



# Women's Legal Rights Handbook

*2021 Edition*



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# **Women's Legal Rights Handbook**

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# Acknowledgements

The Women’s Legal Rights Handbook (handbook) was originally developed as a resource to empower women about the justice system and combat gender bias in the court system. The Alaska Network on Domestic Violence & Sexual Assault and the Alaska Joint State-Federal Courts Gender Equality Task Force first updated this handbook in 1998 and has updated it six times since then. Special thanks to former Governor Tony Knowles’ Office for transferring the copyright from the former Alaska Women’s Commission to ANDVSA.

This handbook is designed to inform individuals in Alaska about the law and how it applies to them, but it is not intended to serve as legal advice nor to replace the services of an attorney. This eighth edition has been revised to reflect changes in the law since the last printing in 2015.

The information in this handbook is based upon the law in effect in 2021. However, laws are subject to change by the courts and the legislature. For advice about a specific legal problem or for more in-depth information, you should contact an attorney.

Any corrections or suggestions to the handbook should be sent to ANDVSA Legal Program at 408 Oja Way, Suite A, Sitka, AK 99835, (907) 747-7545, or [cpate@andvsa.org](mailto:cpate@andvsa.org). This handbook can also be found online at [www.andvsa.org](http://www.andvsa.org).

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# INTRODUCTION

*Alaska law guarantees all Alaskans the legal right to be treated equally. However, women often face multiple forms of discrimination which affect their ability to exercise this right: they may have harm inflicted upon them; they may lack financial security because of traditional gender roles; they may have difficulty obtaining work because of their sex; they may be unable to collect child or spousal support from former partners; they may not obtain a fair property settlement when leaving a non-marital relationship; or they may face discrimination or harassment in their workplace.*

*The Women’s Legal Rights Handbook (handbook) outlines legal rights affecting women in various areas. The Alaska Network on Domestic Violence and Sexual Assault has been updating this handbook for the last 23 years. Over that time, we have realized that our language has become outdated and exclusionary. Many individuals in Alaska do not identify in the traditional gender identities of woman or man and are gender non-conforming. Gender non-conforming individuals often face discrimination that is equal to or worse than women, the target audience of the original handbook. To be inclusive of all Alaskans, we have attempted to make the language in this edition of the Women’s Legal Rights Handbook as gender neutral as possible. To be fully inclusive and ensure that we reach those who most need this handbook, in its next iteration we will be removing “Women” from the title and adding chapters to address the legal rights of people of all gender identities, including gender non-conforming and transgender people.*

*In the chapters that address intimate partner and non-intimate partner violence, we recognize that abuse occurs across a spectrum of relationships and affects people of all gender identities. Our use of gender neutral language in these chapters seeks to be inclusive of all experiences. However, statistics show that intimate partner and non-intimate partner violence predominantly impacts individuals who identify as women and gender non-conforming and it is these individuals who are our target audience. Regardless, we hope that all will positively benefit from the information.*

## Chapter One

# WHERE TO FIND THE LAW

*This handbook outlines legal information and rights in various areas of the law. In some sections, statutes, rules, cases, and constitutional sections are cited. This chapter addresses the source of various laws that affect you, defines abbreviations you might see, and provides some basic definitions to help you navigate the handbook. Note also that there is a Glossary at the end of this handbook that can be used to define legal terms. Be aware, however, that the law can change and is sometimes difficult to interpret. If you have a legal problem, try to consult an attorney or government agency.*

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## SOURCES OF YOUR RIGHTS

The law concerning your rights is a combination of:

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

Examples of the above include:

- Title VII of the Civil Rights Act of 1964, a federal law prohibiting discrimination in employment.
- The 1972 amendment to the Alaska Constitution that includes an equal rights provision that reads: “No person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin.”
- The federal Violence Against Women Act and the Alaska Domestic Violence Prevention and Victim Protection Act of 1996.
- Regulations passed by the Department of Health and Social Services regulating day care facilities.
- Alaska Civil Rule 90.3, which establishes standard rules and formulas for child support in divorce and child custody cases.

## CONSTITUTIONS, STATUTES, RULES, REGULATIONS, AND COURT DECISIONS

Courts interpret federal and state laws, regulations, and constitutions in individual cases. Much law is set by the written opinions of justices/judges at the Supreme Court and Court of

Appeals levels of the legal system. The decisions or cases are published in books called reporters. You can check state statutes, rules, regulations, constitutional provisions, and some cases online at the Alaska Court System website at <http://www.courts.alaska.gov/home.htm>. Most federal statutes, cases, regulations and constitutional provisions are also available online.

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

AS- Alaska Statutes  
AAC- Alaska Administrative Code  
USC- United States Code  
CFR- Code of Federal Regulations  
ARCP- Alaska Rules of Civil Procedure  
ARE- Alaska Rules of Evidence  
P.2d- Pacific Reporter (Second)  
P.3d- Pacific Reporter (Third)

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

### **CIVIL AND CRIMINAL LAW**

The law is divided into two broad areas:

- civil law, where persons or institutions sue each other (such as divorce/child custody actions, domestic violence protective orders, and personal injury cases); and
- criminal law, where the government prosecutes someone for committing a crime.

Civil cases result in damages and/or a determination of each party's rights. Criminal cases result in fines, probation, and/or jail sentences. Some actions are quasi civil and criminal such as child-in-need-of-aid proceedings, where the state files for custody of children against caregivers who are accused of abusing or neglecting the children.

### **FEDERAL AND STATE LAW**

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

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

## TRIBAL LAW AND COURTS

Alaska Native tribes have inherent legal rights and powers over their citizens. For example, the federal Indian Child Welfare Act [25 U.S.C. §1901 *et seq.*] limits the State's intervention and powers in cases involving the placement of Alaska Native children. Tribes have power to decide issues such as child custody, rules of inheritance for members, and determination of tribal status. *John v. Baker*, 982 P.3d 738 (Alaska 1999); *Matter of F.P.*, 843 P.2d 1214 (Alaska 1992). Tribal court processes for resolving disputes are generally less adversarial than those of the states and federal courts. Tribal courts and councils make decisions generally based on traditional law, tribal law, and federal law.

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

## GOING TO COURT

Where possible, it is advisable to have the assistance of an attorney if you are involved in a legal proceeding. *See Chapter Two for more information.*

The Alaska Court System has many handbooks on rights, remedies, and use of the court system that you might find helpful. The handbooks are free and available online and at any state court. Some of the handbooks that are available include:

- Information About Representing Yourself
- Information for Petitioners About Requesting a Domestic Violence Protective Order
- Understanding Alaska's Domestic Violence Protective Order Process
- What is a Guardian Ad Litem?
- Child in Need of Aid Proceedings
- Mental Health Commitments
- Misdemeanor Arraignments
- Depositing Your Will
- Court Administered Child Custody/Visitation Investigations
- Legal Resources Information Pamphlet

- Teaching Kids About Courts: Educational programs for students sponsored by the Alaska Court System

### **ALASKA COURT SYSTEM SELP-HELP CENTER**

The Alaska Court System Self-Help Center on the Alaska Court System website provides valuable information and assistance on how to navigate the legal system for the public on a variety of topics including adoption, housing, small claims, guardianship, divorce, dissolution, child custody, and child support. Sample forms, instructions on how to complete the forms and informative videos are all available on their website at <http://www.courts.alaska.gov/shc/index.htm>.

## Chapter Two

# LEGAL REPRESENTATION

*If you have legal issues, you should consult with an attorney if possible. Complex legal issues should be handled by an attorney. This is the ideal; however, there are circumstances (usually lack of money) that may force someone to represent themselves.*

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### **When do I need an attorney?**

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

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

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

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

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

## **Why can't I handle my own legal problems?**

You may represent yourself in court and handle your own legal matters. Self-help “kits,” pro se packets, and preprinted forms are sometimes available. However, these items may not consider individual needs, differences, and complications. Tribal courts are generally more friendly to self-represented litigants than state or federal courts.

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

## **REPRESENTING YOURSELF**

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

One of the things to keep in mind if you must represent yourself is to put things in writing. Keep notes on conversations and phone calls, including dates, times, names, and summaries of conversations. Follow-up in writing, such as with a letter or email, whenever possible. Keep copies of all correspondence. Keep copies of information that may be useful such as receipts, tax records, and licenses.

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

Be punctual and businesslike when you meet with people. Prepare for meetings and think about which documents you may need to have with you.

Representing yourself is no substitute for having an attorney represent you. If possible, make arrangements to get legal counsel. If you cannot pay for an attorney, you may qualify for free help from Alaska Legal Services Corporation, the Alaska Network on Domestic Violence and Sexual Assault, the Alaska Native Justice Center or the Alaska Institute for Justice. *See the Resource Directory at the back of this handbook for the office nearest you.* You also should check whether you or a relative is entitled to legal help through a union benefit plan. You

might consider borrowing money to ensure that you are well represented.

