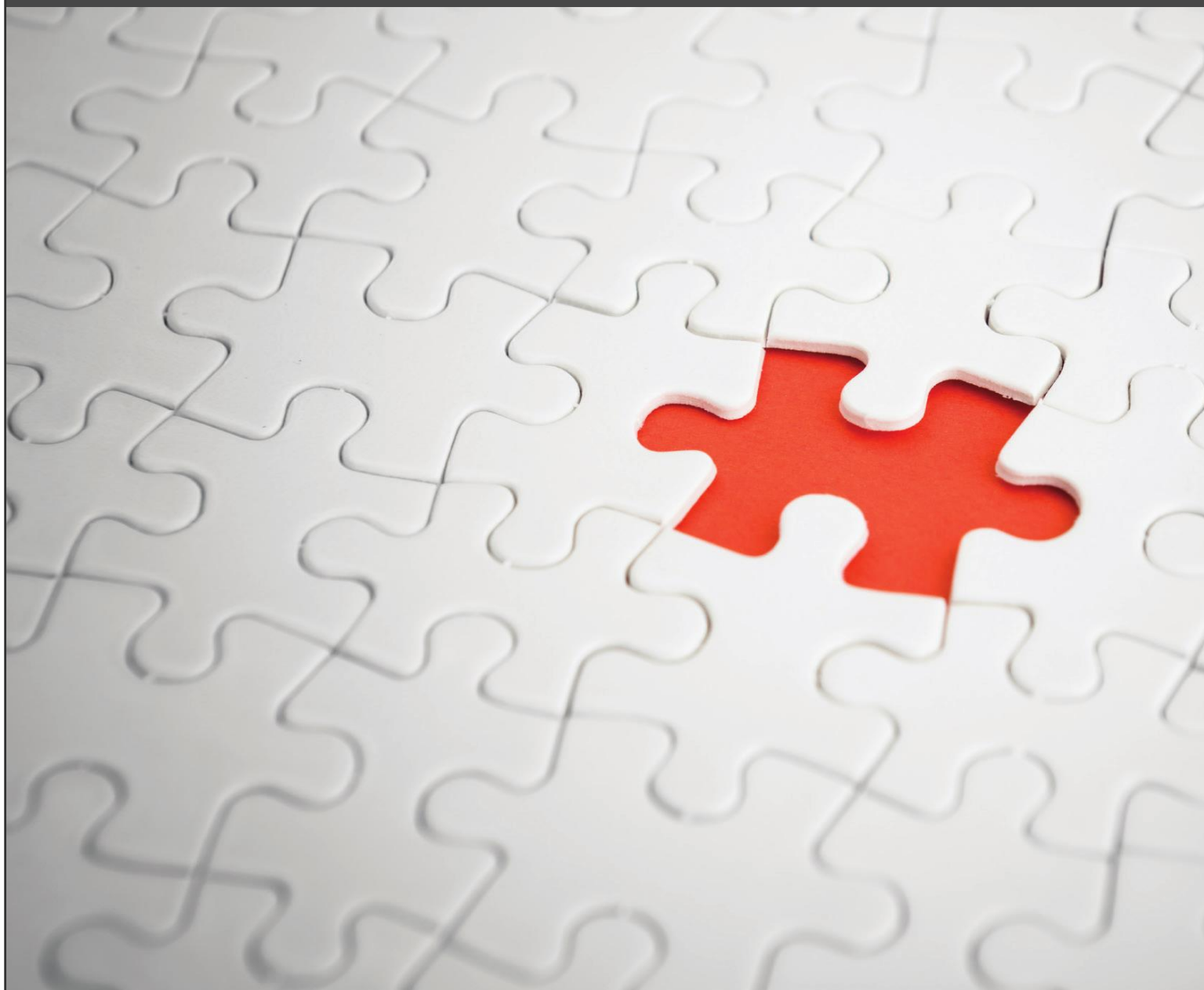


Self-Help Legal Manual

for *Incarcerated* 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

Ohio Domestic Violence Network
4807 Evanswood Drive, Suite 201
Columbus, OH 43229
phone: 614.781.9651
www.odvn.org



Ohio Poverty Law Center, LLC
555 Buttles Avenue
Columbus, OH 43215
phone: 614.221.7201
www.ohiopovertylawcenter.org

Prepared by

Nancy Grigsby

Legal Assistance Program Director
Ohio Domestic Violence Network

Michael R. Smalz

Senior Attorney
Ohio Poverty Law Center, LLC

With



**Katie Hanna, Becky Perkins and Kate Lawson,
Ohio Alliance to End Sexual Violence**

and

**Micaela Deming, Attorney at Law
Melanie GiaMaria, Attorney at Law**

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How this Manual Is Organized

This manual begins with an introduction about 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.

Companion Manual Available

This manual is specifically **for incarcerated women**. There is a **second manual** with more sections and additional information that applies once you are out, with longer sections on housing, employment, etc. It is available **at your institution**, many half-way houses, re-entry groups, and domestic violence programs, or on the Ohio Domestic Violence Network website: www.odvn.org.

If you will be released soon, you should read both manuals.

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 July, 2013.*

Please copy and share.

This manual includes many websites that may be helpful to you, although we know that you may not have access to the internet while you are in prison. We include them here so that if someone on the outside is helping you, you can share these websites with them to ask them to look things up for you.

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 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 the law you need
- level of expertise with domestic violence, sexual violence or stalking
- whether the 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. 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. This will be hard to do while you are in, but if you give Power of Attorney to someone, they may be able to talk to an attorney on your behalf.

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.

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

Allen and Hardin Counties	Ohio Northern University (419) 227-0061	Help with family law cases (divorce, etc.) For details: www.law.onu.edu/academicsclinical-programs
Akron	University of Akron (330) 972-7462	Help with expungement, clemency, Certificate of Qualification for Employment. For details: www.uakron.edu/law/clinical/cqe-clinic.dot
Cleveland	Case Western Reserve (216) 368-2766	Help with contractor disputes, debt collection, Social Security appeals, criminal defense. For details: www.law.case.edu/clinic/
Cleveland	Cleveland Homeless Legal Assistance Program (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: www.neoch.org
Columbus	Capital University Law Clinic (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: www.law.capital.edu/legal_clinic/
Columbus	CRIS Refugee and Immigration Services (614) 840-9634	Help with Immigration cases.
Columbus	Ohio Hispanic Coalition (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.
Cincinnati	University of Cincinnati (513) 241-9400	Assistance with Civil Protection Orders. For details: www.law.uc.edu/institutes-centers/rgsj/dvc poc/about
Dayton	University of Dayton (937)-229-3817	Help with misdemeanor criminal defense, civil matters, some family law. For details: https://www.udayton.edu/law/academics/clinics/civil-law-clinic.php
Toledo	University of Toledo (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. If you are released, you can seek legal help through our program by contacting your local domestic violence or sexual assault program.

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 you or others
- 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 or has strangled/choked you
- 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**. A safety plan is a specific plan you make and update to help you manage risks from your abuser in all parts of your life. Your safety plan also helps you develop allies – people you can turn to if you find yourself in danger. When you are out, your safety plan should include 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 While You are Incarcerated - While intimate relationships are not allowed between incarcerated individuals, close bonds and friendships do happen. You may get close to a friend while in prison who becomes controlling, coercive (threatening you that they will do something to you if you don't do what they want), verbally, emotionally or physically abusive, stalks you, or becomes sexually abusive. The institution where you are has its own policies for dealing with these situations and you should become familiar with them if you are facing these issues. Each prison has a Prison Rape Elimination Act coordinator or officer who can explain prison policies on sexual assault and relief available.

Other things you can do for yourself include:

- Find a trusted friend you can tell about the situation
- Surround yourself with people who value you and your right to be safe
- Seek classes and activities that support you
- Avoid situations where you are alone with that person

- Avoid situations where you are ever alone, if you fear that person or someone on their behalf may corner you when you are alone
- Journaling or keeping a record of incidents may be helpful, but these may be read by prison staff
- Find a trusted therapist, counselor or case manager you can talk to. Talk with them up front about what things they would have to disclose to others before you tell them your whole situation
- Ask trusted friends in the institution what they know about how a complaint would be handled
- If you do not feel you can remain safe, consider asking for a transfer to another section of the institution, or to another institution (See *Requesting a Transfer* in the *Early Release and Transfers* section of this manual)

How to Find an Advocate

To find a domestic violence program, call the **Ohio Domestic Violence Network at 800-934-9840** (voice/tty) or go to: 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, Resources, then click Directory of Services.



Civil Protection Orders



In this Section

- **Types of Protection Orders**
- **Enforcement of Protection Orders**
- **How Protection Orders Can Help**
- **Protection Order Process**

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 chart below provides 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 these 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?

- You cannot get transferred for a CPO hearing, so if you decide you need a protection order, you will need to wait until you are released to seek one.
- If you are not sure what to do or have questions, talk with a domestic violence or sexual assault advocate, or a case manager.

If You Are Thinking About Filing for a Civil Protection Order - Save and document everything. If you are being threatened while you are in, be sure to save all of the letters written to you or items sent to you by the abuser. If you are receiving harassing or threatening calls, be sure to document every time it happens and as close to the exact words as possible. If you are being threatened, assaulted or harassed by someone at the facility who you fear may hurt you when you get out, also record all of these incidents. If you write things down when they happen – calls, sending or receiving letters, being visited, assaults, threats – you can use that log later in court to help you remember what happened on which day. Remember that your journals may be read by officials at the institution at any time.

Where You Can File (Jurisdiction) - You can file a petition for a CPO in the county where you temporarily or currently reside, where the perpetrator lives, or where the violence or threats happened. Be sure to file in the right county so that your case doesn't get dismissed, because the abuser will still get notice that you filed.



Note: If you file where you are and not where the respondent lives, the respondent will know which county you are living in. If you file where the abuser lives, you will need to travel to that court for every hearing. If you are going to a temporary place such as a halfway house, you can file in that county. If you are temporarily staying in the community where you were incarcerated, you can also file there.

