discrimination on the basis of sex, including on the basis of sex stereotypes, in education programs and activities. All public schools and any private schools receiving federal funds must comply with Title IX. Under Title IX, discrimination on the basis of sex can include sexual harassment or sexual violence such as rape, sexual assault, sexual battery, sexual coercion, or dating violence.

Gender-based violence and harassment are behaviors that are committed because of a person's gender or sex. They can be carried out by a boyfriend or girlfriend, a date, other kids, or adults. If someone does any of the following to you because of gender or sex, it may constitute gender-based violence or harassment:

- follows you around, always wants to know where you are and who you are with, or stalks you
- pressures you to perform sexual acts, or touches you sexually against your will

- forces you to have sex
- interferes with your birth control
- verbally abuses you using anti-gay or sex-based insults
- sends you repeated, harassing, unwanted texts, IMs, online messages, and/or phone calls
- hits, punches, kicks, slaps, or chokes (strangles) you
- verbally or physically threatens you

Sexual assault, dating violence, and stalking can lead to, among other things, dramatic declines in academic performance; increases in absenteeism; or permanent withdrawal from school. It is not unusual for it to impact your entire educational experience and other aspects of your life.

**Campus Disciplinary Complaints:** If the person who assaulted you is a fellow student, you may struggle with difficult decisions about whether to file a complaint with your school. Student disciplinary systems can be very helpful in addressing the problem, but they can also be poorly managed and intimidating. You may have a number of concerns including:

- **Privacy:** Campus gossip about the assault may be making it hard for you to have your normal social life. Your peers probably know a lot about your daily life and if details about the violence/harassment get out into the community, the resulting gossip can be unbearable. You may even be considering dropping out of school or transferring to avoid the gossip.
- **Physical Safety:** You may feel unsafe on campus if the assailant/stalker is a fellow student or knows where you attend school. You may be avoiding certain classes or libraries. You may be staying inside your room just to avoid seeing the assailant.
- **Housing:** You may be concerned that the assailant knows where you live and you may want to change dormitories or location on campus.
- **Transfers:** You may want to request a safety transfer to another school.
- **Suspending school:** You may want to take a semester off but keep tuition assistance, housing, etc.

**Under Title IX, your school is obligated to respond to gender-based violence and harassment IF:**

- the behaviors are so severe (for example, even a single incident of rape) or happen so often (for example, numerous harassing texts) that the acts would deprive a student of equal access to education, or to an educational activity like being on a team or in the band, AND
- your school has authority over the person or people committing the violent or harassing behavior, and over the environment where the behavior is happening.

Under Title IX, schools have specific responsibilities which are outlined in a letter on the website of the U.S. Department of Education Office of Civil Rights. The letter explains that *“Title IX protects students from sexual harassment in a school’s education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school’s facilities, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.”* For a full explanation of the obligations of schools to address sexual harassment and sexual assault, see: [http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104\\_pg6.html](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104_pg6.html)). There is more information available at: <http://knowyourix.org/>

Even if your school does not permit an attorney to attend the hearings in disciplinary cases, an attorney can help in many other ways. For example, an attorney can help you write a statement, prepare for the

hearing, and prepare to question witnesses and introduce evidence. Here is information on how to file a complaint: [www2.ed.gov/about/offices/list/ocr/complaintprocess.html](http://www2.ed.gov/about/offices/list/ocr/complaintprocess.html). Complaints must ordinarily be filed within 180 days of the last act. For more information you can also contact the Women's Rights Project of the American Civil Liberties Union at (212) 549-2644, or email [womensrights@aclu.org](mailto:womensrights@aclu.org)

## Sexual Assault

### In this Section

- Sexual Assault Forensic Exams
- Polygraphs
- HIV and STI Testing
- Statute of Limitations
- Unfavorable Prosecution Outcomes
- Child Custody After Sexual Assault

### Sexual Assault Forensic Exams

A survivor of sexual assault can obtain a Sexual Assault Forensic Examination (also known as a “rape kit”) in any hospital emergency department in Ohio. The purpose of the exam is to collect and document physical evidence of the assault in and on your body and clothing. In many communities, a specially-trained Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Examiner (SAFE) will conduct the examination. However, hospitals that do not have SANEs or SAFEs available are still required to coordinate care for you and make a forensic examination available.