## **SELF-HELP CENTER**

The Self-Help Center is a free statewide public service provided by the Alaska Court System. It is dedicated to helping self-represented people understand legal procedures, increasing access to courts, and resolving their cases more quickly. The Center also provides referrals to social service and legal organizations and government agencies. The following services are available:

- **Self-Help Center Website:** <https://courts.alaska.gov/shc/index.htm>  
The website provides comprehensive information about several areas of the law including divorce, dissolution, child custody, child support, guardianship/conservatorship, paternity, probate, housing, appeals, debt collections, small claims, and domestic violence protective orders. The page is easy to use and has detailed information and downloadable forms and instructions for virtually all commonly experienced situations. It is written in plain language and follows a frequently asked question format.
- **Statewide Telephone Helpline:** **907-264-0851 (in Anchorage) / 1-866-279-0851 (toll free in-state, outside of Anchorage)**  
The statewide Helpline is available to anyone without a lawyer and strives to provide appropriate legal education to help people help themselves. In a typical call, the facilitator first explains that the Center can provide legal information, not legal advice or strategy, and confirms that there is no attorney representing the caller. The facilitator then asks the caller basic information to determine the type of case, the procedural posture, and identify what the caller is trying to do. The facilitator will provide background information about the issue at hand, present options, and discuss specific forms. If the person needs additional assistance, the facilitator will schedule a follow-up call. The facilitator cannot review forms for accuracy or completeness.
- **Free Self-Help Center/Printer Work Stations:**  
In cooperation with Alaska Legal Services Corporation, the Self-Help Center has deployed seven workstations at various courts for use by self-represented people in any type of civil case. These workstations provide access to unlimited internet service, Microsoft Word and Excel software, and telephones with local access and pre-programmed speed dialing to relevant statewide providers. The self-help workstations are located in Anchorage, Fairbanks, Juneau, Ketchikan, Kenai, Kodiak, and Palmer.

## **How can I find an attorney?**

There are several ways to locate an attorney:

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

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

You may find it in your best interest to interview more than one attorney regarding their fee schedule, attitude, and experience with your legal problem. If you do not feel comfortable with an attorney you have interviewed, it is okay to interview and choose another attorney.

## **Can I change attorneys?**

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

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

## **LEGAL FEES**

### **When should legal fees and costs be discussed?**

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

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

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

### **Should I expect to pay an initial consultation fee?**

Policy and practices vary. Don't hesitate to ask about the initial consultation fee when calling for an appointment with an attorney. Some attorneys have a policy of "no charge for the initial consultation," while others charge for a client's first visit.

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

### **Is a written fee agreement necessary?**

A clear understanding of fees is important to the attorney-client relationship. No matter which fee arrangement you agree to, the attorney must provide a written agreement if the fee exceeds \$1,000. An attorney must advise you in writing or if she or he does not have malpractice insurance of a required amount. The attorney must advise you in writing later if that insurance drops below that amount or is terminated. If you have any questions about the written agreement, you should ask questions and clarify them before you sign. You should keep a copy of the signed agreement.

### **Who is responsible for the fee?**

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

judge may award a partial or full fee to be paid by an opposing party.

### **When is the fee payable?**

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

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

### **What if I think the fee is too high?**

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

### **Can I do anything to reduce legal expenses?**

The following suggestions may help reduce legal costs:

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

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

You must have a written fee agreement between yourself and your attorney in the form of a letter or a contract if the fee exceeds \$1,000. This agreement can keep you from later having a dispute over your bill. You can tell the attorney not to work more than a specified number of hours and not to run up high costs in your case without telling you what they are doing.

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

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

### **WORKING WITH AN ATTORNEY**

Remember, your attorney is there to help you and answer your questions. It is their job to provide information and advice but you get to ultimately decide how to proceed in the case. Do not hesitate to ask questions even if you feel embarrassed.

Ask what you can do to save money on your legal bill, e.g., gathering your own bank information, medical records, or employment records. Also, ask the attorney what documents and information you should bring to the office on your first visit.

Some attorneys will agree to provide you with “unbundled” legal services. This means that they will help you on one piece of your case, such as appearing for you at an interim custody hearing, but not represent you in the whole matter. This can substantially reduce your attorney costs and may be a good option if you feel able to do some of the legal work on your own. Talk with your attorney about this option.

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

Realize that your attorney only provides legal services. The attorney is not your counselor, parent, minister, etc. Many people have emotional issues associated with their legal problems, especially if they are getting a divorce. Many domestic violence and sexual assault programs

have trained advocates who can help you sort out your feelings and discuss your options.

If you are not happy with the service you are getting from an attorney, you can always dismiss that attorney and hire another one. But remember you will likely pay for any services provided unless the attorney decides not to charge you. In some instances, it may be better to change attorneys and incur the costs associated with the change so that you have a good attorney-client relationship. If you need to fire your attorney, ask for a copy of your file so that you can give it to your new attorney.

### **LEGAL ASSISTANTS/PARALEGALS**

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

### **COMPLAINTS ABOUT ATTORNEYS**

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

If you think your attorney is not acting in your best interests, you may file a complaint against the attorney with the Alaska Bar Association and they will review and investigate as needed. *See the Resource Directory at the end of this handbook for contact information.* The Bar Association provides a form for you to fill out. Just because you do not like the way things turned out does not necessarily mean that your attorney acted in bad faith or did not serve you as well as possible. The Alaska Bar Association will only discipline an attorney if they breached one of their ethical duties while representing you.

### **FEE DISPUTES**

You may file a petition with the Alaska Bar Association if you think you were overcharged by your attorney. The Bar Association has a form to use for filing this petition. An arbitration panel, which is a group of three people (one of whom is not an attorney), will rule on the claim if it exceeds \$5,000. If the dispute involves \$5,000 or less, one member of the Panel

will hear your case. The decision of the Arbitration Panel is final unless it is appealed in accordance with AS 09.43. The fee arbitration service is provided free of charge to you unless, in an unusual case, it is “complex” arbitration. [Alaska Bar Rules 34-42.]

### **FUND FOR PROTECTION OF CLIENTS**

The Alaska Bar Association administers a Lawyers’ Fund for Client Protection to provide reimbursement when an attorney has taken money or property by dishonesty and there is no other source for reimbursement. You may apply for assistance by filling out an application through the Bar Association. You should first report any dishonest conduct to the Bar Counsel of the Bar Association because disciplinary action may be necessary before any reimbursement can be made. [Alaska Bar Rules 45-60.]

## Chapter Three

# EMPLOYMENT

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

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

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## EMPLOYMENT DISCRIMINATION

### **What is employment discrimination?**

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

### **How can this chapter be helpful?**

The following is an overview and general discussion of employment law. If you think that you have been a victim of an illegal employment practice, including discrimination, you should discuss the facts of your situation with someone who is familiar with these laws. You can contact your human resources department or personnel representative, a private attorney through the Lawyer Referral Service of the Alaska Bar Association, and/or one of the local, state, or federal agencies listed at the end of this chapter and in the Resource Directory at the end of handbook. There are important time limits on filing a complaint of employment discrimination. You should file your complaint as soon as possible with one of the local, state, or federal agencies. In general, you must file your complaint within 180 days for the Equal Employment Opportunity Commission (EEOC) and 300 days for the Alaska State Commission on Human Rights (ASCHR). The time period to file with the EEOC is extended to 300 days if you also file with a state agency like ASCHR.

## **What are the Alaska laws regarding employment discrimination?**

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

- The Alaska Human Rights Act [AS 18.80.220] prohibits discrimination on the basis of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, and pregnancy or parenthood. These are the protected classes under state law.
- Employers may not discriminate in compensation or in a term, condition, or privilege of employment because a person is a member of one of the protected classes, unless the reasonable demands of the job require a distinction. [AS 18.80.220(a)(1).]
- Labor organizations may not discriminate against members of the protected classes. [AS 18.80.220(a)(2).]
- Employers, employment agencies or others, such as newspapers, may not advertise jobs in such a way as to discriminate against members of the protected classes. [AS 18.80.220(a)(3) & (6).]
- Employers, labor organizations or employment agencies may not retaliate against a person who has opposed practices forbidden under the Human Rights Act. [AS 18.80.220(a)(4).]
- Employers may not pay women less than men for the same work. [AS 18.80.220(a)(5).]

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

## **What are the federal laws regarding employment discrimination?**

The following laws prohibit a variety of discriminatory practices:

- Federal laws, such as Title VII of the Civil Rights Act of 1964;
- the Age Discrimination in Employment Act (ADEA) of 1967;
- the Americans with Disabilities Act (ADA) of 1990;
- the Equal Pay Act (EPA) of 1963;
- the Rehabilitation Act of 1973;
- Title IX of the Education Amendments of 1972; and
- Title VI of the Civil Rights Act of 1964.

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

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

### **What is the Pregnancy Discrimination Act?**

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

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

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

### **What is the Americans with Disabilities Act of 1990?**

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

### **What is the Equal Pay Act of 1963?**

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

### **What is the Rehabilitation Act of 1973?**

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

agencies, or federal contractors.

### **What is Title IX of the Education Amendments of 1972?**

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

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

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

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

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

If discrimination is found under either federal or state law, the employee may be entitled to hiring, promotion, reinstatement, back wages and benefits, and future wages and benefits if they can show a reduction in their earning capacity. Compensatory damages for emotional distress or pain and suffering and punitive damages may also be granted.

There are caps under federal law on the amount of combined compensatory, future, and punitive damages. The caps range from \$50,000 to \$300,000 depending on the size of the employer. In 1997, the Alaska State legislature passed a “tort reform” bill that put caps on compensatory and punitive damages under state law ranging between \$200,000 to \$500,000 depending on the size of the employer. [AS 09.17.020.] Check with an attorney to find out the possible tax consequences for awards of lost income.

### **What type of conduct is prohibited under Title VII?**

Title VII prohibits sex discrimination and sexual harassment in employment. In 1972, the United States Supreme Court ruled that an employer violated Title VII of the Civil Rights Act when it refused to hire women with children while hiring men who were similarly situated. *Phillips v. Martin Marietta*, 400 U.S. 541 (1971). In 1977, the United States Supreme Court held that a state’s height and weight requirements that had the effect of excluding most qualified women from being eligible to be prison guards violated Title VII. *Dothard v. Rawlinson*, 433 U.S. 321 (1977). Since then, courts have found liability in a variety of situations including discrimination and harassment. Title VII claims can be brought in state courts as well as federal courts. *Yellow Freight System, Inc. v. Donnelly*, 494 U.S. 820 (1990).