If there is a Protection Order or No Contact Order Against You – Read your order carefully. If you have access to a lawyer, ask questions if you don't understand what the order says. You can be criminally charged for violating the order even if the protected person gives you permission. If the protected person no longer wants the protection order, he or she must file in court to have the order dismissed or changed. Protective Orders usually say that you cannot have any contact with the petitioner – even by phone or mail, even through other people, and even contact that is not threatening or that is with good intentions. Violations of protection orders can result in a misdemeanor or felony conviction with incarceration. So, be careful not to violate the order. Remember that all of your communication is read or recorded while you are in, so it will be easy for a prosecutor to prove a violation. Violating the protection order may also be a violation of a condition of release. As long as the order is in place, you can be prosecuted for violating any part of the order. If you are unclear if there is still a Protection Order against you, or no contact orders as a condition in your case, ask your Parole Officer.

If you are thinking of filing when you get out, there is extremely helpful and detailed information about how to file for a protection order in the companion manual, available at: www.odvn.org.

Types of Protection Orders

Type of Order	Who Can File for One:	Court*	Based on:
Domestic Violence Civil Protection Order – up to 5 years, can be renewed**	Family or household members including : <ul style="list-style-type: none"> • Spouses, former spouses • Parent, child, foster parent • People who have kids together • People who lived together in the last 5 years • Same sex couples are eligible 	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)

Type of Order	Who Can File for One:	Court*	Based on:
Stalking Protection Order - 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 file as DV Protection Order, above)	Pattern of conduct (2 or more events), closely related in time, that cause distress or make you believe the stalker will cause harm
Sexually Oriented Offense Protection Order - 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)
Juvenile Protection Order – 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** courts assign all protection orders to their Domestic Relations Judges. Ask your Clerk of Courts where to file.

** **Renewing a Protection Order:** Some courts require that new violence or threats occur to extend a protection order; others may renew based on continued fear of the abuser. *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:
Stalking Protection Orders *and* Sexually Oriented Offense Protection Order	<ul style="list-style-type: none"> To not harm or try to harm, follow, threaten, stalk, harass, or force sexual relations To turn over keys and garage door openers to the victim 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 To not enter the victim’s residence, school, business or workplace or parking lots of these locations To not interfere with the utilities, insurance, telephone, or mail at the victim’s residence To not hide, remove, damage property or pets of the victim To complete counseling or substance abuse treatment To turn over weapons to police, and prohibit future gun access To wear an electronic monitoring device Any other relief the court considers “equitable and fair”
Domestic Violence Civil Protection Order	<ul style="list-style-type: none"> To not harm or try to harm, follow, threaten, stalk, harass, or force sexual relations To move out of the household (even if the home is leased only in the abuser’s name, the court may evict him/her if he/she has any duty to support the victim or the victim’s children) To follow temporary child custody and visitation orders and pay temporary child/financial support To comply with police officers who can also be ordered to help victim get his/her children back or to transfer personal belongings To abide by orders setting up temporary use of assets such as a car To turn over keys and garage door openers to the victim 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 To not enter the victim’s residence, school, business or workplace or parking lots of these locations To not interfere with utilities, insurance, telephone, or mail at the victim’s home To not hide, remove, damage property or pets of the victim To complete counseling or substance abuse treatment To turn over weapons to police, and prohibit future gun access Can protect companion animals (pets) that are owned or possessed by the Petitioner.

	<ul style="list-style-type: none"> Any other relief the court considers “equitable and fair” (for example, if the court awards use of the vehicle, you can ask the court for power of attorney to get the tags changed into your name)
Juvenile Protection Order	<ul style="list-style-type: none"> To not harm or try to harm, follow, threaten, stalk, harass, or force sexual relations To not enter the victim’s residence, school, business or workplace or parking lots of these locations To not hide, remove, damage property or pets of the victim To stay away; to have no contact with the victim by phone, fax, email, voice mail, etc. To turn over weapons to police, and prohibit future gun access To submit to electronic monitoring (under very specific conditions)

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 th 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	By a motion for contempt (up to 30 days in jail for first finding of contempt, then increases) and/or by arrest, prosecution and possible jail time. See penalties above for prosecution. You can pursue either or both options.

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. ALWAYS consult with an advocate at a domestic violence or rape crisis center for help with your protection order petition. Victim advocates from local domestic violence programs, rape crisis programs, or prosecutor’s offices, may be able to help prepare your 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. See the companion manual for more information about filing for a protection order.

Writing Your Petition for a Protection Order

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

For forms you fill out yourself, go to:

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



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.

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 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: Use caution. 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; 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 issued by the Supreme Court, at: 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.



Confidentiality, Privacy and Technology



In this section

- Confidentiality & Privilege
- Privacy of and Access to Records and Files
- Exceptions to Confidentiality & Privilege
- Miscellaneous Privacy Issues
- Technology and Evidence

Confidentiality and Privilege

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

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, 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.

“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.

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

Contact with Attorneys – None of your mail is private and may be read by prison staff, except legal communication from your attorney must be stamped “legal mail” for your privilege to be protected.

Phone calls – It is important to know that all of your calls at the institution are monitored and recorded. This may provide evidence later, if you are threatened during a call with your abuser.

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

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>

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>

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 her 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 party 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 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
- order you to sign a release for the records.

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 - Ohio law requires certain professionals to report any suspected child abuse or neglect to the local Children Services agency (also called Child Protection 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 or 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 - 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 from providing for his or her own care or protection and who resides in an independent living arrangement.

Miscellaneous Privacy Issues

There are several other privacy-related issues that may arise in litigation.

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—even without knowing it—admit to criminal behavior. For example, in explaining that you fought back against your abuser by threatening him with a gun, 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 and Evidence

Phone records, 911 tapes, and social media postings may, in some circumstances, be used as evidence in court cases, including divorce and custody cases.

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. Records of phone calls made by an abuser or stalker may also be helpful evidence, but you will probably need to subpoena the phone company records in order to produce them at a court hearing or trial. If threats are made while you or the perpetrator are on the phone at prison, those calls are generally recorded and you may be able to subpoena them.

Social Media – Information posted about 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. Social media can offer evidence of a party's extramarital affairs, parental unfitness, or activities that are harmful to the best interests of the children. Although such evidence is hearsay, it can be admissible in some cases. If someone on the outside can check social media on the opposing party in your case, this may uncover useful information.

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 (or legal side effects) of your conviction at: <http://civiccoho.org/>

Sealing Criminal Records or Expungement - 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 and 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. See the Employment section of this manual for more detailed information about removing barriers to employment.

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.

Early Release and Transfers

In This Section

- **Judicial Release**
- **Intensive Program Prison Boot Camp**
- **Transitional Control**
- **Earned Credit**
- **80% Release Mechanism**
- **Risk Reduction Sentence**
- **Clemency, Commutation and Pardons**
- **Preparing for Parole Hearings**
- **Transfers**

Judicial Release (ORC 2929.20)

Judicial Release is a form of early release granted by your judge. You are not eligible if your entire sentence is a mandatory sentence. At least part of your sentence must be non-mandatory. You are not eligible during any period you are serving a mandatory sentence. Once granted, any time you have remaining on your sentence becomes suspended time and you will be given 1 to 5 years of community control (local supervision). If you complete the entire 1 to 5 years successfully, then your suspended time disappears and you will not have any further post-release control (state supervision). If you violate the terms of your community control, the court could re-impose the remaining portion of your sentence. If so, you will be facing further post-release control (state supervision) once you complete your prison sentence.

When Can I file? – When you can file depends on your sentence and how much time you have served.

If your sentence:	You can file:
Is non-mandatory, less than 2 years	After serving 30 days in prison
Includes mandatory time	30 days after you have served the mandatory portion of the sentence
Is 2 years or more, but less than 5 years	After serving 180 days in prison
Is 5 years	After serving 4 years
Is 5 years with mandatory time	After serving 4 years plus the mandatory portion of the sentence
Is more than 5 years non-mandatory but 10 years or less	After serving 5 years
Is more than 5 years, but 10 years or less including some mandatory time	After serving 5 years plus the mandatory portion of the sentence
Is more than 10 years non-mandatory	The date on which you have served one-half of your “stated prison term” * or five years after you have served any mandatory portion of your sentence, whichever is later.

* “Stated prison term” means the combination of all mandatory and non-mandatory prison terms imposed by the sentencing court. See ORC 2929.01(FF).

How do I file? - File the motion in the court that tried your case. The court does not have to appoint an attorney to file your judicial release motion. Find out if your original attorney is willing to file your motion by writing to him or her. If you don’t have an attorney to file your judicial release motion, kite the Public Defender and/or case manager to request a judicial release packet. The packet contains instructions and forms you can use to prepare your own motion.

If you need assistance in filling out the forms, you can kite the law library to receive assistance from an inmate clerk. While in the library, review the local rules for your county to find out how many copies you will need and where they should be sent. Mail the original to the clerk and a copy to the prosecutor.



Note: If your request for judicial release is denied after a hearing, you cannot file again. If your motion is denied without a hearing, the law allows you to file another motion for judicial release, unless the court denies the motion “with prejudice.” The law does not specify a time frame for filing a second judicial release motion. If a court denies a motion “with prejudice,” you cannot file again but the court may later consider judicial release on its own motion.

If your judicial release is granted, you will meet with the probation department from your county to determine the details of your supervision, such as where you will live, and if you will be required to participate in programs as a condition of probation. You will be required to serve up to 5 years on a community control sanction. If you do not want time on community control, do not file for judicial release.

Intensive Program Prison Boot Camp (IPP)

Intensive Program Prison (IPP) is an alternative form of correctional life stressing a highly structured and regimented daily routine which includes programming and counseling. Successful completion of the program may result in early release. Every individual admitted to the prison system is automatically screened to determine if they qualify for IPP. You will have an orientation with the people who administer this program, and they will tell you whether you qualify for this type of early release. Even if you qualify, your judge can refuse to allow you to participate in the program. You are required to spend 90 days in the boot camp program. After graduating from the program, you will be released on post-release control under the supervision of the Adult Parole Authority.

Transitional Control (ORC 2967.26)

This is another type of early release for which you will automatically be screened by the Parole Board. If you are serving at least six months when you are admitted to the prison system, the Parole Board will review your file to determine if you qualify for transitional control. There are several eligibility requirements. However, even if you qualify, the judge can refuse to allow you to be released on transitional control.