Usually, the exam must be conducted within 96 hours (4 days) of the assault. This exam is the only opportunity for you to have evidence collected. Having the exam does not obligate you to report the assault to police, but it does preserve valuable evidence should you decide to report the assault.

**Components of the Exam:** A forensic examination in Ohio must follow Ohio Department of Health guidelines. You should be informed about the forensic exam process and about the availability of a rape crisis advocate or support person. It is up to you to decide if you want an advocate or support person present in or out of the exam room. While the evidence collected varies in each case, it should include each of the following *unless you decline part of the exam, which you have a right to do*:

- A statement from you (also known as “assault history”) about the details of the assault which will be recorded by the SANE or SAFE or a medical person
- Photographs of any physical injuries from the assault (cuts, scrapes, bruises, etc.)
- Swabs of any areas of the body that may have come into contact with the perpetrator’s body, particularly the perpetrator’s body fluids
- A genital examination, including swabs for the presence of the perpetrator’s DNA, as well as photographs of any injuries utilizing a colposcope (a specialized camera that can magnify and capture images of microscopic injuries); and
- Collection of any clothing that does (or could) contain evidence of the assault

**Exposure to STIs, Pregnancy, and “Date Rape” Drugs:** As part of the exam, survivors are entitled to:

- Preventative antibiotic treatment to guard against sexually transmitted infections (STIs) such as chlamydia and gonorrhea, from the assault. These do NOT treat viral infections, such as herpes and HIV. The antibiotic is free of charge.
- Information about emergency contraception, where to obtain it, and how to take it. Some hospitals will provide emergency contraception free of charge.
- If you suspect you were drugged prior to the assault occurring, a Drug-Facilitated Sexual Assault (DFSA) Kit can be requested, in which a sample of the survivor's urine or blood is collected for later analysis. This kit is separate from the rest of the examination and is often not given unless you specifically request it.

**Costs Involved:** All components of the forensic examination are free of charge to the survivor (including the DFSA kit, if requested). You should not be billed, directly or through insurance, for any of these components; see: <http://codes.ohio.gov/orc/2907.28> You *are likely*, however, to be billed for any of the following:

- Radiologic tests to assess for injuries, such as x-rays or MRIs
- Treatment for any injuries, such as stitches or casts
- Any medication other than preventative antibiotics, such as pain medication
- Testing for sexually transmitted infections (for adults), testing for pregnancy, emergency contraception (some hospitals do all of these services for free; some hospitals will not provide emergency contraception)
- Admittance to the hospital as an inpatient for any follow-up treatment or monitoring
- Any intensive assessment by a physician, including assessment for emergency needs in a hospital that does not have a SANE or SAFE available

While all of these costs will be billed to you or your insurance, you can seek reimbursement through the Crime Victims Compensation program. See Finances and Money section of this manual.

**Rights and Reporting Obligations:** You have the following rights regarding the exam process:

- To consent to or refuse any or all parts of the exam and any medication or treatment
- To the presence or absence of a support person through any part of the process, including a rape crisis advocate and/or a family member or friend
- To report the crime to the police, or to refuse to report the crime, and to have a support person present during police interviews
- To a language interpreter and/or assistive technology throughout the exam
- For minors: If you are a minor, you can obtain (or refuse) a forensic exam without the consent of your parent or guardian. Hospitals are required to notify parents/guardians in writing that you were seen in the hospital's emergency department but are NOT required to disclose the nature of the visit.

**Mandatory Reporting of Felonies:** When a survivor is treated in a hospital emergency department (whether or not he or she obtains a forensic exam), certain reporting procedures are required by law. Medical personnel are required to report knowledge of any felony crime to law enforcement. Similarly, evidence collected in a forensic exam must be turned over to the police department in the jurisdiction where the crime occurred. These requirements do not obligate you to personally report the crime to police, nor to participate in the criminal justice process. The police may come to the ER and ask to speak with you; you do not have to speak with them if you do not wish to.

**Anonymous (“Jane Doe”) Kits:** In Ohio, adult survivors have the option of reporting a sexual assault anonymously, meaning that they can obtain a forensic exam without having their personal identity included. Instead of attaching the survivor’s name to the collected evidence, a number unique to that survivor will be used. Law enforcement must still be notified and must be given the evidence that is collected, however, only the unique number and general location of the assault will be provided to law enforcement (not the survivor’s name or identifying information). Upon discharge from the hospital, the survivors are given their unique number, so that they can later report to police, if they choose, and be able to connect the report to the evidence collected. Note that minors are not able to obtain an anonymous forensic exam in Ohio.