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

There are local, state, and federal agencies responsible for enforcing anti-discrimination laws and other employment laws. Usually the state agencies will refer you to the appropriate federal agency when necessary. *See the Resource Directory at the end of this handbook for contact information.*

## **SEX DISCRIMINATION**

### **What is sex discrimination?**

Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex. Sex discrimination also can involve treating someone less favorably because of their connection with an organization or group that is generally associated with people of a certain sex.

Discrimination against an individual because that person is transgender is discrimination because of sex in violation of Title VII, also known as gender identity discrimination. In addition, lesbian, gay, bisexual, transgender, and queer (LGBTQ) individuals may bring sex discrimination claims. In *Bostock v. Clayton County*, 883 F. 3d 100 (2020), the United States Supreme Court held that Title VII protects LGBTQ employees from discrimination in the workplace based on sexual orientation or gender identity. The Court held this type of discrimination falls squarely under Title VII's prohibition of discrimination based on "sex." Claims for discrimination because of sex may include, for example, allegations of sexual harassment or other kinds of sex discrimination, such as adverse actions taken because of the person's non-conformance with sex-stereotypes. Employers may not take adverse action against an employee for traits or actions it would not have questioned in members of a different sex. State law also prohibits discrimination based on sex.

Although there are a variety of circumstances in which courts impose liability on employers for sex discrimination, courts have also limited the scope of employer liability. When an employer can show that it had enough non-discriminatory reasons for an adverse employment action that it would have taken the same action in the absence of discrimination, it can avoid Title VII liability. *Price-Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

Following *Price-Waterhouse*, the United States Supreme Court held that a plaintiff employee need not show direct evidence of sex discrimination to present a case to a jury as a "mixed motive" case of sex discrimination. *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003). The Court in *Bostock* again confirmed that a "plaintiff's sex need not be the sole or primary cause

of the employer’s adverse action” to establish a claim for discrimination.

### **What is sexual harassment?**

Sexual harassment is a form of sex discrimination and is prohibited under both state and federal laws. *French v. Jadon, Inc.*, 911 P.2d 20 (Alaska 1996); *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). Sexual harassment violates Title VII of the Civil Rights Act of 1964 and AS 18.80.220. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when submission to, or rejection of, this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.

A person does not have to prove psychological damage to show sexual harassment, but can win based on evidence of conduct that would reasonably be perceived to be hostile and sexually abusive. *Harris v. Forklift Systems*, 510 U.S. 17 (1993).

Sexual harassment can be found where men and women are working together and the women find vulgarities directed at them as offensive sexually, while the men are more tolerant and join with the sexual bantering among men. In *EEOC v. NEA, Alaska*, 442 F.3d 840 (9th Cir. 2005), the Ninth Circuit Court of Appeals held that harassing conduct need not be sexual in nature to violate Title VII if the harasser treats men and women differently; and adopted the “reasonable woman” standard to determine whether men and women were treated differently even though the conduct is not facially sex- or gender-specific.

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

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

If it is safe, it is best for the victim to directly inform the harasser that the conduct is

unwelcome and must stop. It is important to promptly use any employer complaint mechanism or grievance system available if possible.

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

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

### **What are the two types of sexual harassment?**

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

In the past, the distinction between “quid pro quo” and “hostile environment” sexual harassment was important in determining employer liability for a supervisor’s acts. Two United States Supreme Court decisions have made it easier for employers to be held liable for a supervisor’s discriminatory acts. The labels of “quid pro quo” and “hostile environment” are no longer controlling for employer-liability purposes.

### **How can a person show they have been sexually harassed?**

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

pervasive that it created a hostile workplace.

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

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

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

In *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998), the United States Supreme Court held that employers are liable for sexual harassment by a supervisor, regardless of whether the employer knows about specific incidents of harassment, if it resulted in a tangible employment action such as firing, failure to promote, or loss of job benefits. The employer can assert an affirmative defense if the harassment did not cause a tangible employment action. The employer must show that they exercised care to prevent and correct promptly any sexually harassing behavior and that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm. This is one of the reasons it is important to use an employer complaint mechanism or grievance system, if possible.

In *Faragher v. City of Boca Raton*, the Court identified the circumstances under which an employer may be held liable under Title VII of the Civil Rights Act of 1964 for the acts of a supervisory employee whose sexual harassment of subordinates has created a hostile work environment amounting to employment discrimination. The court held that “an employer is vicariously liable for actionable discrimination caused by a supervisor, but subject to an affirmative defense looking to the reasonableness of the employer’s conduct as well as that of a plaintiff victim.”

In *Burlington Industries v. Ellerth*, the United States Supreme Court held that employers are vicariously liable for supervisors who create hostile working conditions for those over whom they have authority. In cases where harassed employees suffer no job-related consequences, employers may defend themselves against liability by showing that they quickly acted to prevent and correct any harassing behavior and that the harassed employee failed to utilize their employer’s protection.

The United States Supreme Court substantially narrowed the applicability of Title VII to harassment cases in its decision in *Vance v. Ball State University*, 570 U.S. 421 (2013), the United States Supreme Court held that an employee is a “supervisor” for purposes of

vicarious liability under Title VII of the Civil Rights Act only if he is empowered by the employer to take tangible employment actions against the victim.

**How can a person show that the harassment is unwelcome?**

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

**What if the employee engages in sexual conduct for fear of losing their employment?**

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

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

The sexual harassment does not need to be directed at the victim to be offensive, unwelcome and actionable. That is, if sexual harassment directed at others is so pervasive as to offend others in the workplace, those employees may have a claim.

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

Yes. Sex discrimination consisting of same-sex sexual harassment is actionable under Title VII and AS 18.80.220. *Joseph Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998).

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

Possibly. One case decided by the United States Court of Appeals involved a hostile work environment at the Securities and Exchange Commission. The court held that third parties can be injured by a sexual relationship between two other parties if they are denied job benefits. Widespread sexual favoritism can thus support a claim of hostile environment or an implied quid pro quo sexual harassment claim. *Broderick v. Ruder*, 685 F.2d 1269 (D.DC 1988).

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

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

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

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

### **WAGE DISCRIMINATION**

#### **What are Alaska’s laws regarding wage discrimination?**

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

#### **What are the federal laws regarding wage discrimination?**

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

#### **In what way do jobs have to be equal to qualify under the Equal Pay Act?**

In 1974, the United States Supreme Court held for the first time that an employer who paid

women less than men for the same work violated the Equal Pay Act. *Corning Glass Works v. Brennan*, 417 U.S. 488 (1974). A number of court cases have established that jobs need be only substantially equal, not identical, in order to be compared for purposes of the Act. Job descriptions or classifications are irrelevant in showing that work is unequal unless they accurately reflect job content and mental as well as physical effort must be considered.

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

## **PREGNANCY DISCRIMINATION**

### **What is the federal law regarding pregnancy discrimination?**

At the federal level, the Pregnancy Discrimination Act of 1978 amended Title VII to include under the definition of sex any discrimination based upon pregnancy, childbirth, or related medical conditions. This Act makes it unlawful for an employer to refuse to hire someone because they are pregnant unless pregnancy interferes with the major tasks associated with the job. [42 U.S.C. § 2000e(k).] Where a pregnant employee can show that an employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers, this tends to show intentional discrimination; the employer will face a very high burden to show a lack of discriminatory intent. *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 229-30 (2015).

### **What is Alaska’s law regarding pregnancy discrimination?**

State law also makes it illegal to discriminate on the basis of pregnancy or parenthood. [AS 18.80.220 (a)(1).] For the most part, Alaska law provides the same coverage as the federal legislation but is more liberally interpreted than federal law for the purpose of eradicating discrimination. [AS 18.80.220(a)(1).] Public employers must treat pregnancy-related conditions the same as they treat other types of temporary disabilities. [AS 39.20.500(a).] Public employers with at least twenty-one employees are required to transfer a pregnant employee to a vacant, existing position that is less strenuous or less hazardous, upon the employee’s request. [AS 39.30.520.]

### **What is the federal law regarding pregnancy and medical leave?**

The federal Family and Medical Leave Act (FMLA) requires that an employer must keep a person’s job open in accordance with the same conditions afforded fellow employees on disability or sick leave if they are on certified FMLA leave for a pregnancy-related condition. [29 U.S.C. § 26.] An Alaska law applying to state employees has similar requirements for

pregnant employees. [AS 23.10.500 *et seq.*] State and federal laws also require employee benefit, temporary disability, and leave programs to treat pregnancy like any other medical condition. Additionally, impairments resulting from pregnancy (for example, gestational diabetes or preeclampsia) may be disabilities under the Americans with Disabilities Act (ADA) requiring reasonable accommodations such as leave.

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

In *University of Alaska v. Tumeo*, 933 P.2d 1147 (Alaska 1997), the Alaska Supreme Court stated that the University's health care benefits plan, which provided benefits to employees and their dependents, discriminated on the basis of marital status by providing greater benefits to married employees than unmarried employees. Thus, this was a violation of AS 18.80.220. However, the Alaska legislature amended AS 18.80, providing that "an employer may . . . provide greater health and retirement benefits to an employee with a spouse or dependent children than are provided to other employees." [AS 18.80.220(c).] Another Alaska Supreme Court case clarified that marital discrimination does not cover a situation where an employee is treated adversely because of the individual to whom they are married. *Muller v. BP Exploration, Inc.*, 923 P.2d 783 (Alaska 1996).