Transitional control involves serving the last three to six months of your sentence in a halfway house. An offender placed into the transitional control program remains in the status of “inmate.” While in the halfway house, you can work and earn privileges such as home visits. If you fail to follow the halfway house rules, you may be returned to prison to serve the remainder of your sentence. *WARNING: If you leave the halfway house without permission, or fail to return, there is a strong possibility you will face felony escape charges which carry additional prison time.*

Earned Credit (ORC 2967.193)

An incarcerated person can be credited between one and five days toward a prison term for each completed month during which he or she productively participates in an eligible program. The increased earned credit applies only to sentences for offenses committed on or after September 30, 2011. For crimes committed before that day, the law allows eligible offenders to earn one day credit.

The law prohibits persons convicted of certain offenses from obtaining earned credit. The list is lengthy. You are not eligible for earned credit if you are serving:

- A prison term for an offense specified under ORC 2929.13(F) and ORC 2929.14;
- A mandatory prison term (ORC 2967.193(C)(1));
- A life or death sentence for Aggravated Murder, Murder, or related conspiracy, attempt, or complicity (ORC 2967.193(C)(2));
- A term of life without parole (ORC 2967.193 (C)(3));
- A sentence for a sexually oriented offense committed on or after September 30, 2011 (ORC 2967.193(C)(3));
- A “Risk Reduction Sentence” under ORC 2929.143(B).

The total number of days earned may not exceed 8% of the total number of days in your sentence. The credit is “provisionally earned,” meaning it can be taken away for rules violations.

80% Release Mechanism (ORC 2967.19)

To be eligible, you must be serving a “stated prison term” of one year or more. The law applies to any incarcerated person, regardless of the date of offense, if otherwise eligible. Unlike judicial release, the Department of Rehabilitation and Corrections (DRC) starts the process by petitioning the trial court. It is DRC’s decision whether to do so. You cannot petition the court on your own for this type of release. The petition is a recommendation by DRC that the court “strongly consider” release. See ORC 2967.19(B). If you have any mandatory portion of your sentence, you are not eligible for this release mechanism until your mandatory time is served. The court may deny release without a hearing and cannot grant release without a hearing. If the court denies release without a hearing, the court may later consider release of the offender on a subsequent petition filed by DRC. If the court grants release, the offender is placed on community control for a period up to five years. You will meet with the probation department from your county to determine the details of your supervision, such as where you will live, and if you will be

required to participate in programs as a condition of probation. The court may re-impose the sentence it reduced, if you violate the terms of his community control supervision.

Risk Reduction Sentence (ORC 2929.143 and ORC 5120.036)

Under Ohio law, the court may recommend that an offender serve a risk reduction sentence. The court makes the recommendation at sentencing. If the court did not make the recommendation at your sentencing, it cannot do so now. If DRC determines you have successfully completed the required assessment and treatment or programming required, you can be granted supervised release after serving a minimum 80% of the non-mandatory prison term. ORC 5120.036(C). All of the following must apply:

- The offense in question is not aggravated murder, murder, or complicity in committing aggravated murder or murder; a first or second degree violent felony; a sexually oriented offense; or any attempt, conspiracy, or complicity that is a first or second degree felony;
- The sentence must consist solely of one or more non-mandatory terms;
- The offender agrees to an assessment of his or her needs and risk of reoffending; and
- The offender agrees to any programming or treatment that the DRC orders to address issues raised in the assessment. ORC 2929.143(A)(1)-(4).

An offender who is serving a risk reduction sentence is not entitled to any earned credit under ORC 2967.193.

Clemency, Commutation and Pardons

Clemency is the power a Governor has to do pardons, to provide absolute forgiveness for an offense, as if it never happened. Executive clemency may be an option if you are not eligible to have your criminal justice record sealed. Executive clemency is an act of leniency from certain consequences of a criminal conviction, and is exercised by the Governor after receipt of a recommendation from the Parole Board. Only the person seeking clemency or their legal representative can apply for clemency.

Pardons - Clemency can be in the form of a pardon. A pardon is an act of forgiveness that relieves the person pardoned from any remaining punishment and puts the person pardoned in the same position as if the crime never happened. A pardon does not automatically clear a person's criminal record or seal a conviction, but persons receiving a pardon can take their "warrant of pardon" to the clerk's office of the court in which they were convicted and ask for their criminal record to be sealed. This means that you may answer "no" when asked if you have been convicted of a crime. Pardons are usually done once you are released. A commutation, by contrast, is an act of leniency that reduces a person's punishment – e.g., by shortening the person's period of incarceration – but does not constitute absolute forgiveness of the person's crime.

Clemency and Commutations – Clemency can be done while you are still in to reduce your sentence. There are three types of relief under clemency: to ask to be eligible for parole early, to ask for flat time (if you have a "life tail" on your sentence), or to ask for immediate release. Clemency in the form of flat time or immediate release is rarely ever granted.

Application Process – The process is the same for pardons and clemency. ORC 2967.07 requires that all clemency applications be made in writing to the Adult Parole Authority. An application and instructions are available at: <http://www.drc.state.oh.us/web/ExecClemency.htm>. When completing your application, pay especially close attention to questions twelve and thirteen. To answer question twelve, you should attach a separate letter to your application. The letter should explain the circumstances of

your convictions and what you have done since your convictions to change your life. For question thirteen, you should send as many letters of support as you can collect.

The process takes 6-8 months or longer and usually follows these steps:

- The Parole Board reviews all written applications and decides whether to further consider the merits of an application at a hearing, or submit an unfavorable recommendation to the Governor without further consideration. The Parole Board makes its decision based upon your submitted application and an investigation conducted by a parole officer. You may be contacted by someone who is investigating your application.
- The Parole Board will contact the prosecuting attorney and judge who were involved in your case. The prosecuting attorney and judge will be asked if they believe you should be given a pardon. In addition, the victim of your crime will be contacted.
- You also may be scheduled for a hearing before the Parole Board. You should attend this hearing. Hearings are generally conducted when the application is considered to potentially have merit. The hearing allows for the opportunity for the Parole Board to meet with the applicant and to provide statutory notice to interested parties, who may also choose to attend the hearing.
- Upon completion of its examination, the Parole Board provides a report to the Governor which includes a summary of the facts in the case, a recommendation for or against the granting of clemency, and the reasoning behind the recommendation. The Governor's office notifies you if your pardon has been granted or denied.

If the Governor grants you a full pardon, you will be sent a copy of the "warrant of pardon." A copy will also be filed with the court where you were convicted. The Governor also may grant you a conditional pardon requiring you to do certain things before the pardon is granted. For example, you may be asked to pay any fines or costs that you still owe on the case. This action does not automatically seal your convictions. To pursue that, you should take your "warrant of pardon" to the clerk's office of the court in which you were convicted and ask for your criminal record to be sealed.

Preparing for Parole Hearings

Depending on the terms of your sentence, you may be eligible for parole and have an opportunity to go before the Parole Board. When doing so, it may be helpful to:

- Know that your family or supporters have the opportunity to meet with a member of the Parole Board one month prior to your hearing with the Board. It is ideal to have an attorney be there if your family/supporters can bring one, or at least advise them in advance. They can speak on your behalf and talk about what plans there are if you are released.
- Remember that the Parole Board will be in control of the hearing, not you
- Know that the hearing can be difficult and discouraging
- Try not to be defensive
- Be honest
- Express genuine remorse for your crime and take appropriate responsibility for your crime
- If a life was lost or someone was injured as a result of your crime, genuinely acknowledge that
- Highlight all the programming you have participated in during incarceration and provide copies of all certificates. Use caution to not appear to be saying that by taking a class, the past is erased.
- If your crime was committed directly in the context of being a victim of a crime, such as being battered on an on-going basis by your spouse or partner, you may want to share that information. You may also want to share the steps you took to try to escape from that person (like calling the police, leaving, going to a shelter, asking family or friends to try to intervene, going to your own

friends, family or faith leader for help and advice, calling a hotline, etc.) Use caution so that you do not appear to be saying that you have no responsibility for your actions.

- Highlight what support (if any) you would have on the outside that would help you succeed in your transition back into your community

Transfers

You may be transferred to another prison for several reasons including the availability of needed programming, security, or to facilitate visitation. A transfer may be initiated by you or DRC. To seek a transfer you must first file a formal, written request (called a “hardship”) to transfer through the case manager. The case manager sends your request to the institutional unit classification committee which interviews you to determine eligibility. The request is forwarded to the institution warden or warden designee for approval. The request is then forwarded to the Bureau of Classification and Reception. The Bureau investigates the request to determine final approval and transfer if applicable. If the warden denies your request, you may appeal in writing to the Bureau of Classification and Reception.

Employment and Workplace Harassment

In this Section

- Removing Barriers to Employment
- Privacy Rights in Job Interviews

Removing Barriers to Employment

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 –

Certification of Achievement and Employability (CAE)	Certificate of Qualification for Employment (CQE)
<ul style="list-style-type: none">• To apply for a CAE, you must be incarcerated and within 1 year of your release date, or currently on post-release control or parole• Application is at: http://www.drc.ohio.gov/OCSS/aandebrochure.pdf• Application must name the civil impact of conviction you are trying to get lifted – and – it must be related to a vocational program completed• You must have completed a DRC-approved vocational program, a DRC-approved behavioral program, -and- 120 hours of community service	<ul style="list-style-type: none">• You can apply after it has been at least one year since you were released from all sanctions including incarceration and supervision (for felonies) or 6 months (for misdemeanors).• If you were ever incarcerated in a DRC-funded institution, your application must first go through DRC at https://www.drccqe.com/Login2.aspx?APPTHEME=OHCQE• Application must name the civil impact of the conviction you are trying to get lifted.• Application must include evidence that the CQE will help you get a job or license, you have a substantial need for the CQE to live a law-abiding life, and getting the CQE will not create an unreasonable risk to public safety.

Privacy Rights in Job Interviews

Employers are also prohibited from asking certain questions of you during interviews and generally cannot ask about *arrest* records if they 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 on this, and keeps a list of communities where fair hiring practices are being implemented, which is at:

http://www.nelp.org/index.php/content/content_issues/category/criminal_records_and_employment/

Family Law

In this section

- Dissolution, Divorce and Legal Separation
- Child Custody and Parenting Time
- Informal Custody Arrangements
- Private Custody Cases
- Guardianships
- Agency Custody and Termination of Parental Rights
- Adoption
- Exercising Parental Rights While You are In
- Reunification with Your Children
- Working with Guardians ad Litem
- Mediation and Working with Mediators
- Co-Custody Agreements and Same Sex Couples
- Same Sex Marriage in Ohio
- “Grandparent”/Relative Visitation
- Child Support and Paternity

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

You must submit a **Separation Agreement** 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
- It must also be signed and submitted by both spouses

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 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.