**Privacy During Prosecution:** You may request that the judge in the criminal case prevent the release of your or the offender’s name or the details of the offense until the preliminary hearing, the accused is arraigned in the court of common pleas, the charge is dismissed, or the case is otherwise concluded, whichever occurs first. See: <http://codes.ohio.gov/orc/2907.11>

**Kit Analysis and Storage:** Not all forensic exam kits are analyzed. Analysis often takes weeks or even months, so results are not immediately available. Currently, kits are required to be stored for a minimum of 60 days, commonly within the police department, hospital, or other formal storage facility. After 60 days, it is up to the discretion of individual agencies and jurisdictions as to whether the kit continues to be stored, or is destroyed. To determine the status of a kit’s analysis, contact the responding police department.

It is important to note that SANEs/SAFEs collect evidence and testify about the evidence collection process in court, when applicable. They cannot analyze the evidence, nor are they permitted to provide the survivor or his/her support person(s) with opinions or conclusions about the nature of the evidence collected. For more information about the sexual assault forensic exam process, see:

<http://www.healthy.ohio.gov/en/sadv/sassault/sadvprot>



*Note: The purpose of the forensic exam process is to collect any evidence and to check for injuries. It is not a kit to prove if a rape occurred or not.*

## Polygraphs

Ohio law forbids police officers, prosecutors or other public officials from asking or requiring survivors to submit to a polygraph examination (“lie detector test”) *as a condition of proceeding with the investigation*. This includes a test known as “voice stress analysis.” Additionally, your refusal to submit to a polygraph exam cannot prevent the investigation of a sex offense, filing criminal charges, or prosecuting an offender. Note that under the law, police may still “suggest” to the survivor that taking a polygraph test may be beneficial. But, you are not, at any time, required to submit to such a test. When considering taking a polygraph exam, you should carefully consider the accuracy, limitations, and uses of such an exam. For more information, please read here:

[http://www.nsvrc.org/sites/default/files/publications\\_Truth-telling-Devices-in-Sexual-Assault-Investigations.pdf](http://www.nsvrc.org/sites/default/files/publications_Truth-telling-Devices-in-Sexual-Assault-Investigations.pdf) and <http://codes.ohio.gov/orc/2907.10>

## HIV and Sexually Transmitted Infections (STI) Testing

Ohio law requires that *if an individual is charged with a sex offense*, the survivor or the prosecutor can request that the offender be tested for sexually transmitted infections, including HIV. Law enforcement or a judge will then force the accused offender to undergo such testing. Test results will be given to the



court, and you can request to see the results. The offender must first be charged with a sex offense in order for you to exercise this right. See: <http://codes.ohio.gov/orc/2907.27>

## Statute of Limitations

The statute of limitations – meaning the time limit on when an action can be filed - on rape or sexual battery offenses is twenty-five years. R.C. 2901.13(A)(4). If DNA is collected in the case and it matches a known person, then there may be up to an additional five years to prosecute the crime from the DNA match. R.C. 2901.13(D). The statute of limitations for rape and sexual battery when the victim is a minor does not begin to run until the child turns 18 years old or children services or law enforcement is notified where the child lives or where the abuse occurred. R.C. 2901.13(J).

## Unfavorable Prosecution Outcomes

Some sexual assault cases are difficult to investigate and prosecute. Even when the most competent and thorough investigation has been conducted, sometimes cases cannot be successfully prosecuted. In such cases, law enforcement will typically classify the case as being unfounded or lacking sufficient evidence. This does not mean that law enforcement believes the survivor was lying about the assault; rather, it means that they do not believe there is enough evidence to successfully prosecute the case.