The Alaska Supreme Court also held that the United States Constitution prohibits a landlord's discrimination against unmarried couples. *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska) (per curiam), *cert. denied*, 115 S. Ct. 460 (1994).

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

The Affordable Care Act eliminated pre-existing condition exclusions in employer healthcare plans and the individual insurance market. Even before the ACA was enacted, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) helped those with preexisting conditions get health coverage. In the past, some employers' group health plans limited, or even denied, coverage if a new employee had such a condition before enrolling in the plan. Under HIPAA, that is not allowed. If the plan generally provides coverage but denies benefits to you because you had a condition before your coverage began, then HIPAA applies.

## **AMERICANS WITH DISABILITIES ACT**

### **What is the Americans with Disabilities Act?**

Title I of the Americans with Disabilities Act of 1990 (ADA) prohibits an employer from discrimination based on physical or mental disability. [42 U.S.C. § 12101 *et seq.*] The ADA also prohibits discrimination in public accommodations and transportation, which are beyond

the scope of this section. You may contact the U.S. Department of Justice or the local Disability Law Center if you need assistance in this area. *See the Resource Directory at the end of this handbook for contact information.* The ADA prohibits discrimination against qualified individuals with disabilities who can perform the essential functions of the job with or without reasonable accommodations. The federal Rehabilitation Act of 1973 also prohibits discrimination on the basis of a physical or mental disability by the federal government and its agencies, federal contractors, state governments, and other programs that receive federal funds. [29 U.S.C. § 701 *et seq.*] The ADA Amendments Act of 2008 makes changes to the definition of the term “disability,” clarifying and broadening that definition—and therefore the number and types of persons who are protected under the ADA and other federal disability nondiscrimination laws. The Act retains the ADA’s basic definition of “disability” as an impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.

### **What is the Alaska law on disability discrimination?**

Alaska state law prohibits discrimination against an employee with a physical or mental disability if “the reasonable demands of the position do not require such a distinction.” [AS 18.80.20; *see also* 6 AAC 30.910.] Like federal law, Alaska law protects individuals who have a physical or mental impairment that substantially limits one or more major life activities; a history of such an impairment; and those who are treated as having such an impairment. The Alaska courts use federal law as guidance in interpreting state laws on disability discrimination. *Moody-Herrera v. State Dept. of Natural Resources*, 967 P.2d 79 (Alaska 1988).

### **What can I do if I believe I am being discriminated against based on a disability?**

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

## **FEDERAL FAMILY AND MEDICAL LEAVE ACT**

### **What is the federal Family and Medical Leave Act?**

The federal Family and Medical Leave Act (FMLA) of 1993 requires certain employers with 50 or more employees to provide up to 12 weeks of leave per year for eligible employees to care for a newborn, newly adopted child or newly placed foster child; or due to a serious health condition of the employee or close family member; or if the employee experiences certain situations (a “qualifying exigency”) arising out of the fact that their spouse, parent or child is either a member of the Armed Forces or has been called to active duty in the Reserves or National Guard by the federal government, and is being or was deployed to a foreign country. [29 U.S.C. § 2612(a)(1).] An employee is eligible for FMLA leave if they have worked 12 months for the employer for at least 1,250 hours. [29 U.S.C. § 2611(2).] In addition, eligible employees are entitled to up to 26 weeks of family medical leave to care for an employee’s spouse, child, parent (as defined under FMLA) or next of kin (defined as a person for whom the employee is the nearest blood relative) who is either a member of the Armed Forces (including members of the National Guard or Reserves) or a qualified veteran, and is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a qualified injury or illness which was either incurred by the service member in line of duty on active duty in the Armed Forces or aggravated by military service in the line of active duty. This law requires employers to return employees to the same or an equivalent position after the leave. [29 U.S.C. § 2614(a).] However, an employer may deny restoration to the same or similar position if the employer would suffer “grievous economic injury” and notifies the employee of the harm. [29 U.S.C. § 2614(b)(1).] Also, leave may be denied to a salaried employee among the highest paid ten percent of employees within 75 miles of the facility in which employee is employed. [29 U.S.C. § 2614(b)(2).]

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

In the case of planned medical treatment, the employee is required to provide the employer with notice prior to the leave and to make efforts to schedule treatment so as not to “unduly” disrupt the operations of the employer. [29 U.S.C. § 2612(e).] The employer may require medical certification from the employee regarding the leave. During FMLA leave, an employer must maintain coverage for an eligible employee for the duration of their leave. [29 U.S.C. § 2614(c).] There is no comparable state law requiring employers to provide leave to private sector employees. However, state law does provide leave benefits to state employees under AS 39.20.500. This law allows state employees up to 18 weeks of leave, contrasted with 12 under federal law.

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

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

seek advice from an attorney.

## **WRONGFUL TERMINATION/BREACH OF EMPLOYMENT CONTRACT**

### **When can an employer take action against an employee?**

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

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

Alaska State law provides that the employment relationship constitutes a contract between the employee and the employer. *Selid Const. Co. v. Guarantee Ins. Co.*, 355 P.2d 389, 393 (Alaska 1960).

If you are a union member, usually you will have a collective bargaining agreement, which is a special type of employment contract. If you are a union member and have a dispute with your employer, you should check the collective bargaining agreement or contact your union representative immediately. The time frames for filing a union grievance are very short – sometimes just a few days. You should ask your union representative to grieve any adverse employment action. If your union refuses to do so, you should ask for the reasons in writing. Even if your union will not file a grievance for you, you may be required to file it yourself. If you fail to file a grievance, you may be precluded from filing a claim in court. In most cases, if you or your union does file a grievance, you may be required to exhaust your union remedies before you file an action in court. Thus, you will be required to take such a claim to arbitration, if allowed. After the arbitration, you may be limited to an appeal of the arbitration only; you may not be able to file an original suit. It is very important that you are well prepared for the arbitration with your testimony and documentary exhibits. If you do not have a union assisting you or if your union fails to fairly represent you, you may want to contact an attorney. The Lawyer Referral Service of the Alaska Bar can refer you to an attorney who handles these types of matters. *See the Resource Directory at the end of this handbook for contact information.*

### **What if I am not a union member?**

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

said that an employer need not have employment policies and handbooks; if they do, however, the rules and policies constitute a contract and must be followed. *See Jones v. Cent. Peninsula Gen. Hosp.*, 779 P.2d 783, 786 (Alaska 1989).

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

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

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

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

### **What are the laws in Alaska regarding personnel files?**

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

## **WHISTLEBLOWER PROTECTION**

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

There are state and federal laws that protect employees from adverse employment action based on the employee's reporting matters of public concern. Under federal law, employees are protected from adverse employment actions when they report environmental violations.

These claims must be filed through the federal Department of Labor, and the timelines for filing are short – usually 30 days. You should contact an attorney or the federal Department of Labor if you are an “environmental whistleblower.”

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

## **VICTIMS OF DOMESTIC VIOLENCE OR SEXUAL ASSAULT & THE WORKPLACE**

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

Domestic violence does not always stop when a victim/survivor leaves home in the morning to go to work. For example, the victim and the batterer may work together, or the batterer may come to the victim’s job and harass or assault them at work. Laws regarding discrimination, harassment, wrongful termination, and leave may all be particularly important for workers dealing with domestic or sexual violence.

### **Can sexual harassment laws cover workplace violence?**

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

### **Does workers’ compensation cover injuries related to domestic or sexual violence?**

Workers’ compensation provides no-fault, generally exclusive coverage for work-related injuries as defined by state laws. The amount of recovery is limited by state statute. Some individuals and their families have recovered workers’ compensation awards for injuries resulting from sexual assaults, rapes, and murders that occurred at work, whether they were committed by a supervisor, a customer, or an intimate partner who tracked the victim on their job, e.g., *Williams v. Munford, Inc.*, 683 F.2d 938, 940 (5th Cir. 1982). Where injuries are found to be exclusively covered by workers’ compensation, employees are not permitted to

bring negligence claims against their employers in court and are limited to the damages available under the state workers' compensation statute.

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

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

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

An employer may be liable for negligently hiring or retaining an employee who later injured someone in the course of the job. Some courts have held companies liable when they knew or should have known that the employee might commit a violent act or when they could foresee that the employee, through their employment, would create a risk of danger, e.g., *Watson v. Bally Mfg. Corp.*, 844 F. Supp. 1533, 1537 (S.D.Fla. 1993), *aff'd*, 84 F.3d 438 (11th Cir. 1996). For example, one court found that an employee's record (sexual harassment of female co-workers, threats to male co-workers, and sexual advances and threats to the female employee he ultimately killed) made it foreseeable that he could act violently and created a duty of care by the company to take steps to prevent further harm to the victim. *Yunker v. Honeywell, Inc.*, 496 N.W.2d 419, 424 (Minn. Ct. App. 1993). In responding to complaints that their employees committed violent acts, however, company officials must take care not to violate other legal obligations or to jeopardize the rights of the accused. For example, in many jurisdictions, companies may not discriminate against employees who have criminal records unless the employer's action was based on job-related factors.

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

Federal and state occupational safety and health laws require employers to make sure their employees work in safe environments. The federal Occupational Safety and Health Act of 1970 (OSHA) contains a "general duty clause" that requires every employer to provide a workplace free from recognized safety hazards. [29 U.S.C. § 654(a)(2000).] State laws

impose similar requirements. OSHA's general duty clause may be interpreted to require employers to take reasonable steps to protect workers from violent attacks in the workplace.