Note: There are several things to consider before filing a divorce while you are in:

- You do not have a right to be transported for divorce hearings. Consider this when deciding whether or not you want to file for divorce while you are in.
- Your spouse is required to serve you at the institution if they file for divorce and know you are there. If they do not know you are there, they can serve you by publication (through a newspaper). The only way to address a divorce that went forward without your knowledge – if you know your spouse knew you were incarcerated – is to prove to the Court your spouse knew where you were and did not have you properly served.
- If a divorce is filed by your spouse after you are in, do your best to get someone – a friend, family member, adult child or your Power of Attorney – to be at all hearings, to file your motions and affidavits and to dispute any untruths the other side states in their documents or in hearings.

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 (or your spouse) have been a resident of Ohio for at least 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, battering, sexual assault, 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), that 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.



Note: If you are awarded marital or separate property after you are incarcerated, it will be important for you to set up a specific Power of Attorney with someone for the purposes of securing that property. The Power of Attorney can also get locks changed, sub-lease your apartment, store your belongings, etc., depending on the powers you give them. See Power of Attorney under Legal Procedures in this manual.

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 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 always has 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) unless the decree specifically states the court will not have future jurisdiction to modify. The language in the actual decree dictates. Because the amount of spousal support is based on your living expenses, it would normally stop upon your incarceration. However, if the decree states that the court does not have jurisdiction to modify future amounts of spousal support, it is possible you would still receive spousal support while incarcerated.

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 a 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.

Forms - 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>

Child Custody and Parenting Time (Parental Rights and Responsibilities)

Words that you may hear or see in a child custody case:

- **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** – where 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.

There are many different arrangements incarcerated people may have for their children while they are in. Generally, they fall into these categories:

- **Informal custody arrangements** – You verbally agree that your child(ren) will be cared for by a specific person while you are in. Nothing legal is filed.
- **Private Custody Case** – The other parent or a third party files for custody in Domestic Relations or Juvenile Court.
- **Guardianship** – You formally agree that your child(ren) will be cared for by a specific person while you are in by appointing them the guardian through Probate Court.
- **Informal custody arrangements with Power of Attorney** – You agree that your children will be cared for by a specific person while you are in. No custody case is filed, but you file a Power of Attorney (see Legal Procedures).
- **Agency Custody** – Child Protective Services (CPS) files to get custody of your child(ren) in Juvenile Court. This may include CPS filing to permanently terminate your parental rights.
- **Adoption** – Someone files an action to permanently adopt your child(ren) with or without your agreement in Probate Court.

Informal Custody Arrangements (where a legal case was not filed)

The disadvantage to this kind of arrangement is that it does not protect your wishes. Someone can turn around and file for private custody or adoption, or, if Children's Services (CPS) does not feel the children are adequately cared for where they are, they may file for custody and possibly for termination of your parental rights. If you have an informal arrangement and then become concerned about the care of your children while you are in, use extreme caution when deciding to contact child protective services. You may be alerting them that you are not caring for your child(ren) and they may start a case to terminate your rights just because you are incarcerated. Consider having another relative or friend intervene if that can be done without involving authorities. If the situation is very dangerous, the safety of your child(ren) will probably outweigh the risk of potentially alerting CPS that you are incarcerated.

Changing Informal Custody Placements - If your children were placed by an agreement that was never filed with any court or by Children's services, legally, you can change the arrangement at any time. It is best to try to negotiate this transition with the person who has been caring for your children while you are in. Otherwise, they may retaliate by filing some kind of custody action, adoption, or report to Children's Services that you are incarcerated and unable to care for your child(ren). And, unfortunately, they may succeed in using the court's bias against incarcerated people to win a custody case.

Private Custody Cases (where a legal case was filed)

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 non-parent (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.

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. *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*, 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.

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.



Note: The court can only consider your release from prison as a change in circumstances if you have a Shared Parenting Order.

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.

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.

Enforcing Your Visitation Rights – If you have an order requiring the person who has your child(ren) to bring them to the prison for visitation, and they refuse, you can file a motion for contempt. (See this section under Legal Procedures in this manual.) With your motion, you must file an Affidavit. The problem is that your Affidavit cannot be cross examined. You need to establish the *fact* that the child(ren) are not visiting. Your Affidavit alone may not be enough. So, it will be important for you to try to get someone to attend the hearing who can testify that the visitation is not happening. For example, if the child was supposed to be dropped off at your mother's home for her to drive him to the prison, she could testify that they are not dropping the child off for her to bring him. If you have a Power of Attorney, that person can also speak for you in the court, and they could question the person

who is refusing to bring the child(ren) and ask them on the record if they are bringing the child(ren) for visits.

Judges and Magistrates have many different ideas about whether or not it is okay for children to visit an incarcerated parent. If your visitation order does not specify that the children were to be brought to the institution, you may find that the court is unwilling to require them to come there for visits.

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, and 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** which may 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, 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:

- **Certified copies of medical and dental 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 the 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, documentation from your therapist or counselor may be helpful to address these claims. If you have had a problem with drug or alcohol abuse, inform the court about the treatment you have received and how long you have been drug or alcohol-free.

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.

Guardianships

Before you went in, you may have signed off on having a person appointed as the guardian of your child(ren), who are called "wards" in this process. The guardianship process takes place in Probate Court. If you plan to appoint someone a guardian, you may consider making the person a limited guardian of the child (called a "guardian of the person") – limited for the amount of time and limited in

the types of decisions or situations in which he/she can make decisions for the child(ren). There are basically three ways you can let the Court know you agree to a Guardianship:

- You can appear at a hearing and give your consent
- You can send a notarized letter giving your consent
- Or, if you ignore notice and don't object to the guardianship, the court will assume you agree and consent to it.

Guardianships are only available if no other court has jurisdiction over your case (jurisdiction is created if any court has ever made orders related to the custody of your children). Once another court has motions before it related to custody, you have to go back to that court to make changes.

The guardian is appointed to protect the child(ren) and provide for their day-to-day well-being, such as food, shelter, clothing, health care and other necessities. This also includes the responsibility for the education of minor children as required by law, and making decisions about medical treatment and other professional services they may require.

Each probate court has its own forms to sign and file. Some jurisdictions require a background check of the Guardian, at his or her expense. Filing fees are not refundable.

When deciding about whether or not to seek a guardianship, you should consider:

- Guardianships can be revoked. You have more options to change this arrangement if it doesn't work than if you give someone custody through a case in Juvenile or Domestic Relations Court.
- Guardianships are done in Probate Courts which can be more familiar with the challenges incarcerated people face regarding their children.
- Guardianships are easier and cheaper to do than some custody cases.
- Guardianships spell out your wishes for who will care for your children while you are in.
- Guardianships can protect you from other parties, including Children's Services, who may otherwise try to step in to remove and place your children. By setting up a guardianship, you show that you planned for appropriate care for your children when you knew you were going to be unavailable to care for them during your incarceration.
- If you give guardianship to someone, they cannot use the guardianship as a basis to try to file to adopt your child(ren).
- Guardians have the right to determine all decisions regarding your children. It is up to them. Even if they agree that they will bring the children for visits, schedule phone calls, etc., they can go back on those promises. The only option you have then is to file with the court to change Guardians.

Terminating a Guardianship - To terminate a guardianship, you must inform the court that you are withdrawing your consent by filing a Motion or sending a notarized letter indicating you want to terminate the Guardianship. If you are still in and no longer want the Guardian you selected, you will have to arrange for someone else to step in to be the new Guardian. Your Motion or notarized letter to the Court will prompt them to schedule a termination hearing. The standard you have to meet to terminate a Guardianship is "good cause," meaning that you have a good reason to ask to terminate the Guardianship (this is a lower standard than in a private custody case, where the court must consider the best interest of child factors).

Agency Custody and Termination of Parental Rights

Juvenile Court Abuse, Neglect, and Dependency Cases: If Child Protective Services (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 required to do certain things in your case plan and you fail to do those things, 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 a free attorney appointed by the Court. *Be sure to ask for an attorney separate from the other parent of your children.* 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.

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.

Children's Services Actions to Terminate Parental Rights - Parental Rights are most commonly terminated through an action started by child protective services (CPS). If a child has been in the temporary custody of an agency for 12 of the last 24 months, and no family or friends have stepped forward to take care of your children, the agency is required to file a motion for permanent custody (although this timeframe varies from county to county). This is why it is so important for you to make plans (and back-up plans) for the care of your child(ren) before you are sentenced if you can, and to make sure that your children don't stay in state custody for any period of time close to 12 months. The agency may also file for permanent custody if the child was neglected, abused or dependent. Permanent custody (PC) is also called Permanent Court Commitment (PCC). The process is not likely to get this far if the agency was able to place your child(ren) with the other parent or a family member – so be sure to give as many possible placement options to CPS when they ask.

For CPS to get permanent custody of your child(ren), they must prove that it is in the child's best interest to grant permanent custody and that:

- the child cannot be placed with his or her parents in a reasonable time; or
- should not be placed with his or her parents; or
- the child is abandoned; or
- the child is orphaned and no relatives can take him or her; or
- the child has been in the temporary custody of an agency for 12 of 24 consecutive months.

Because you as the biological (birth) parent have a constitutionally protected right to raise your child(ren), you are entitled to a free, court appointed attorney. Some courts will allow for you to participate in or to be transported to your hearing(s). (See section on Getting Transported for Hearings, under the Legal Procedures section of this manual.) After speaking with your attorney, you may decide that it is best for you and your child(ren) for you to agree to end your parental rights. These conversations with your lawyer will likely be very emotional. Do your best to find support from friends, group members, counselors, and/or caseworkers to help you through this difficult time.