Sometimes law enforcement does not conduct a competent or thorough investigation, meaning that the case cannot be (or has not been) prosecuted due to the actions of law enforcement, not because of the merits of the case itself. If you feel that your case has not been handled in a professional or ethical manner by law enforcement, there may be options to help remedy the situation. Survivors can contact the following organizations for guidance:

- The Ohio Crime Victim Justice Center: <https://ocvjc.org/>
- The Victim Rights Law Center: <http://www.victimrights.org/>

It is possible that another prosecutor can be asked to be involved, but your general dissatisfaction with the investigation is often not enough to warrant official action or intervention from any outside agency. The Ohio Attorney General's Office cannot investigate a sexual assault case or the handling of it based on the request of a private citizen. The request must be made by an eligible public official or agency and must follow specific guidelines. For more information, please read here:

<http://www.ohioattorneygeneral.gov/FAQ/All-Frequently-Asked-Questions?tagid=105>

If you have a grievance or complaint against an attorney, judge, or magistrate, see the section in this manual called *Problems with Attorneys and Judges*. See *Housing, Employment and School* sections of this manual for information on sexual assault in these settings.

## Child Custody After Sexual Assault

If a child is conceived as a result of rape or sexual battery, then you may seek a declaration by the court that will result in the offending parent (or any of his/her relatives) having no parental rights except the obligation to pay child support. See R.C. 3109.50-507 and R.C. 3109.042(B). To qualify for this relief, the parent must have been convicted of rape or sexual battery, the victim must be the person asking for relief, the child was conceived as a result of the rape or sexual battery, and a DNA test must confirm parentage. See R.C. 3109.501(B). The family of the perpetrator can have no visitation rights unless the victim-parent agrees. See R.C. 3109.056.

## Other Issues

See *Housing, Employment and School* sections of the companion manual for information on sexual assault in these settings.

For information on safety planning around sexual assault, see the Victim Rights Law Center guide at: [https://victimrights.org/sites/default/files/Safety%20Planning%20with%20Adult%20Sexual%20Assault%20Survivors\\_A%20Guide%20for%20Advocates%20and%20Attorneys.pdf](https://victimrights.org/sites/default/files/Safety%20Planning%20with%20Adult%20Sexual%20Assault%20Survivors_A%20Guide%20for%20Advocates%20and%20Attorneys.pdf)

## Address Confidentiality in Ohio

If you are moving, you may want to keep your new address confidential to make it more difficult for your abuser to find you. Ohio has an address confidentiality program called Safe at Home. Safe at Home is an address confidentiality program that allows victims of domestic violence, stalking, human trafficking, rape or sexual battery to apply for an address designated by the Secretary of State to serve as the person's address to shield their residence address from public records, including the voter registration lists. Victims can apply to participate in the program only through a "certified application assistant." An application assistant is defined in the law as "...an employee or volunteer at an agency or organization that serves victims of domestic violence, menacing by stalking, human trafficking, trafficking in persons, rape, or sexual battery who has received training and certification from the secretary of state to help individuals complete applications to be program participants." (ORC Section 111.41(A)) You can find a "certified application assistant" at most local domestic violence programs, or by calling the Ohio Domestic Violence Network at 800-934-9840.

Additionally, the program allow survivors to register to vote without their records appearing in the Statewide Voter Registration Database, and vote absentee without their residence address being compromised.

The program works by providing you an address that you use for your mail. Your mail goes to that address which is at the Ohio Secretary of State's office. They then forward your mail to you directly at your actual physical address.

## Website Resources

- Ohio Domestic Violence Network (800-934-9840) - [www.odvn.org](http://www.odvn.org)
- Ohio Alliance to End Sexual Violence (888-886-8388) - [www.oaesv.org](http://www.oaesv.org)
- Ohio State Legal Services Association, information on many legal topics - [www.oslsa.org](http://www.oslsa.org)