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

An employee who has a disability due to domestic or sexual violence and is able to perform the essential functions of a job may not be terminated, demoted, harassed, or otherwise disadvantaged because of their disability and may be entitled to “reasonable accommodations” under the Americans with Disabilities Act (ADA), as discussed elsewhere in this chapter. Employees who are dealing with domestic violence may experience many forms of abuse that cause mental and/or physical disabilities which would qualify them for protection under the ADA. Reasonable accommodations may include time away from the office for appointments with doctors, modified work schedule, additional training or supervision, a transfer, or medical leave.

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

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

## **RESOURCES**

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

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

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

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

your union or your employer, it is safest to file written complaints or requests

### **Where can I file a charge of discrimination?**

You may file a charge of discrimination with the United States Equal Employment Opportunity Commission (EEOC) or the Alaska State Commission for Human Rights (ASCHR) if you believe you have been discriminated against by an employer, labor union, or employment agency when applying for a job or while on the job because of your race, color, sex (including sexual orientation or gender identity), pregnancy, religion, national origin, age (40 or older), physical or mental disability, genetic information (including family medical history), marital status, or parenthood. You can also pursue an age discrimination claims regardless of your age (older or younger than 40) under Alaska law through the Alaska State Commission for Human Rights. You also may file a charge of discrimination with EEOC or ASCHR if you believe that you have been discriminated against because of whistleblowing or participating in an equal employment opportunity matter. *See the Resource Directory at the end of this handbook for contact information.*

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

An individual aggrieved by an alleged discriminatory practice prohibited by AS 18.80 may file a written complaint with the Commission. Complaints must be filed with the Alaska State Commission for Human Rights (ASCHR) within 300 days of the alleged discriminatory act. It may be filed in person or by mail at any Commission office. You may also file a complaint online at <https://humanrights.alaska.gov/>, then click on “File a Complaint Now.” The Commission’s staff will assist you with drafting and filing the complaint. You can contact ASCHR at 1-800-478-4692 for more information.

### **How do I file a charge with the EEOC?**

Charges may be filed in person, by mail, or by telephone by contacting the nearest EEOC office. *See the Resource Directory at the end of this handbook for contact information.* You may also file online, at <https://publicportal.eeoc.gov/Portal/Login.aspx>. To avoid delay, call or write beforehand if you need special assistance to file a charge.

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

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

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

You may contact EEOC if you have any questions about your rights, including advice on which court can hear your case, or if you need to inspect and copy information contained in the case file. Additionally, many EEOC offices can provide you with names of private attorneys who have agreed to consider referrals for private litigation.

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

No. A complaint filed with one agency is considered filed with the other due to a work-sharing agreement. If you only file a complaint with the EEOC and not a state agency, then you must file within 180 days of the wrongful action. Filing with a state agency extends that period to 300 days, and most state agencies will automatically cross-file complaints with the EEOC under work-sharing agreements if the claims asserted are also covered by federal law.

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

Employment law and employment discrimination law are specialized areas of practice. You may call the Alaska Bar Association Lawyer Referral Service at 1-800-770-9999 for the contact information of attorneys who practice in this area. You may want to ask how much experience the attorney has with these types of cases. Try to find an attorney who is recommended for their work in this area.

### **What are the state agencies/commissions?**

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

- The Alaska State Commission for Human Rights (ASCHR) is the state agency that enforces the Alaska Human Rights Law. The Commission maintains an investigative unit in Anchorage. The Commission has statewide powers and accepts complaints from all regions of the state. At the present time, if an individual has a discrimination action in the Commission, the individual can only recover actual wage and benefit damages, or reinstatement to their original position. There can be no recovery for emotional distress or punitive damages in the Commission. (However, emotional distress and punitive

damages are available before the federal EEOC and in a state court civil suit under AS 18.80.220.)

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

### **What are the local agencies?**

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

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

### **What are the federal agencies?**

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

- The U.S. Equal Employment Opportunities Commission (EEOC) is the federal agency charged with enforcing federal laws outlawing employment discrimination. As a practical matter, EEOC, ASCHR, and AERC have a work-sharing agreement. If you file with one agency, your complaint will be simultaneously filed with the other agencies, although only one agency will investigate.
- The U.S. Department of Labor is charged with enforcing federal wage and hour laws,

such as overtime and minimum wage; it also enforces the federal Family and Medical Leave Act and federal whistleblower laws.

- The Office of Federal Contract Compliance Programs is a federal agency charged with monitoring federal contractors for equal employment opportunity and affirmative action practices. This agency has an office in Anchorage.

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

## Chapter Four

# CREDIT, DEBT COLLECTION, & BANKRUPTCY

*Credit is money, goods or services provided to an individual who promises to pay the lender later. You may not be denied credit because of your sex or marital status. The standards used to determine whether someone is a good credit risk must be the same for everyone. You have the right to establish credit in your own name even if you are married. You have the right to know why you were denied credit. There are methods for seeking relief if you are in debt.*

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## FEDERAL CREDIT REPORTING RULES

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

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

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

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

Given the widespread problems with identity theft, it is important to periodically review your credit report. If you have filed bankruptcy, it is important for you to review your report six months or so after you receive your discharge, as some creditors may still be reporting your discharged liability as a current liability or charge off. Such action is a violation of both the Fair Credit Reporting Act and the permanent stay under the Bankruptcy Code. If a credit report discloses such a claim, you can contact the company in writing and demand that they correct the report. Include a copy of your discharge order and ask the company to provide

you with an updated credit report removing the liability as current and outstanding and reporting it as discharged in bankruptcy. If the credit reporting company fails to do so, you can contact an attorney who has experience in litigating consumer law issues. You may sue in federal court for both damages and the costs of such action.

### **What federal protections do I have against credit discrimination?**

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

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

Questions about your age or marital status are allowable by the Equal Credit Opportunity Act. One reason for this allowance is that agencies may take your marital status or age into account to give elderly or disadvantaged persons favorable treatment. Another reason is that it is reasonable for the agency to inquire about age or marital status to determine probable future income.

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

### **What state protections do I have against credit discrimination?**

The Alaska Fair Credit law [AS 18.80.250] says that an institutional creditor cannot refuse credit or loans because of "sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color, or national origin." The state law is similar to the federal law. The state also forbids creditors from denying credit to a spouse or requiring both spouses to have a single account.

### **What do I do if I experience credit discrimination?**

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

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

### **BANKRUPTCY AND DEBT COLLECTION**

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

If you do discuss your situation with your creditors, you may be able to resolve the situation by establishing a payment plan. Before making any payments, you should insist upon receiving a written agreement with the creditor setting forth the terms of your agreement. You may be able to negotiate a discount in the debt and interest rate if you can convince the creditor that you are in financial hardship. However, the information you provide may be used by the collection agency to identify assets and any sources of income. You should insist that any agreement include a provision that the creditor will take no further collection action while you negotiate the debt before providing the creditor with information. You also may wish to consult with a consumer credit counselor before engaging in negotiations with your creditors or supplying them with information.

In the event you are unable to resolve your financial problems by negotiation with your creditors, you can consider bankruptcy. Federal law currently provides consumers protection against overwhelming indebtedness through two forms of bankruptcy relief. Known as

Chapter 7 and Chapter 13, these two forms of bankruptcy relief are designed to give individuals a fresh start in life in terms of resolving their financial problems.

### **What is Chapter 7 relief from debt?**

Chapter 7 relief is the most commonly filed petition by consumers and is known as a liquidation proceeding. A Chapter 7 case typically involves a debtor who is mired in dischargeable debt and whose income is close to or less than the debtor's reasonable and necessary living expenses, and whose exemptions adequately protect the assets that the debtor would like to retain after the bankruptcy. Dischargeable debt – or debt that you may get rid of in Chapter 7 bankruptcy – consists of all debts existing before the filing of the bankruptcy petition. Non-dischargeable debt under Chapter 7 includes:

- unpaid taxes (with some exceptions);
- child support, alimony, and certain property settlement obligations;
- fines and penalties owed to a government;
- debts incurred through fraudulent conduct, intentional or malicious actions that inflict bodily injury, and judgments for personal injuries as a result of driving while intoxicated;
- debts incurred after the filing of bankruptcy (post-petition); and
- government guaranteed student loans.

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

For a debtor to qualify for a Chapter 7 proceeding they must also meet an income or “means” test. If their income exceeds the median income for where they live, they then must go through a complicated test to establish that they qualify for a Chapter 7. If they do not qualify for a Chapter 7, then they must file a Chapter 13. The median income level for a two-person household in Alaska as of May 15, 2021 was \$86,628, a three-person household was \$103,223, and a four person household was \$103,223. These amounts get updated every few months. Most people needing Chapter 7 relief will not have to go through the means test. If you have any questions about qualifying for Chapter 7, you should contact an attorney who regularly practices in this area of the law.

### **What is Chapter 13 relief from debt?**

Chapter 13 is known as Debt Adjustment for Individuals with Regular Income. It is also called a wage earner's plan. It enables individuals with regular income to develop a plan to

pay all or part of their debts. A Chapter 13 petition for relief is most often used in three situations:

1. The debtor cannot meet the means test in a Chapter 7 and needs protection from creditors.
2. The debtor has debts that are not dischargeable in a Chapter 7 proceeding.
3. The debtor has assets that exceed their exemption rights in property they wish to keep after the bankruptcy.

A Chapter 13 plan requires the debtor to devote all their disposable income (that amount of money remaining after all reasonable and allowable living expenses have been deducted from your income) to a Chapter 13 plan payment. The payment plans run from 36 months in length to 60 months depending upon the debtor's income. A Chapter 13 plan can provide for the payment of the debtor's attorneys' fees through the plan.