Note: CPS must file for permanent custody if you are incarcerated for more than 12 months. If CPS is successful and the court grants the Motion for permanent custody, your rights are permanently terminated. This means that you become a legal stranger and have absolutely no rights to your child(ren). Your child(ren) will be available for adoption and there is no guarantee that they will be kept together or that you or they will be able to communicate with each other or with you. Even if your children are still available for adoption when you are released from prison, you are not eligible to adopt them.

If Your Parental Rights are Terminated - Make sure that the caseworker has answered all of your questions before your case is closed. For example, you may want to ask if anyone has stepped forward to begin the adoption of one or all of your children and if that person or the foster parent will permit contact between you and the child(ren). Some foster and adoptive parents will permit some contact on birthdays, allow letters and cards to be sent and received, and/or will send an annual letter and picture to the biological parent about how the child is doing. Other foster and adoptive parents refuse all contact or even the release of any of their information to the biological parent. When your child(ren) reaches the age of 18 or is otherwise emancipated, you are free to try to contact the child(ren) to see if he or she wants to resume or begin a relationship with you.

You may be permitted to have a final farewell visit with your child(ren) or to write them a final letter that they can take with them. Think carefully about what you say or write to your child(ren). Consider sharing one or more of these messages with them: to be happy about their new home; that you will always love them; that you made a bad choice and that none of it is their fault. Do not promise anything that you cannot do.

Adoption

There is also a way for a private party – a relative, married couple or another adult – to file for adoption of your child(ren) in Probate Court. You, the biological parent, usually must agree to the adoption, but there are situations where your agreement is not required. Generally, an adoption can go forward without your agreement if it can be proven by “clear and convincing evidence” by the person who wants to adopt your child(ren) that you have:

- failed to have meaningful contact with the child for 12 months – or –
- failed to support the child (financially) for at least one year immediately before filing of the petition.

This is why sending letters, making phone calls and sending whatever money you can is *so important* to your children *and* to your parental rights. Someone trying to adopt your child(ren) against your wishes has the burden of proving you haven’t tried to have contact or send money.

Opposing an Adoption – The party seeking the adoption must give you notice. You have 14 days after getting notice to object to the adoption in writing. Even if you receive the notice after the 14 days has

expired, file your response anyway and explain when you received the notice through the institution's mail system. The Court may still consider the information you send. To oppose an attempt to adopt your child(ren), you must file a motion or send a notarized letter to the Court stating your opposition and providing details about your history of writing letters, making phone calls and sending money. If you believe your cards and letters were never delivered to the child, state how often you wrote, and that you should not be found to have failed to have meaningful contact if a third party interfered by not giving the child your letters. Attach to your motion or notarized letter any copies you have of letters/cards you sent and any receipts you have for money you sent. Finally, include a request that you be provided an opportunity for "meaningful participation" in any hearings on the adoption case by being transported or allowed to participate by phone (see more help on this topic under Legal Procedures section of this manual.)

If your child is over the age of 12, he or she must also agree to the adoption. When an adoption is completed, all of your parental rights are terminated – permanently. The adoptive parents are even issued a new birth certificate as if they were the birth parents.



Note: No agreement between the biological or birth parents and the adoptive parents for communication or contact after the adoption can be enforced in any court in Ohio.

Exercising Parental Rights While You Are In

Just because you are in prison, doesn't mean you stop being a parent. There are other ways to stay involved with your child(ren)'s lives when you can't be with them every day, unless you have a court order limiting your ability to contact your children.

In addition to the emotional benefits for you and your children, it is legally important for you to remain in contact with your children while you are in, if you want to protect your parental rights when you are released. If you have had no contact with your child(ren), provide no financial or emotional support to them for a year or longer, you may be considered by the Court to be giving up your parental rights. In other words, not staying in contact with your children makes it easier for people to get legal custody, to adopt, or to restrict your visitation/parenting time when you get out.

Here are some ways that parents maintain a relationship with their children while incarcerated:

- sending letters and drawn pictures
- calling them on the phone – consider setting up a regular time each week to conserve your phone time and keep consistency for you and the child(ren)
- arranging for family members to bring the child(ren) for visitation days
- participating in family or mother-child programs at your facility if they are offered and your family is close enough (such as scouting, etc.)
- asking for a transfer to a facility closer to your family, this is called "applying for a hardship"
- signing requests for school, medical, daycare, and activity records and reports every few months (if your parental rights have not been terminated, you should be able to do this by sending a letter to the school or provider asking for the document you want)
- sending money, even if it is a very small amount

When there are Problems with Your Children While You are In – You may learn of problems your children are experiencing while you are in. Your options to respond depend on your parental rights.

- **School Problems** - If your child is having difficulty at school, for example, being bullied by other children, you can advocate for your child with the principal by writing a letter and letting the school know what you want them to do about it (for example, alert teachers, address the other child and/or his or her family, discipline the other child, separate your child's schedule from the bullying child, connect your child with a school counselor, etc.).
- **Child Abuse or Neglect** - If you believe that your child is being abused or neglected while you are in, you have some limited options to try and protect your child. First, consider how your child(ren) came to be living with the person that they are living with. Did Child Protective Services/Children's Services (CPS) place the child? Was there a court order? Did you sign something? Was there a hearing? Or is it an informal arrangement?

If there is a private custody order, then you cannot change it without going back to court. You may have someone else who is willing to file in court to assume the responsibility of caring for your child(ren). Your wishes may be considered in that proceeding by filing an affidavit. See the earlier Family Law section on modification of custody and see the Legal Procedures section on filing motions and affidavits.

If Children's Services is already involved, you may be able to report your concerns directly to the caseworker or call in a new report. Beware that if your report shows that the person who is caring for your child is not a safe option and there is no one else that you can identify who can take custody of your child(ren), CPS may begin proceedings to terminate your rights and will likely have to put your child(ren) in foster care.

If you cannot call CPS, consider reporting to another mandatory reporter within your facility like a counselor. A lawyer or group leader may also make the call for you. The person reporting will need a lot of information, including: your child's name, date of birth, the address where he or she lives, the name(s) of the person/people that the child is living with, and the name and identifying information about the person that is harming or neglecting the child.

Depending on the strengths of your family and friends, you may or may not want to ask one or more of them to step in to report and/or help develop a safety plan with the child. Also think about who your source of information is about the abuse or neglect and if that person is accurately reporting to you about the danger to your child. Remember that taking action to protect your child could have serious consequences for your parental rights.

Reunification With Your Children (After Incarceration)

If you plan on reuniting with your children when you get out, it is important to start taking action before you get out. There are different options and possibilities for reunifying with your children, depending on who has them now and whether there was a legal case to place them there.

Child Protection Services Cases – If your children are involved with child protective services, you must follow the case plan ordered by the court and visit the child as often as possible. If the plan is for reunification, stay in contact with your caseworker, and participate in as many programs as you can, while in and out, to build your strengths as a parent.

Preparing to Ask for Custody or Visitation - Whether you are filing to get a change in your status with your children through Children's Services or in a private custody case, be prepared. Put yourself in the best position for successfully getting some or all of your parental rights back. Here are some areas the court may be looking at and some suggestions that may help:

- **Ongoing Relationship** – Show the court what kind of contact and relationship you had, or tried to have, with your children while you were in. See section above on Exercising Parental Rights.
- **Housing** – Have stable, appropriate housing with enough bedrooms for your children to live with you or have long visits with you.
- **Income** – Have a steady, legal source of income. Whether it is from employment or social security, you need to be able to prove that you can provide for your children and yourself.
- **Self-Growth** – Take as many classes and programs as you can while you are in and continue when you are released. Have copies of any certificates for any parenting, domestic violence, or other classes you participated while in (or while out) that helped you become an even better parent.
- **Sobriety** – If you have a substance abuse history, maintain sobriety and have a plan to support your future sobriety. Get active in NA/AA, and get a sponsor. Participate in any substance abuse treatment available while you are in, and keep your plan in place to maintain your sobriety. Get proof of your work to stay sober. For example, have a signed attendance sheet from your regular AA/NA meeting and a letter from your sponsor.
- **Support** – Have a support system in place - safe and healthy people who are close by, who can help with things like transportation or child care, checking in with you on your plans, etc. If you have issues with sobriety, these should be people who actively support you staying sober.
- **Child Care** – Have plans for child care for when you would not be able to be with your kids. If your child has any special needs, have a reasonable plan on how to provide for these needs.

Expect that the Court may have a bias against you as a formerly incarcerated person. You may have to work extremely hard to prove that you can be a responsible parent (even if the other parent or guardian has their own problems or limitations).

Reunifying - If the plan is for you to get your children back, understand that although you are thrilled to see your children and have expectations of a loving reunion, this often is not the case. Children often fear that you may leave them again and may shy away from you, which can cause pain and confusion. Be warm, loving and accepting of your child's reaction. Put yourself in his or her place and consider the age of your child(ren). Sometimes a gradual reunification process is best for everyone involved.

Working with Guardians ad Litem (GALs)

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.

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; 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:

<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**. 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 a GAL is not privileged. The other party can access everything that you give the GAL, even notes 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 are designed to measure personality, psychopathology, intelligence, or achievement (and may be biased in even measuring these things). But they do not address most issues relevant to 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. If you want an opportunity to work with a mediator on your case, see if you can participate in mediation by phone.

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 have to do it. If you have an attorney, you can wait to sign the agreement until your attorney looks over everything 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 by the court 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:

- You case may be resolved more quickly and is usually cheaper than litigation
- There may be 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)
- Children are kept out of the case

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.

ORW Program for Infants and Incarcerated Mothers

The Ohio Reformatory for Women in Marysville, Ohio operates the Achieving Baby Care Success (ABCS) program which allows incarcerated pregnant women to maintain custody of their infants after they are born. You may make a request for participation in the ABCS Program prior to or soon after birth.

As part of the eligibility requirements for the ABCS Program, you must have an “alleged perpetrator check” completed, and must also have an alternative plan for the child if the child and you are unable to complete the program or do not qualify for the program. An “alleged perpetrator check” requires a check of the Ohio Child Abuse and Neglect Registry to find out whether you have a history of “substantial” or “indicated” child abuse or neglect. An alternative plan includes the completion of an approved home assessment of a relative or non-relative caregiver, or an agreement by local Public Children Services Agency (PCSA) that the child will be taken into agency custody and placed into foster care. Also, PCSAs are required, upon the request of the Ohio Reformatory for Women to provide a statement to the prison that if there is no identified or approved relative or non-relative caregiver for the child, that the PCSA will at a later date take custody of the child and find a foster care placement for the child if needed.