- Battered Women's Justice Project - [www.bwjp.org](http://www.bwjp.org)
- Buckeye Region Anti-Violence Organization, support for LGBTQ survivors of domestic violence, sexual assault and hate/bias crimes - [www.bravo-ohio.org](http://www.bravo-ohio.org)
- Crime Victims Compensation - [www.ohioattorneygeneral.gov/VictimsCompensation](http://www.ohioattorneygeneral.gov/VictimsCompensation)
- Custody website by and for survivors in custody cases - [www.custodyprepformoms.org](http://www.custodyprepformoms.org)
- Deaf Phoenix - [www.phoenixdiversity.org](http://www.phoenixdiversity.org)
- Disability Rights Ohio - [www.disabilityrightsohio.org](http://www.disabilityrightsohio.org)
- Forms , Protection orders - [www.sconet.state.oh.us/JCS/domesticViolence/default.asp](http://www.sconet.state.oh.us/JCS/domesticViolence/default.asp)
- Forms, Domestic Relations - <http://www.supremecourt.ohio.gov/jcs/cfc/drforms/default.asp>
- The Ohio Crime Victim Justice Center: <https://ocvjc.org/>
- Legal Momentum, resources on various legal issues - <https://www.legalmomentum.org/get-help/legal-resources-kits>
- National Network to End Domestic Violence - [www.nnedv.org](http://www.nnedv.org)
- Ohio Bar Association, information on various legal issues - [www.ohiobar.org/ForPublic/Resources/LawFactsPamphlets/Pages/LawFactsPamphlets.aspx](http://www.ohiobar.org/ForPublic/Resources/LawFactsPamphlets/Pages/LawFactsPamphlets.aspx) and <https://www.ohiobar.org/ForPublic/Resources/LawYouCanUse/Pages/LawYouCanUse.aspx>
- Ohio Justice & Policy Center – [www.ohiojpc.org](http://www.ohiojpc.org)
- Ohio Statutes - <http://codes.ohio.gov/orc>
- Victim Rights Law Center (sexual assault information) - [www.victimrights.org](http://www.victimrights.org)
- Women's Law – domestic violence and sexual assault - [www.womenslaw.org](http://www.womenslaw.org)

## Ohio Domestic Violence and Rape Crisis Programs

Counties Served	City	Organization	Program Type	Phone number
<b>Adams</b>	Batavia	YWCA House of Peace	DV	800-540-4764
	Manchester	Reach Out, Inc.	DV	937-217-5072
<b>Allen</b>	Lima	Crossroads Crisis Center	DV	877-228-4357
	Lima	Crime Victims Services	DV/RC	877-867-7273
<b>Ashland</b>	Ashland	Rape Crisis Domestic Violence Safe Haven	DV/RC	419-289-8085
<b>Ashtabula</b>	Ashtabula	HomeSafe	DV	800-952-2873
<b>Athens</b>	Athens	My Sister's Place	DV	800-443-3402
<b>Auglaize</b>	Wapakoneta	Auglaize County Crisis Center	DV	419-738-5511
<b>Belmont</b>	St. Clairsville	Tri-County Help Center	DV/RC	800-695-1639
<b>Brown</b>	Batavia	YWCA House of Peace	DV	800-540-4764
<b>Butler</b>	Hamilton	Dove House, YWCA	DV	800-618-6523
	Cincinnati	Women Helping Women	DV/RC	513-381-5610
<b>Carroll</b>	Carrollton	Carita's House	DV	330-627-5765
<b>Carroll</b>	New Philadelphia	Harbor House, Inc.	DV	330-364-1374
	New Philadelphia	Compass	RC	888-356-4644
<b>Champaign</b>	Springfield	Project Woman	DV	800-634-9893
	Bellefontaine	New Directions of CCI – Soteria House	DV	877-394-1046
<b>Clark</b>	Springfield	Project Woman	DV/RC	800-634-9893
<b>Clermont</b>	Batavia	YWCA House of Peace	DV	800-540-4764
<b>Clinton</b>	Wilmington	Alternatives to Violence Center	DV	888-816-1146
	Xenia	Family Violence Prevention Center of Greene County	DV	937-372-4552
<b>Columbiana</b>	Lisbon	Christina House	DV	330-420-0036
<b>Coshocton</b>	Coshocton	First Step Family Violence Intervention	DV	740-622-9533
<b>Crawford</b>	Marion	Turning Point	DV	800-232-6505
<b>Cuyahoga</b>	Cleveland	Domestic Violence and Child Advocacy Center	DV	216-391-4357
	Cleveland	Cleveland Rape Crisis Center	RC	216-619-6192
	Cleveland	Jewish Family Services Association	DV	216-292-3999
	Cleveland	Asian Services In Action, Inc. (ASIA, Inc.)	DV	216-881-0330
<b>Darke</b>	Greenville	Shelter from Violence, Inc.	DV	937-548-4679
<b>Defiance</b>	Defiance	House of Ruth	DV	800-782-8555
<b>Delaware</b>	Columbus	CHOICES	DV	614-224-4663
	Marion	Turning Point	DV	800-232-6505
	Delaware	Helpline of Delaware and Morrow Counties	RC	800-684-2324
<b>Erie</b>	Sandusky	Safe Harbour DV Shelter	DV	800-953-2207
<b>Fairfield</b>	Lancaster	The Lighthouse	DV	740-687-4423
<b>Fayette</b>	Washington Courthouse	My Sister's House	DV	740-572-2919
<b>Franklin</b>	Columbus	CHOICES	DV	614-224-4663