### **What property can a debtor protect while going through bankruptcy?**

Every state and federal government recognizes that some types of property are essential for maintenance of an individual's health, safety, and welfare. Therefore, every state has statutory exemption rights in varying amounts in those types of property deemed to be essential. The equity that is exempt in each category of property varies from state to state and from state to federal government. For example, in Alaska, AS 09.38.010(a)(3) and 8 AAC 95.030 establish an exemption amount of \$72,900 in a debtor's home. The federal exemption is \$23,675 per debtor. Thus, if a debtor has substantial equity in her home, they may protect that equity up to \$72,900 in a bankruptcy. Similarly, Alaska protects up to \$4,050 worth of equity in a debtor's automobile, while the federal statute protects only \$3,775.

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

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

**I’ve heard that I can’t file bankruptcy unless I get credit counseling first. Is this true?**

Yes. Individual debtors must get credit counseling from an approved agency within the 180 day period before a bankruptcy is filed. An individual can get the required counseling in person, over the telephone, or on the Internet. A list of approved credit counseling agencies is available from the Bankruptcy Court Clerk’s Office, or the list can be found at the United States Trustee’s website: [www.usdoj.gov/ust/](http://www.usdoj.gov/ust/). After a debtor has taken the required credit counseling, the credit counseling agency will give the debtor a certificate of completion. The debtor must file this certificate with the bankruptcy court to prove that he or she has had credit counseling.

**Where can I get more information on bankruptcy and do I need an attorney?**

The United States Bankruptcy Court, District of Alaska, has a website with lots of information about bankruptcy and is a great place to get the basics and find forms. <https://www.akb.uscourts.gov/understanding-bankruptcy>. In terms of representation, there are individuals who successfully handle their own bankruptcies, but there are risks involved in proceeding without the assistance of an attorney. In large part it depends upon an individual’s own comfort level in learning a lot about a specialized area of the law and then acting upon that knowledge on their own. Generally, lawyers practicing in bankruptcy are well-known within their communities. The Alaska Bar Association provides a referral service to the public if you are uncertain as to whom you should contact regarding assistance in this area. *See the Resource Directory at the end of this handbook for contact information.*

## Chapter Five

# CRIMINAL LAW AND VICTIMS' RIGHTS

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

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

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### **What are the different types of crimes in Alaska?**

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

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

A criminal case differs from a civil case in several ways. In a criminal case, a government prosecutor files charges, however in a civil case, private individuals (or their attorneys) file the complaint. People in civil cases are asking for remedies or relief, such as money or protection, for themselves. In criminal cases, prosecutors are representing the “people” and trying to protect communities from criminal activity. Criminal cases always involve some type of crime. In a criminal trial, the jury must unanimously agree in order to reach a verdict. Civil cases cover a wide range of subjects including protective orders (*discussed in Chapter Seven*), divorces and dissolutions (*discussed in Chapter Fourteen*), child custody and support (*discussed in Chapter Fourteen*), property division (*discussed in Chapter Fourteen*), and paternity issues (*discussed in Chapter Twelve*). At a civil trial, only a majority of the jury must agree on the decision to reach a verdict and many civil cases, including family law cases, are tried in front of a judge rather than a jury.

Domestic violence protective orders are unique because, although a protective order is a civil remedy, a violation of a protective order can result in criminal charges.

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

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

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

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

Paralegals provide support and information to crime victims and assist the prosecutor with case preparation throughout the criminal justice process. They are a valuable resource to contact if you need to find out the status of your case, to learn what your legal rights are, or to answer questions you have about the criminal process. They also provide you with information to keep you updated on scheduled court hearings in the case.

### **How do I know what my rights are as a crime victim?**

Police and prosecutors are required by law to tell you about the Alaska Office of Victims' Rights (OVR) and provide OVR's contact information. You can contact OVR at any time after the crime is reported to law enforcement. There are other resources available to learn about your rights such as this handbook, OVR's <https://ovr.akleg.gov/rights.php>, domestic violence and sexual assault advocacy programs, the Alaska Department of Law's <http://www.law.state.ak.us> (with resources in Yup'ik, Russian, Spanish, Tagalog and Korean), as well as paralegals at the Prosecutor's Office. *See the Resource Directory at the end of this handbook for contact information.*

## **CRIME VICTIM RIGHTS**

You have both constitutional and statutory rights as a crime victim. Your constitutional rights are those contained in Alaska's Constitution, Article I, Section 24. Statutory rights are those created by the Alaska Legislature.

**If you are a victim of a crime, you have the following rights under the Alaska Constitution:**

- The right to be treated with dignity, respect, and fairness throughout all phases of the criminal justice or juvenile justice process.
- The right to protection from the defendant by the judge setting bail and/or conditions of release.
- The right to the timely disposition of the case following the arrest of the defendant.
- The right to talk with the prosecutor.
- The right to obtain information about and to attend all criminal or juvenile delinquency hearings that the defendant has a right to attend.
- The right to be heard, if you request, at the defendant's sentencing or the juvenile's disposition.
- The right to be heard at bail hearings, if you request, or at any proceeding where the accused's release from custody is considered.
- The right to restitution from the defendant.

Many of these rights are also protected in federal law under 42 U.S.C. § 10606(b).

**In addition to the rights crime victims have under the Alaska Constitution, there are numerous statutory rights crime victims have in Alaska. Some of these rights include:**

- The right of all crime victims upon initial contact with police and prosecutors to be told about and given contact information for the Office of Victims' Rights.
- The right to be provided information about and application forms for the Violent Crimes Compensation Board.
- The right, in felony or domestic violence cases if requested, to be notified by the prosecutor about a proposed plea agreement before it is entered into with the defendant.
- The right to see a doctor if you are in need of immediate medical attention.

- The right to protection from harassment or threats because of your involvement in the case. If someone bothers you or threatens you, call the police or the Prosecutor's Office. They may be able to help in these ways:
  - by contacting the person, or the person's attorney, to tell the person to stop bothering you;
  - by investigating and, if necessary, arresting and prosecuting the person;
  - by asking a judge to put the person back in jail, if the person has been released; and
  - by providing information about shelter programs that may be available in your area.
- The right not to be fired from your job because you must miss time from work to go to court at the request of the prosecuting attorney.
- The right not to have your address released to the public.
- The right to be told when the defendant will go to court for trial and for sentencing and to be told if those court dates change.
- The right to be told, after the defendant is convicted, about the defendant's other criminal convictions.
- The right to choose if you want to talk to the defense. The person who is charged with the crime will usually have an attorney to help with the case. The attorney, or a person working for the attorney, may want to talk to you. There is nothing wrong with this, but when the person contacts you, they must tell you:
  - their name and how they are associated with the defendant;
  - that you do not have to speak to them unless you want to do so; and
  - that you may have a District Attorney or other person present during the interview.

Note: The defense attorney may record your conversation if you choose to talk to them, pursuant to a 2007 court case called *Murtaugh v. State*, and they do not have to tell you that they are recording the conversation. You have a right to ask for any recordings.

## **What rights do crime victims have regarding a defendant's sentencing and post-sentencing?**

As a crime victim, you have a number of rights specifically related to the defendant's sentencing and after the defendant has served his sentence. Some of these rights include:

- The right to be heard at sentencing in misdemeanor, felony or juvenile cases, if you request.
- The right to Violent Crimes Compensation Board information and how to apply. The Violent Crimes Compensation Board (VCCB) is a program to reimburse victims of violent crime for crime-related expenses such as medical bills, lost wages, and counseling costs. VCCB reimbursements are often made prior to a defendant's sentencing. *More information on VCCB is presented later in this chapter. See the Resource Directory at the end of this handbook for contact information for VCCB.*
- The right to restitution if the defendant is convicted. Restitution is when the judge orders the defendant to pay for your expenses/losses caused by the crime that are not covered by other sources (such as insurance). To request restitution, you must fill out a "Restitution Request Form" and return it to the Prosecutor's Office. If expenses are ongoing (so you do not yet have a final amount), provide the current total and explain which amount you will provide in the future giving an approximate date. Be sure to follow up. Contact your local Prosecutor's Office for assistance. If the judge orders restitution for you, make sure that you get a copy of the restitution judgment in the criminal case from the court system or Prosecutor's Office. It is important to notify the Alaska Court System Restitution Collection Unit if you change your address, so they can forward any money collected. You also have the right to seek collection privately if you choose. For more information you can go to the website <http://www.courts.alaska.gov/trialcourts/restitution> or contact them at Restitution Collection Unit, Alaska Court System, 820 West 4th Avenue, Anchorage AK 99501, phone (907) 265-0195 or email [restitution@akcourts.us](mailto:restitution@akcourts.us).
- The right to notice and the right to attend the defendant's parole board hearing if you request.
- The right to be provided, after conviction, the defendant's complete conviction history.
- The right to notice that the defendant has filed an appeal.
- The right to a written copy of the judgment or disposition within 30 days of the end of a domestic violence or felony case, if you make a request.

- The right to be told when the defendant will be released and/or if the defendant escapes from jail, if you make a request. Make your request by registering with the VINE system (an automated notification system) by calling 1-800-247-9763 and following prompts, or signing up online ([www.vinelink.com](http://www.vinelink.com)). In addition, if you make a written request, a recent photo of the defendant will be sent to you with the notice of release or escape. To make a request for a recent photo, write to:

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

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

Alaska Psychiatric Institute  
2900 Providence Dr.  
Anchorage, AK 99508

### **How can I be heard at sentencing?**

You can give your statement to the judge at sentencing by:

- writing a letter to the judge;
- appearing in person to speak at the sentencing;
- having someone speak on your behalf at sentencing; and/or
- providing a victim impact statement in the presentence report if a presentence report is ordered (see more below about presentence reports).