To ensure completion of the necessary checks and documentation, you should apply for participation in the ABCS Program before the child’s birth, if possible. This program provides a unique opportunity for incarcerated women who give birth during their incarceration to establish and maintain a strong mother-child bond beginning at the time of the child’s birth. Eligible mothers for the program are screened and must be serving a short-term sentence for a non-violent crime. The criteria for the program is to ensure that mothers and infants leave the institution together.

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 court in cases involving custody/visitation with children 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.

Establishment of a Child Support Order - Both parents have a legal responsibility to support their children financially. Child support orders set 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 case. Juvenile courts may order child support in any child custody case or in an action brought by a parent seeking child support only. Otherwise, the local CSEA usually takes the lead to establish child support orders and can do so 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 “arrearage.” 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:

- the party is now fully employed and got a reduced amount before
- 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

Incarceration and Child Support – Since Ohio law changed in 2013, the law prohibits a court from ordering you to pay child support if you are incarcerated for 12 months or more, you have no other available assets and you have not been convicted of an offense that involves a child. Before the law changed, a court could calculate your child support obligation based on earnings of a least minimum wage as it considered incarcerated people as “voluntarily unemployed.”

If you are an obligor and you want to modify your child support obligation because of your incarceration, you should ask for a review of the child support order, even if the most recent support order is less than 36 months old. (You cannot apply for this modification if the obligee and/or child subject to the order are the victims of the offense for which you have been incarcerated.) Here is a link to the form you can complete to ask for your child support obligation to be reduced due to your incarceration: <http://www.odjfs.state.oh.us/forms/file.asp?id=651&type=application/pdf> You can fill out the application form and send the form to the Office of Child Support Services (child support office) in the county in which the order was issued. To see the revised Ohio law, see: <http://codes.ohio.gov/orc/3119.05>

You can access frequently asked questions and answers at: <http://jfs.ohio.gov/Ocs/OCSFAQs.stm>. The Ohio Administrative Code rules related to the administrative review and adjustment of a support order are at: <http://codes.ohio.gov/oac/5101%3A12-60-05>. To find the local child support office, call 1-800-686-1556 or see: http://jfs.ohio.gov/County/County_Directory.pdf.

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.

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 also information available at the CSEA office and on the Job and Family Services website at: <http://jfs.ohio.gov/ocs/index.stm>.

In this section

- **Bankruptcy**
- **Consumer Issues**
- **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.



Note: In order to file for bankruptcy, you have to be able to attend hearings and to participate in a class. If you decide to file a bankruptcy, you should file close to the time of your release, or your Power of Attorney may be able to file on your behalf.

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 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 beginning the first month after the petition is filed. 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

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 by the abuser.

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.

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 and at www.annualcreditreport.com.

If you have a bad credit history, whether or not it is as a result of the abuser, you can fix some of the damaging information. Consumers 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.

Here is current contact information (they sometimes change) on the three major credit bureaus:

- **Experian** - P. O. Box 9595, Allen, TX 75013-9595, 888-397-3742
www.experian.com/disputes/main.html
- **Equifax** - P. O. Box 740241, Atlanta, GA 30374-0241, 800-685-1111 or 888-766-0008,
<https://www.ai.equifax.com/CreditInvestigation>
- **Trans Union** - P. O. Box 2000, Chester, PA 19022 Tel: 800-916-8800,
<https://dispute.transunion.com>

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 report 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>

Property (Outside of Divorce)

If you were never married to someone who has property of yours that you want to get back, and if direct negotiations or requests through third parties don't work, you can seek your property or 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.

- 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>



Note: See the Power of Attorney section under the Legal Procedures section of this manual for guidance on how a Power of Attorney can help you take care of money issues.

Public Benefits

Social Security Benefits - The Social Security Administration (SSA) administers the Federal Old Age, Survivors and Disability Insurance benefits program (OASDI, commonly known as "Social Security"). Social Security benefits terminate when you are convicted and begin serving your sentence. If you are released, you will have to file to get these benefits reinstated, or, depending on how long you were in, you may have to do a new application for benefits. More information is available at: www.socialsecurity.gov/pubs/EN-05-10133.pdf and www.ssa.gov/OP_Home/ssact/title02/0202.htm

Taxes

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.

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.



Housing



In this Section

- **Evictions and Incarceration**
- **Housing Assistance and VAWA Protections for Tenants**
- **Fair Housing Laws and Domestic Violence**

Evictions and Incarceration

Your landlord may pursue an eviction against you if your lease continues while you are incarcerated. It is important to avoid having an eviction for two reasons: first, evictions stay on your credit record for a very long time and will affect your ability to secure future housing, employment, etc. Second, if you have a Section 8/Housing Choice voucher, an eviction will terminate your voucher. See the section on Power of Attorney under the Legal Procedures section of this manual. You should explore all the options below, depending on your situation. Here are some strategies that may help resolve the situation:

Negotiate with your landlord – The first step is to *carefully* read the terms of your lease. See if any of the options below are allowed within your lease. Then, based on what is allowable under your lease, ask your landlord to work with you to resolve the outstanding months on your lease, since you are

incarcerated. Even if none of these options are spelled out in your lease, you can still ask your landlord to consider them.

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 period of time you will not be in your home.

Continuing to pay rent – If your lease doesn't prohibit you from leaving your unit vacant, if you have the money, you can continue paying rent and have someone check on the property until your return.

Co-tenants – If you co-signed your lease with another person, see if you can keep the co-signer in the unit and avoid eviction because that person continues to fulfill the obligations of the lease.

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. If rents 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. 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.



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

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. *Some specific convictions (such as drug and violence-related offenses) may bar you from obtaining a Housing Choice voucher or other federally subsidized housing.* Housing authorities may consider any evidence you can provide of recovery from addiction or that you have not engaged in criminal activity for a reasonable period of time.

VAWA Protections - The federal Violence Against Women Act (VAWA) provides important protections for victims of domestic violence, sexual assault, dating violence, and stalking in all forms of *federally subsidized housing* including the Housing Choice Voucher Program, Project-Based Section 8 housing, Section 202 Housing for the Elderly, Section 811 Housing for the Disabled, Rural Housing, and any other federally subsidized housing program. 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 any federally subsidized housing program
- Terminate your participation in the housing program
- Evict you. An incident of domestic violence, 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.

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.

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 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.

Section 8 housing vouchers – You should read the rules pertaining to your voucher, however, most vouchers become invalid if they are not used in a specific period of time, such as 60 days. You can ask for an extension but they are usually only given for limited reasons and for limited periods (i.e. another 30 days). If you are incarcerated and have a Housing Choice voucher that lists other persons (for example, your children and your spouse) it may be possible to take your name off the voucher, and preserve it for your other family members.

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, non-federally subsidized, landlords 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/ftheo/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
- Immigration Relief and Criminal Convictions

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, foreigners 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 or her relationship with the LPR, and his or 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).

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, 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 the 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 forms, information and guidance, see:

http://www.womenslaw.org/laws_state_type.php?id=10268&state_code=US and https://egov.uscis.gov/crisgwi/go?action=offices.detail&office=VSC&OfficeLocator.office_type=SC&OfficeLocator.statecode=VT and <http://www.uscis.gov> or you can order them by phone at 1-800-870-3676. ***You do not ever need to pay someone for copies of these forms.***

Immigration Relief and Criminal Convictions

Even in the case of some aggravated felony convictions, you are not necessarily excluded from all of the provisions described here and elsewhere in immigration law. In some cases, there may be exemptions or waivers available to you. For example, persons convicted of an aggravated felony can apply for withholding of removal under 8 USC § 1231(b)(3) if they have the equivalent of a very strong asylum claim, or for relief under the Convention Against Torture if they fear torture. Persons who were not permanent residents at the time of conviction, and whose aggravated felony does not involve controlled substances, might be able to adjust status (become a permanent resident) through a close U.S. citizen or permanent resident family member with a waiver under 8 USC § 1182(h). And an aggravated felony conviction is not a bar to applying for the “T” or “U” visas for persons who are victims of alien smuggling or a serious crime and who cooperate with authorities in prosecuting the crime. See 8 USC § 1101(a)(15)(T) and (U). More detail is available at: <http://www.immigrantcrime.com/PDF/UT-Visas-reprint.pdf>. The law regarding waivers and exemptions for immigrants with criminal convictions is incredibly complex, and it is *crucial* that you get legal advice before attempting to pursue a waiver.

Language Interpreters

In this section

- Interpreters and Attorneys
- Interpreters and Courts
- Interpreters at the Institution

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, prosecutors and public defenders 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, prosecutors, public defenders, 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
- does 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/.

Interpreters at the Institution

Prisons also must follow the Americans with Disabilities Act, meaning that they are responsible to provide interpreters for deaf/hard of hearing incarcerated individuals for certain activities. More information is available at the National Association for the Deaf, at:

<http://www.nad.org/issues/justice/jails-and-prisons/rights-deaf-inmates>

Legal Procedures and Tips for Representing Yourself

In this Section

- Jurisdiction
- Local Court Rules
- Researching Your Case
- Filing for Contempt
- Continuances
- Discovery and Subpoenas
- Filing Legal Actions, Cases and Motions
- When a Hearing is Scheduled
- Evidence
- Testifying
- Objections and Appeals
- Power of Attorney
- Tort Actions – Suing the Perpetrator or Others
- General tips
- Special Warnings

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.



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 \$10,000 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.

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, prison 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/>
- If you are a victim of domestic violence, 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>.

Getting Public Information Without Internet Access - When you are incarcerated, the best source of public information related to a court case is the Clerk at the Court handling the case. To request information, send a letter with a title that says "Precipe" (which means a request for something). Include the case number and caption and explain what you need them to do, for example, "Please send me a copy of the final orders in this case," or "Please provide me with an Affidavit of Indigency" form. You may be responsible to pay fees for certain things you are requesting. If you cannot afford to, file the Affidavit of Indigency, using that Court's standard form. You can get this by either writing to the Clerk to ask for it, or asking if someone at the prison library or the notary can help you find the form for that Court. In the Affidavit of Indigency, you should state your income, your debts and why you cannot pay the costs of the action.