DV = Domestic Violence Program; RC = Rape Crisis Program; DV/RC = Program provides both services

Counties Served	City	Organization	Program Type	Phone number
	Columbus	Sexual Assault Resource Center of Central Ohio	RC	614-267-7020
	Columbus	The Center for Family Safety and Healing	DV	614-722-8293
	Columbus	Asha Ray of Hope (serving South Asians)	DV	614-565-2918
	Columbus	Asian American Community Services	DV	614-220-4023
	Columbus	BRAVO (LGBTQ)	DV/RC	866-862-7286
	Columbus	Ohio Hispanic Coalition (Latino communities)	DV	614-840-9934
	Columbus	DeafPhoenix	DV/RC	614-450-1262
<b>Fulton</b>	Defiance	House of Ruth	DV/RC	800-782-8555
<b>Gallia</b>	Gallipolis	Serenity House, Inc.	DV	800-942-9577
<b>Geauga</b>	Chardon	WomenSafe	DV	888-285-5665
<b>Greene</b>	Xenia	Family Violence Prevention Center of Greene County	DV	937-372-4552
<b>Guernsey</b>	Cambridge	Haven of Hope	DV/RC	800-304-4673
<b>Hamilton</b>	Cincinnati	Women Helping Women	DV/RC	513-381-5610
	Cincinnati	YWCA of Greater Cincinnati Battered Women's Shelter	DV	888-872-9259
<b>Hancock</b>	Findlay	Open Arms DV & Rape Crisis Services	DV/RC	419-422-4766
<b>Hardin</b>	Lima	Crossroads Crisis Center	DV	877-228-4357
<b>Harrison</b>	St. Clairsville	Tri-County Help Center	DV	800-695-1639
<b>Henry</b>	Defiance	House of Ruth	DV	800-782-8555
<b>Highland</b>	Hillsboro	Alternatives to Violence Center	DV	800-816-1146
<b>Hocking</b>	Athens	My Sister's Place	DV	800-443-3402
<b>Holmes</b>	Wooster	One Eighty (formerly Every Woman's House)	DV	800-686-1122
<b>Huron</b>	Sandusky	Safe Harbour DV Shelter	DV	419-626-2200
<b>Jackson</b>	Gallipolis	Serenity House, Inc.	DV	800-942-9577
<b>Jefferson</b>	Steubenville	A.L.I.V.E., Inc.	DV	888-611-7233
	Wheeling, WV	Upper Ohio Valley Sexual Assault Help Center	RC	800-884-7242
<b>Knox</b>	Mt. Vernon	New Directions	DV/RC	740-397-4357
<b>Lake</b>	Painesville	Forbes House	DV	440-357-1018
<b>Lawrence</b>	Ironton	Lawrence County DV Task Force	DV	888-372-7433
<b>Licking</b>	Newark	Center for New Beginnings	DV	800-686-2760
	Newark	Family Health Services of East Central Ohio	RC	800-688-3266
<b>Logan</b>	Springfield	Project Woman	DV	800-634-9893
	Bellefontaine	Soteria House	DV	877-394-1046
<b>Lorain</b>	Elyria	Genesis House	DV	866-213-1188
	Elyria	Lorain County Rape Crisis Center	RC	800-888-6161
<b>Lucas</b>	Toledo	YWCA of Northwest Ohio	DV	888-341-7386
	Toledo	YWCA Hope Center	RC	866-557-7273
	Toledo	Family & Child Abuse Prevention Center	DV	419-244-3053
	Toledo	Bethany House	DV	419-727-4948
<b>Madison</b>	London	A Friend's House	DV	740-852-7761
<b>Mahoning</b>	Youngstown	Sojourner House	DV	330-747-4040
<b>Marion</b>	Marion	Turning Point	DV	800-232-6505
<b>Medina</b>	Akron	Battered Women's Shelter	DV	877-414-1344