### **What can I say or write about when addressing the court on sentencing?**

For sentencing, you may write or talk about any relevant information including:

- how the crime hurt you or your family (emotionally, physically, financially, etc.) and affected your life;
- what you think should happen to the defendant (jail, counseling, having to stay away from you and your family, paying you for your out-of-pocket expenses not covered by insurance, etc.); and

- other information you would like the judge to know about the defendant or this case.

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

### **What is a presentence report?**

If the defendant is convicted of a felony crime, the judge may order a "presentence report." The purpose of the report is to provide information to the judge about the defendant, the crime, and how the crime affected you. For that reason, the person writing the report, usually a probation officer, should contact you for your oral or written victim impact statement. You have the right to be told the address and phone number of the office that will prepare the presentence report for the judge and the right to be interviewed by the person writing the presentence report. If you want restitution from the defendant, it is important to let the presentence report writer know. The presentence report is confidential to specific parties. Only the prosecutor, the judge, the defense attorney, and the defendant can read the entire report.

If you are the victim in the crime, you are entitled to read parts of the report before the sentencing if you request. You can contact the paralegal or prosecutor in the Prosecutor's Office handling your case or contact OVR for assistance. The parts of the presentence report that are available to you are:

- the summary of the offense;
- the defendant's version of the offense;
- the summary of your statements;
- letters of support for the defendant that have been provided; and
- the sentence recommendation made by the report writer.

## **THE ALASKA OFFICE OF VICTIMS' RIGHTS**

### **What is the Alaska Office of Victims' Rights?**

The Alaska Office of Victims' Rights (OVR) provides free legal representation to crime victims throughout the criminal process. Its purpose is to help crime victims secure the rights they have under the Alaska Constitution and statutes when interacting with the criminal justice agencies in this state.

The Alaska legislature passed a law in 2001 that created OVR. The agency operates similar to an Inspector General's office. It was created within the legislative, rather than the executive branch, to avoid any conflicts of interest within state government and to ensure that the OVR director and staff attorneys would have the necessary independence to investigate criminal justice agencies and make appropriate recommendations in their effort to help crime victims and their families. The law went into effect on July 1, 2002. [AS 24.65.010-250] *Contact information for the Alaska Office of Victims' Rights is in the Resource Directory at the end of this handbook.*

### **Can OVR advocate in court on behalf of crime victims?**

Yes. To accomplish the goal of assisting you as a crime victim and of protecting your rights as a crime victim, OVR can advocate in court for you. OVR has authority to represent you and advocate on your behalf in state or municipal court cases involving any felony offense, all class A misdemeanors involving domestic violence, and all class A misdemeanors involving crimes against the person. To receive OVR's assistance, you must contact them. The Prosecutor's Office does not contact OVR on your behalf.

### **What types of things can OVR do to advocate for crime victims?**

OVR works with you to understand what your individual concern or complaint is as a crime victim. Here are just a few of the ways OVR can assist:

- contact law enforcement to determine why the criminal investigation is taking a long time or to determine whether the case is being referred for prosecution;
- determine why a case is not being charged by the prosecution or why it is taking so long to have charges filed;
- help you understand what specifically is happening with the case including what to expect in the various stages of the criminal justice process, and what your rights are at each stage of the process;
- upon consultation with you, OVR can file pleadings on your behalf to assert your rights in the criminal case, such as the right to speedy disposition of the case or to assert your privacy rights;
- address the court about a bail release proposal, continuances, or to provide a victim impact statement on your behalf if you choose not to personally address the judge; and
- help protect your right to privacy when the defense or prosecution tries to obtain

your privileged or confidential records such as mental health, substance abuse, counseling, medical or other personal records.

### **How does OVR investigate complaints by victims?**

If you are a victim of crime, you have a right to file a request for help with OVR when you believe you have or may be denied any of the victims' rights established by Article 1, Section 24 of Alaska's Constitution or an Alaska statute. OVR is empowered to investigate your concerns and take appropriate action on your behalf regarding your contacts with criminal justice agencies such as law enforcement, prosecution, the courts, or defense attorneys. In investigating, OVR may:

- make inquiries and obtain necessary information or documentation from justice agencies;
- hold private hearings; and
- notwithstanding other provisions of law, have access to records of justice agencies, including court records of criminal prosecutions and juvenile adjudications, necessary to ensure that the rights of crime victims are not being denied; with regard to court and prosecution records, OVR is entitled to obtain access to every record that any criminal defendant is entitled to access or receive. [AS 24.65.120.]

Some examples of information and records available to OVR are police reports, witness statements, lab reports, photos, taped statements, grand jury proceedings and exhibits, officers' notes, scene diagrams, dispatch records, autopsy reports, presentence reports, access to all physical evidence and more. All information and/or records obtained during any OVR investigation, including information and records subpoenaed by OVR, are deemed confidential and cannot be provided to victims.

### **Are matters that come before OVR confidential?**

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

### **Can OVR assist criminal defendants?**

The term "criminal defendant" means any person who is charged with a crime or who has been convicted of a crime. It is the general policy of OVR not to investigate complaints

from crime victims who are also charged with crimes from the same event.

## **COMPENSATION FOR VICTIMS OF VIOLENT CRIMES**

Alaska has a Violent Crimes Compensation Board (VCCB) that can provide compensation to victims who have been physically or emotionally injured in a violent crime in Alaska, victims of drunk drivers or when a car is used as a weapon, and survivors of a homicide victim. This program can provide up to \$40,000 per person per incident. In the case of a victim's death where there is more than one dependent, up to \$80,000 may be awarded. [AS 18.67.130.] *See the Resource Directory at the end of this handbook for contact information.*

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

- You must have reported the crime to local law enforcement within five days, unless there is an explanation why you could not reasonably report in that period.
- You must file an application with the program within two years from the date of the crime.
- You must cooperate with the reasonable requests of law enforcement officers, prosecutors and their staff during the investigation and prosecution of the crime.
- You must not have caused or contributed to your injury or death by violation of a state law or by your own behavior (note: in cases of domestic violence, sexual assault or sexual abuse of a minor, the use of drugs or alcohol will not be taken into account as “contributory behavior”).

### **How long will it take?**

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

### **What is emergency compensation?**

Emergency compensation is available in an amount up to \$5,000 and may be awarded for lost wages, counseling, relocation (where safety is a concern), or security measures.

### **Should I apply for compensation?**

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

### **What costs may be paid?**

Costs that may be paid include:

- medical care needed for victim's injuries;
- counseling;
- transportation to medical and counseling services;
- wages lost as a direct result of the crime injuries;
- criminal proceeding attendance costs not paid by other sources such as transportation, lodging, food, and lost wages;
- security measures such as new locks, motion lights, monitored systems, cell phone, temporary mailbox, and dog training;
- loss of support for dependents of deceased victims;
- funeral and burial costs for homicide victims; and
- replacement of doors, locks and windows.

The Violent Crimes Compensation Board will not pay for:

- lost or damaged property (other than medically necessary items, e.g., eyeglasses, or repairs needed for security);
- money aimed at compensating you for any physical or emotional pain you are experiencing; or
- costs compensated under Workers' Compensation or another state or federal program.

## Chapter Six

# DOMESTIC VIOLENCE, SEXUAL ASSAULT, STALKING & HUMAN AND SEX TRAFFICKING

*If you or someone you know is the victim of domestic violence, sexual assault, stalking, or human (sex or labor) trafficking, there are criminal laws at the federal and state level to protect you. Domestic violence and sexual assault programs throughout Alaska provide information and support. Staff are available 24 hours a day to provide safe shelter, advocacy, accompaniment to the hospital or police station, assistance through court proceedings, and many other services.*

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### **Who is most impacted by intimate and non-intimate partner violence?**

Domestic violence, sexual assault, stalking and trafficking can affect all genders and gender non-conforming individuals. Our use of gender neutral language in this chapter seeks to be inclusive of all experiences. However, statistics show that intimate and non-intimate partner violence predominantly impact individuals who identify as women and gender non-conforming.

There are important differences between male violence against women and female violence against men, namely the amount, severity and impact. Women experience higher rates of repeated victimization and are much more likely to be seriously hurt [Walby & Towers, 2017; Walby & Allen, 2004] or killed than male victims of domestic abuse [ONS, 2017]. Women are more likely to experience higher levels of fear and are more likely to be subjected to coercive and controlling behaviors [Dobash & Dobash, 2004; Hester, 2013; Myhill, 2015; Myhill, 2017]. Members of the LGBTQ community experience intimate and non-intimate partner violence at an equal or higher rate than other communities and experience unique challenges and barriers in accessing help. [http://avp.org/wp-content/uploads/2017/04/2015\\_ncavp\\_lgbtqipvreport.pdf](http://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf)

### **What is the frequency of intimate and non-intimate partner violence?**

Intimate partner violence is one of the greatest single causes of injury to women in the United States. By conservative estimates, 1.5 million women are raped and/or physically assaulted by an intimate partner annually in the United States, according to the National Violence Against Women Survey. By other estimates, four million American women experience a serious assault by a partner during an average 12 month period. Alaska has some of the highest rates of domestic violence and sexual assault in the nation. Alaskans reported four times more sexual assaults than the national rate: 161.6 per 100,000 Alaska residents

compared to 42.6 per 100,000 people nationally [FBI Uniform Crime Report 2018]. The 2015 Alaska Victimization Survey found that over 40% of women in Alaska have experienced intimate partner violence in their lifetimes and 33% of women in Alaska experienced sexual violence. Alaska Native women are significantly more likely to be raped or sexually assaulted than other women in the United States. More than 4 in 5 Alaska Native women have experienced violence in their lifetime and are almost two times as likely to have experienced rape as Caucasian women over the course of a lifetime. The murder rate of indigenous women is almost three times that of Caucasian women [National Institute of Justice Research Report, Rosay 2016].