Note: If possible, when asking the Clerks of Courts to send you something back, include a self-addressed and stamped envelope.

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.



Note: The problem with filing for contempt (such as when a shared parenting or visitation order is not being honored) is that you must be present to put on testimony, which you cannot do while incarcerated. In some cases, your Power of Attorney or an attorney can be present for you at a contempt hearing.

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”).

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 (so you would need to find someone on the outside to email these to a party or ask that the court waive the requirement to serve them electronically.) 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.

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 to be enforceable. But, if you want to force someone to attend the deposition or hearing (or have them sanctioned for not attending), you must serve him or her by certified mail or sheriff/process server service.

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.



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.

Filing Legal 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.

When a Hearing is Scheduled

In criminal cases (when a jail/prison sentence may be ordered), the Court is required to transport you from the institution to the court proceedings.

You do not have an absolute right to be transported from the institution to court in other types of cases. Some Courts may agree that you have a right to attend hearings that may result in terminating your parental rights and will allow you to be present in person, by telephone, or by videoconference in (a) permanent custody hearings filed by Children's Services, (b) adoption hearings or (c) other hearings where your parental rights could be permanently terminated, or (d) other kinds of cases involving important individual rights.

Whether or not you have a legal right to be transported for a hearing, you should file a Motion to Transport asking the court to transport you so that you can participate (see below for more details about possible information to include in your motion.) If you can pay for the sheriff transport, tell the court that in your motion.

Motion to Transport or Appear by Telephone - It is a good idea to file a Motion to Transport or, in the alternative, to Appear by Telephone/Video, for any case that you are a party to that has hearings scheduled, as soon as you learn about the hearing. In the Motion you are asking to be transported and, if the answer is no, that the court consider allowing you to appear by phone/video from prison. More courts are permitting phone or video appearances for certain hearings to save money and time. Even if the court does not grant it, you will make a written record that you tried to participate to preserve your rights. Also, give a copy of the filed motion to your case manager to let him or her know that you have requested to be available by phone for a hearing. Work with the case manager on the logistics of the phone call to make sure you can access a phone if your request to participate by phone is approved by the Court.

Your Motion to Transport should include:

- The Court you need to go to and the Case #
- Where you are currently incarcerated

- The date that you need to be transported and from “(name of location)” to “(name of location)”
- A request that if the Court denies your request to be transported, that you be allowed to participate in the hearing by phone/video
- A request that if the Court denies your request to be transported or to participate by phone, that the Court consider your Affidavit (see below) as your testimony on the matters before the court
- A statement that a denial of your request to be transported for the hearing or to participate by phone may violate your rights, and would deprive the Court of information and your input which may be a factor in the Court’s decision
- A statement that if the Court proceeds without your participation in person or by phone, it may issue orders that negatively impact you, and for that reason, you have a right to be heard
- If the Court is considering termination of your parental rights, you can include that you have a Constitutional right to be heard
- If the Court is considering an eviction or other consumer issue, you can include that the Court’s decision could impact your credit history and credit score for years to come, which has an impact on your ability to rebuild your life upon release (if relevant).
- When asking the court to transport, it may be helpful to note in the motion the name of the contact person at your institution who would make these arrangements if your motion were granted.

Affidavit - In addition to the Motion, you should also file an Affidavit (a sworn, notarized statement) with the court and serving the other parties. In your affidavit, include what you believe is important (relevant) to the case, address anything that is untrue or inaccurate written by the other party in their complaint or motion, and your wishes in the case. Expect that you may encounter bias or suspicion, so be sure to include the good things you have done while in or out related to the issue at hand (for example, taking classes, getting treatment, paying what you can on a debt to a landlord, etc.) Your Affidavit should include a request that the Court consider your affidavit when considering the case in your absence.

Motion for Continuance - If you are getting out very soon after the hearing is scheduled, you may want to file a Motion for Continuance to ask the court to move the hearing to a later date. Tell the court how important it is for you to participate and that you will be able to be present if they can give you a brief continuance. It depends on the type of case and the court calendar how soon you would need to be getting out for a continuance to be realistic – less than 4 weeks for most cases. Do not ever count on getting an early release when negotiating for a continuance. You can mention that you have filed for early release in your affidavit, but you will lose credibility if you ask for a continuance based on that and then do not get your judicial release.

The court will not consider what you have to say if you do not show up for court or file something properly. Filing any or all of the motions/affidavits above may be considered and get you a more fair outcome whether or not you can be present in court for the hearing.



Note: Don’t worry about using legal language when writing Motions. Call the Motion what it is – Motion to Transport, Motion to Consider Statement, or Motion to Appear by Phone. In the Motion, be sure to clearly state what you are asking for and why the court should order that for you. Don’t forget to make several copies, get them notarized if you can (not required), and to send to all parties and certify on each copy (swear in writing) that you sent those copies to the other parties.

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.
- 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 are made to magistrate decisions; appeals are made on judges decisions. Some common reasons people file objections and appeals are that they believe the Court misapplied the law or there was a gross difference between the facts that were presented and the decision. Appeals are generally very complex and should be argued by an attorney. Some things to know about objecting and appealing:

- You must first file a motion for a “finding of fact and conclusion of law.” Without this, usually nothing else can happen.
- 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 Court of Appeals may require you to argue your case. This is rare.
- 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.

Power of Attorney (POA)

A Power of Attorney is a legal document in which a person authorizes another adult to act in that person’s place.

POA and Care of Children - For many incarcerated people, a Power of Attorney is given to someone so that you as a parent can authorize another adult to act in your place on behalf of your child(ren). A Power of Attorney regarding your children is a “permission slip” which tells others, such as doctors or teachers, that when a parent’s signature is needed, the other adult has authority to sign in place of a parent. By signing a Power of Attorney, you do not give up any parental rights. The parent retains all legal rights.

A Power of Attorney can be used for a limited purpose such as taking a child to a specific doctor’s appointment or registering a child for school. However, while incarcerated, you would want to provide a Power of Attorney that can be used for all decisions affecting the child in regards to housing, education, and medical needs, while also giving the ability to do things to provide for your child’s needs as you would do. A Power of Attorney can be revoked by you at any time. (See the end of this section for more information.) Remember a Power of Attorney must be signed by in the presence of a Notary Public. Ask your case manager who can provide this service to you.



Note: Ohio law only specifies how Power of Attorney (POA) for children can be given to grandparents. This is the only POA that is enforceable. However, many people arrange POA for the care of their children with other adults, and these agreements are sometimes honored.

POA and Property Issues - A Power of Attorney can also be used for purposes other than the care of your children. By giving someone a Power of Attorney you can authorize them to handle banking issues, property issues, represent your interests in litigation, insurance matters, sub-leasing your housing, etc.

Signing and Recording the Power of Attorney Form - In order for this form to be used in connection with real property transactions, you must sign and acknowledge the form before a notary public and the form must also be recorded in the office of the county recorder of the county in which the real property is located prior to using the form in connection with a real property transaction. (ORC 1337.04). Another benefit to signing and acknowledging the form before a notary public is that this will facilitate the form's acceptance by businesses, banks and other financial institutions. (ORC 1337.25). Note that recording the completed statutory form power of attorney in the office of the county recorder is permitted but not required unless the form will be used in connection with a real estate transaction. The recording and indexing fees set by the Ohio Revised Code (R.C. 317.32) are twenty-eight dollars for the first two pages and eight dollars for each additional page.

Revoking/Cancelling Power of Attorney – If you decide for any reason that you want to revoke or cancel the power of attorney you have given to someone, you need to do this in writing. Write a letter that states that you revoke any power of attorney given to “(person’s name)” prior to today, that the Power of Attorney is no longer in effect and cannot be used. Get the letter notarized if possible. Provide copies of the letter revoking the Power of Attorney to a) the person you gave power of attorney to; b) any parties who may need to know, such as doctors, schools, child care providers, etc. Anyone who knows you gave power of attorney to this person should be notified that you have revoked it.

Forms: You can download a POA form for financial issues with instructions at:
https://www.lawhelpinteractive.org/login_form?template_id=template.2012-04-12.1905381234&set_language=en.

Tort Actions – 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.

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.

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.

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.

What to Expect When Your Case is Called - When your case is called, walk 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 state what you are requesting and why you are requesting it. You present your evidence, including having any witnesses testify.
- **Cross Examination** - After you are finished, the other side will have a chance to ask questions of you and any witnesses. After they finish, you are allowed to ask your witnesses 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 the other side questions when he or she is finished talking. Once they are done putting on their evidence, and 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 - 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 case 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) or the Ohio State Bar Association (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 and can be found at: 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:

- *(If your attorney is court appointed)* - file a motion for change of counsel 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
- *(If your attorney is court appointed)* - file a motion on 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 (f your attorney is court-appointed) and be sure to serve a copy to your attorney and the other parties in the case
- *(If your attorney is privately paid)* - terminate your attorney agreement and secure other counsel 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 which can be found at: www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf 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 or her 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:

An approved local bar association For information on an approved local bar association near you, call the Board on Grievances and Discipline: 614.387.9370	Office of Disciplinary Counsel 250 Civic Center Drive, Ste. 325 Columbus, OH 43215-7411 Tel. 614.461.0256, 800.589.5256 Fax: 614.461.7205	Ohio State Bar Association (judges) 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, 5th 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, 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), your or your attorney'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.

Sexual Assault

In this Section

- Sexual Assault Forensic Exams
- Polygraphs
- HIV and STI Testing
- Reporting a Prior Sexual Assault
- 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 Sexually Transmitted Infections (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.
- 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 in-patient 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

Note that while all of these costs will be billed to you (either directly or through insurance), you can apply for reimbursement through the Crime Victims Compensation Program. Many felony convictions disqualify crime victims from accessing this program and there are other eligibility rules. To check the rules, see: www.ohioattorneygeneral.gov/VictimsCompensation.aspx/?from=nav

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, 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.odh.ohio.gov/sitecore/content/HealthyOhio/default/sadv/sassault/sadvprot.aspx>



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 and <http://codes.ohio.gov/orc/2907.10>.

HIV and 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>.