Counties Served	City	Organization	Program Type	Phone number
	Akron	Rape Crisis of Summit and Medina Counties	RC	877-906-7273
<b>Meigs</b>	Gallipolis	Serenity House, Inc.	DV	800-942-9577
<b>Mercer</b>	Celina	Family Crisis Network	DV	419-586-1133
<b>Miami</b>	Troy	Family Abuse Shelter of Miami County	DV	800-351-7347
<b>Monroe</b>	St. Clairsville	Tri-County Help Center	DV	800-695-1639
<b>Montgomery</b>	Dayton	Artemis Center	DV	937-222-7233
	Dayton	YWCA Dayton-Shelter & Housing Network	DV	937-222-7233
<b>Morgan</b>	Zanesville	Transitions	DV	740-454-3213
<b>Morrow</b>	Marion	Turning Point	DV	800-232-6505
	Delaware	Helpline of Delaware and Morrow Counties	RC	800-684-2324
<b>Muskingum</b>	Zanesville	Transitions	DV	740-454-3213
<b>Noble</b>	Cambridge	Haven of Hope	DV	800-304-4673
<b>Ottawa</b>	Sandusky	Safe Harbour DV Shelter	DV	419-626-2200
<b>Paulding</b>	Defiance	House of Ruth	DV	800-782-8555
		Rape Crisis of Crime Victims Services	DV/RC	877-867-7273
<b>Perry</b>	Zanesville	Transitions	DV	740-454-3213
<b>Pickaway</b>	Circleville	Haven House of Pickaway County	DV	740-477-9113
<b>Pike</b>	Waverly	Pike County Partnership Against DV	DV	740-947-1611
<b>Portage</b>	Kent	Safer Futures	DV	330-673-2500
	Kent	Townhall II	RC	866-449-8518
<b>Preble</b>	Eaton	YWCA Preble County DV Shelter Services	DV	937-456-6891
<b>Putnam</b>	Ottawa	Crime Victim Services	DV	877-274-7471
	Lima	Crime Victims Services	RC	877-867-7273
<b>Richland</b>	Mansfield	The Domestic Violence Shelter, Inc.	DV/RC	800-931-7233
<b>Ross</b>	Chillicothe	Ross County Coalition/Phoenix House	DV	866-828-2273
<b>Scioto</b>	Portsmouth	Southern Ohio Task Force on DV	DV	800-570-1819
<b>Shelby</b>	Sidney	New Choices	DV	937-498-7261
<b>Stark</b>	Alliance	Alliance Area DV Shelter/PACE	DV	330-823-7223
	Canton	Domestic Violence Project, Inc.	DV	330-453-7233
	Canton	American Red Cross Rape Crisis Center	RC	330-452-1111
<b>Summit</b>	Akron	Battered Women's Shelter	DV	888-395-4357
	Akron	Rape Crisis of Summit and Medina Counties	RC	877-906-7273
	Akron	Asian Services In Action, Inc. (ASIA, Inc.)	DV	330-535-3263
<b>Trumbull</b>	Warren	Someplace Safe	DV	330-393-3005
	Warren	Rape Crisis of Trumbull County	RC	330-394-4060
<b>Tuscarawas</b>	New Philadelphia	Harbor House, Inc.	DV	330-364-1374
	New Philadelphia	Compass	RC	888-356-4644
<b>Union</b>	Marion	Turning Point	DV	800-232-6505
<b>Van Wert</b>	Van Wert	Crisis Care Line	DV	419-238-4357
	Van Wert	YWCA of Van Wert County	DV	567-259-9501
<b>Vinton</b>	McArthur	Shepherd's House	DV	866-596-9271



Counties Served	City	Organization	Program Type	Phone number
Warren	Lebanon	Abuse and Rape Crisis Shelter of Warren County	DV/RC	888-860-4084
Washington	Marietta	EVE, Inc.	DV/RC	800-974-3111
Wayne	Wooster	OneEighty (formerly Every Woman's House)	DV/RC	800-686-1122
Williams	Defiance	House of Ruth	DV	800-782-8555
	Bryan	Sarah's House	DV	419-636-7272
Wood	Bowling Green	The Cocoon Shelter	DV	800-472-9411
Wood	Bowling Green	SAAFE Center	RC	800-472-9411
Wyandot	Marion	Turning Point	DV	800-232-6505

## Notes