Reporting a Prior Sexual Assault

While incarcerated, you may decide that you want to report a sexual assault that occurred prior to your incarceration. You may not have reported it before for many reasons, because of trauma, because of your own drug use, a warrant hanging over your head, not being able to identify the perpetrator, or other reasons. Whatever the reason, it is ok, and you should be supported in reporting it when you decide you are ready and able.

If you decide you want to report the assault while you are still in, you have two options. You can ask a friend/ family member to contact law enforcement in the jurisdiction that the assault occurred and see if they would be willing to come to the prison to take your statement. The other option, and probably the way to be most successful, is to contact the prison investigator. Tell the investigator what happened the best you can. You may want to practice what you will say or write it down before your meeting. You do not need to give the prison investigator details of the assault that may be painful for you to say, but you do need to give them enough information that they will want to help you pursue filing a report. Ask the investigator to contact law enforcement in the jurisdiction that the assault occurred. The prison investigator and the law enforcement agency will work with you to determine the next steps.

Consider getting support from a support group, a counselor, friend, mental health provider, or caseworker to help you through what may be a very difficult decision to tell about the assault and any emotions that might bring up. Even though it may have happened a long time ago, you may still have lots of difficult feelings when you go through the process of disclosing it and talking about it again.

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*.

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

Address Confidentiality in Ohio

If you are going to be released, 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
- Ohio Alliance to End Sexual Violence (888-886-8388) - www.oaesv.org
- Ohio State Legal Services Association, information on many legal topics - www.oslsa.org



- Battered Women’s Justice Project - 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
- Crime Victims Compensation - www.ohioattorneygeneral.gov/VictimsCompensation
- Custody website by and for survivors in custody cases - www.custodyprepformoms.org
- Deaf Phoenix - www.phoenixdiversity.org
- Disability Rights Ohio - www.disabilityrightsohio.org
- Forms , Protection orders - 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
- Ohio Bar Association, information on various legal issues - 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
- Ohio Statutes - <http://codes.ohio.gov/orc>
- Victim Rights Law Center (sexual assault information) - www.victimrights.org
- Women’s Law – domestic violence and sexual assault - www.womenslaw.org

Ohio Domestic Violence and Rape Crisis Programs

Counties Served	City	Organization	Program Type	Phone number
Adams	Batavia	YWCA House of Peace	DV	800-540-4764
	Manchester	Reach Out, Inc.	DV	937-217-5072
Allen	Lima	Crossroads Crisis Center	DV	877-228-4357
	Lima	Crime Victims Services	DV/RC	877-867-7273
Ashland	Ashland	Rape Crisis Domestic Violence Safe Haven	DV/RC	419-289-8085
Ashtabula	Ashtabula	HomeSafe	DV	800-952-2873
Athens	Athens	My Sister's Place	DV	800-443-3402
Auglaize	Wapakoneta	Auglaize County Crisis Center	DV	419-738-5511
Belmont	St. Clairsville	Tri-County Help Center	DV/RC	800-695-1639
Brown	Batavia	YWCA House of Peace	DV	800-540-4764
Butler	Hamilton	Dove House, YWCA	DV	800-618-6523
	Cincinnati	Women Helping Women	DV/RC	513-381-5610
Carroll	Carrollton	Carita's House	DV	330-627-5765
Carroll	New Philadelphia	Harbor House, Inc.	DV	330-364-1374
	New Philadelphia	Compass	RC	888-356-4644
Champaign	Springfield	Project Woman	DV	800-634-9893
	Bellefontaine	New Directions of CCI – Soteria House	DV	877-394-1046
Clark	Springfield	Project Woman	DV/RC	800-634-9893
Clermont	Batavia	YWCA House of Peace	DV	800-540-4764
Clinton	Wilmington	Alternatives to Violence Center	DV	888-816-1146
	Xenia	Family Violence Prevention Center of Greene County	DV	937-372-4552
Columbiana	Lisbon	Christina House	DV	330-420-0036
Coshocton	Coshocton	First Step Family Violence Intervention	DV	740-622-9533
Crawford	Marion	Turning Point	DV	800-232-6505
Cuyahoga	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
Darke	Greenville	Shelter from Violence, Inc.	DV	937-548-4679
Defiance	Defiance	House of Ruth	DV	800-782-8555
Delaware	Columbus	CHOICES	DV	614-224-4663
	Marion	Turning Point	DV	800-232-6505
	Delaware	Helpline of Delaware and Morrow Counties	RC	800-684-2324
Erie	Sandusky	Safe Harbour DV Shelter	DV	800-953-2207
Fairfield	Lancaster	The Lighthouse	DV	740-687-4423
Fayette	Washington Courthouse	My Sister's House	DV	740-572-2919
Franklin	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
Fulton	Defiance	House of Ruth	DV/RC	800-782-8555
Gallia	Gallipolis	Serenity House, Inc.	DV	800-942-9577
Geauga	Chardon	WomenSafe	DV	888-285-5665
Greene	Xenia	Family Violence Prevention Center of Greene County	DV	937-372-4552
Guernsey	Cambridge	Haven of Hope	DV/RC	800-304-4673
Hamilton	Cincinnati	Women Helping Women	DV/RC	513-381-5610
	Cincinnati	YWCA of Greater Cincinnati Battered Women's Shelter	DV	888-872-9259
Hancock	Findlay	Open Arms DV & Rape Crisis Services	DV/RC	419-422-4766
Hardin	Lima	Crossroads Crisis Center	DV	877-228-4357
Harrison	St. Clairsville	Tri-County Help Center	DV	800-695-1639
Henry	Defiance	House of Ruth	DV	800-782-8555
Highland	Hillsboro	Alternatives to Violence Center	DV	800-816-1146
Hocking	Athens	My Sister's Place	DV	800-443-3402
Holmes	Wooster	One Eighty (formerly Every Woman's House)	DV	800-686-1122
Huron	Sandusky	Safe Harbour DV Shelter	DV	419-626-2200
Jackson	Gallipolis	Serenity House, Inc.	DV	800-942-9577
Jefferson	Steubenville	A.L.I.V.E., Inc.	DV	888-611-7233
	Wheeling, WV	Upper Ohio Valley Sexual Assault Help Center	RC	800-884-7242
Knox	Mt. Vernon	New Directions	DV/RC	740-397-4357
Lake	Painesville	Forbes House	DV	440-357-1018
Lawrence	Ironton	Lawrence County DV Task Force	DV	888-372-7433
Licking	Newark	Center for New Beginnings	DV	800-686-2760
	Newark	Family Health Services of East Central Ohio	RC	800-688-3266
Logan	Springfield	Project Woman	DV	800-634-9893
	Bellefontaine	Soteria House	DV	877-394-1046
Lorain	Elyria	Genesis House	DV	866-213-1188
	Elyria	Lorain County Rape Crisis Center	RC	800-888-6161
Lucas	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
Madison	London	A Friend's House	DV	740-852-7761
Mahoning	Youngstown	Sojourner House	DV	330-747-4040
Marion	Marion	Turning Point	DV	800-232-6505
Medina	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
Meigs	Gallipolis	Serenity House, Inc.	DV	800-942-9577
Mercer	Celina	Family Crisis Network	DV	419-586-1133
Miami	Troy	Family Abuse Shelter of Miami County	DV	800-351-7347
Monroe	St. Clairsville	Tri-County Help Center	DV	800-695-1639
Montgomery	Dayton	Artemis Center	DV	937-222-7233
	Dayton	YWCA Dayton-Shelter & Housing Network	DV	937-222-7233
Morgan	Zanesville	Transitions	DV	740-454-3213
Morrow	Marion	Turning Point	DV	800-232-6505
	Delaware	Helpline of Delaware and Morrow Counties	RC	800-684-2324
Muskingum	Zanesville	Transitions	DV	740-454-3213
Noble	Cambridge	Haven of Hope	DV	800-304-4673
Ottawa	Sandusky	Safe Harbour DV Shelter	DV	419-626-2200
Paulding	Defiance	House of Ruth	DV	800-782-8555
		Rape Crisis of Crime Victims Services	DV/RC	877-867-7273
Perry	Zanesville	Transitions	DV	740-454-3213
Pickaway	Circleville	Haven House of Pickaway County	DV	740-477-9113
Pike	Waverly	Pike County Partnership Against DV	DV	740-947-1611
Portage	Kent	Safer Futures	DV	330-673-2500
	Kent	Townhall II	RC	866-449-8518
Preble	Eaton	YWCA Preble County DV Shelter Services	DV	937-456-6891
Putnam	Ottawa	Crime Victim Services	DV	877-274-7471
	Lima	Crime Victims Services	RC	877-867-7273
Richland	Mansfield	The Domestic Violence Shelter, Inc.	DV/RC	800-931-7233
Ross	Chillicothe	Ross County Coalition/Phoenix House	DV	866-828-2273
Scioto	Portsmouth	Southern Ohio Task Force on DV	DV	800-570-1819
Shelby	Sidney	New Choices	DV	937-498-7261
Stark	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
Summit	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
Trumbull	Warren	Someplace Safe	DV	330-393-3005
	Warren	Rape Crisis of Trumbull County	RC	330-394-4060
Tuscarawas	New Philadelphia	Harbor House, Inc.	DV	330-364-1374
	New Philadelphia	Compass	RC	888-356-4644
Union	Marion	Turning Point	DV	800-232-6505
Van Wert	Van Wert	Crisis Care Line	DV	419-238-4357
	Van Wert	YWCA of Van Wert County	DV	567-259-9501
Vinton	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

Appendix

Sample Structure of a Motion and Certificate of Service

IN THE COURT OF _____ XXX

_____ XXX COUNTY

Case Number XXX

Name XXX

Address XXX

Petitioner/Plaintiff

Judge XXX

Vs.

Magistrate XXX

Name XXX

Address XXX

Defendant/Respondent

MOTION/COMPLAINT/RESPONSE TITLE

Now comes, (your name), and does hereby respond/request/etc. (then list what you are asking for or responding to , your reasons for supporting or opposing the motion, and any other information you want the Court to consider).

Respectfully submitted,

Your name

Contact information XXX

CERTIFICATE OF SERVICE

I do hereby certify that the foregoing (put the title here) has been served upon (list all of the other parties, attorneys, agencies that you are serving and the addresses that you used for the mailing) by ordinary U.S. mail, postage pre-paid, on this XXX day of XXX of 20XX.

Your Name