## DOMESTIC VIOLENCE

### What is domestic violence?

Domestic violence can include multiple forms of abuse such as physical, emotional, and sexual abuse. Domestic violence involves a continuum of behaviors ranging from degrading remarks to cruel jokes, economic exploitation, punches and kicks, false imprisonment, sexual abuse, strangulation and suffocation, maiming assaults, and homicide. Sexual abuse can be a form of domestic violence and involves a continuum of behaviors that may include: being denied privacy; unwanted looks at a person's genitals; insulting sexual jokes; sexual labels such as "whore" or "frigid"; treating women as sex objects; forcing someone to watch a sex act; unwanted touching of another's genitals; forced or unwanted anal, oral, or vaginal penetration; and mutilation.

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

The perpetrator's violence may include abuse to the victim's children. The violence may also be directed or threatened against the victim's family, friends, or pets. Perpetrators often remind their victims that non-compliance with demands may lead to violent assaults.

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

Under Alaska law, domestic violence occurs when a person is physically or sexually abused by another person who is a "household member." A "household member" is defined as:

- a spouse or former spouse;

- a person you have dated, or are presently dating;
- a person with whom you have had a sexual relationship;
- a person who lives, or has previously lived, with you in the same household;
- a person with whom you have had a child;
- a person you are related to, or formerly related to, by marriage; or
- a parent, stepparent, grandparent, child or grandchild, aunt, uncle, cousin, second cousin, or children of any of these persons. [AS 18.66.990(5).]

### **What is the legal definition of domestic violence?**

Crimes are defined in the Alaska Statutes. The definitions vary according to the conduct by the perpetrator and the effect of that conduct on the victim. Every act that is a crime, if committed by a stranger, is also a crime if committed by your intimate partner or family member. Under Alaska law, domestic violence is defined as one or more of the following crimes committed or attempting to be committed by one household member (see above list for who is a “household member”) against another:

- Assaults: Causing physical pain or injury to you or placing you in fear of imminent physical injury through words or other conduct. [AS 11.41.200-230.]
- Stalking: Making you, a member of your family, or a person you have dated afraid of being injured or killed by repeatedly making nonconsensual contact with you, a member of your family, or a person you have dated. [AS 11.41.260-270.]
- Harassment: Making repeated telephone calls to you at extremely inconvenient hours or making an anonymous or obscene telephone call, an obscene electronic communication or a telephone call or electronic communication to you that threatens physical injury. [AS 11.61.120.]
- Terroristic Threatening: Making a false report that a circumstance exists that places you in fear that someone has been injured. [AS 11.56.810.]
- Arson or Criminal Mischief: Damaging or tampering with your property, even if it is jointly owned. [AS 11.46.400 & AS 11.46.480.]
- Kidnapping: Taking or holding you against your will in order to physically injure or sexually assault you. [AS 11.41.300.]
- Custodial Interference: If the perpetrator is related to your child, taking and keeping your child away from you for an extended period of time without your permission when you have legal custody. [AS 11.41.320-330.]
- Sexual Offenses: Having sexual intercourse or sexual contact with you without your consent or with minors under a certain age or where the perpetrator is in a position of authority over you. [AS 11.41.410-425 & AS 11.41.434-460.]
- Burglary and Criminal Trespass: Entering your residence, or another building or dwelling, unlawfully. [AS 11.46.300-310 & AS 11.46.320-330.]

- Robbery, Extortion and Coercion: Taking your property by physical force or threats, or making you do an act by threats of force, or by threats to expose secrets that would cause you to be ridiculed. [AS 11.41.500-530.]
- Violating a Protective Order: Contacting you or going to your home, where you work, or other places named in your protective order as places from which to stay away, or violating other conditions set by the judge in the protective order. [AS 11.56.740.]
- Murder: Killing you, your children, or other family members. [AS 11.41.100-110.]
- Cruelty to Animals: Intentionally killing or injuring a pet or livestock. [AS 11.61.140(a)(5).]

### **What protections are available to victims of domestic violence?**

The laws of Alaska provide protection to individuals who are victims of domestic violence. These laws include civil protective orders and protections through the criminal process. Most domestic violence criminal cases are charged as assault cases. Assault charges can range from first degree (the most serious level of offense) to fourth degree (the least serious level of offense). How the State charges the crime will depend on the perpetrator's intent in committing the crime and the level of injury caused to the victim. Fourth degree assault includes a "fear-based" assault and occurs when the defendant puts the victim in fear of imminent physical injury through words or conduct.

For more information on law enforcement and their response to domestic violence, *see Chapter Eighteen: Working With Law Enforcement: Reporting Domestic Violence Crimes.*

### **DOMESTIC VIOLENCE PROTECTIVE ORDERS**

If a person has been the victim of domestic, they can ask the court to order the perpetrator to stay away from and not contact them. A request for a protective order is a civil matter, not a criminal matter. If a victim wants the perpetrator to be prosecuted criminally, they need to report the incident(s) to law enforcement. For more information about domestic violence protective orders, *see Chapter Seven: Staying Safe: Civil Protective Orders and Safety Planning.*

## **SEXUAL ASSAULT**

Sexual assault, in all forms, is a crime. Victims of sexual assault can seek criminal and civil remedies as well as monetary compensation for the crime committed. Sexual assault is a criminal offense and if a victim makes a police report against a perpetrator, the District Attorney may prosecute the case. Victims also have other remedies. A victim of sexual assault can file a civil case against a perpetrator of sexual assault asking for monetary

compensation and a victim can also file for a protective order against the perpetrator.

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

### **What is sexual assault?**

Sexual assault is when someone, without another person's consent, touches or penetrates that other person. Touching, such as rubbing a breast, vagina, penis or anus, even if it is through clothing, is called "sexual contact." Intercourse, oral sex, or insertion of an object or body part into the vagina or anus is called "sexual penetration." Sexual contact or penetration occurs if the offender touches or penetrates someone else's body or if someone is made to touch or penetrate the offender's body. Another sexual assault crime occurs when a person has sexual contact or penetration with a person while that person is incapacitated because of drugs, medication, or alcohol and unable to give their consent. It is also a crime to have sexual contact or penetration with someone who is mentally impaired and not able to understand what they are doing or the consequences of their conduct.

Sexual crimes in Alaska include:

- touching and penetration without consent;
- sexual touching, or penetration of a person who is under the age of consent;
- sexual touching or penetration of a person who is incapacitated or incapable of consenting;
- viewing, photographing, or exposing sexual parts of the body without consent;
- creating or distributing child pornography; and
- a wide range of other acts which affect a person's right to choose whether to interact in a sexual way with another person. [AS 11.41.410-11.41.470.]

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

### **What is sexual harassment?**

Sexual harassment includes:

- verbal assaults such as whistles, jokes, comments, and insults about gender, sexuality, or sexual activity;
- visual assaults such as exposing oneself or exposing someone to nude or pornographic images against someone's wishes, or gesturing or mimicking sexual acts; and

- physical assaults such as intimidating behaviors and postures or unwanted physical touching such as tickling or wrestling.

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

### **Who are the victims and perpetrators of sexual assault?**

Victims of sexual assault can be any age, cultural background, gender, and socioeconomic status. Sexual offenders may also be from any class, culture, profession, or educational level. Sexual assault is not about the uncontrollable sexual desires of the perpetrator, it is about power, control, and domination. Nothing the victim does or wears makes them responsible for the assault. It is a myth that sexual assault occurs because of uncontrollable sexual urges or a lack of sexual opportunities. Studies have shown that most offenders have a consenting sexual partner and are often married. Victims have been sexually assaulted by a friend, a date, a spouse, or a stranger. A spouse can be prosecuted for sexual assault in the first, second, and third degrees. Approximately 80 percent of sexual assaults are committed by someone the victim knows.

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

### **What are common reactions to sexual assault?**

People react differently in times of crisis. You may find it helpful to review the following in case you or someone you know are having, or develop, these symptoms. Sometimes these reactions are immediate, but it is not uncommon for them to occur later.

Psychological:

- guilt, shame, and embarrassment
- confusion
- anger
- helplessness
- depression
- fear and anxiety
- self-blame for the assault
- nightmares or flashbacks
- feeling you are no longer in control of your life

- not wanting to talk about the sexual assault
- denial - pretending it didn't happen

Physical:

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

Social:

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

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

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

These reactions can subside over time. Be patient with yourself. You may find it helpful to reach out to an advocate or learn about healing and coping through other sources like RAINN (Rape, Abuse, and Incest National Network; [rainn.org](http://rainn.org)) or your local advocacy program.

## **SUMMARY OF SEXUAL OFFENSES**

There are four levels of sexual assault; three are felonies and one is a misdemeanor. Sexual assault in the first degree is the highest-level sexual assault crime and has the most serious possible penalties.

The main factors that go into classifying sexual offenses include:

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

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

- when a person sexually penetrates another person without their consent;
- when a person attempts to sexually penetrate another person without their consent and causes serious physical injury; or
- when a person sexually penetrates another person and that person is under the perpetrator's care and the victim is mentally incapable of understanding what is happening. [AS 11.41.410.]

Second degree sexual assault, also a felony is committed:

- when someone engages in sexual contact with another person without their consent, including intentional contact with semen;
- when someone engages in sexual contact with another person and that person is under the perpetrator's care and has a mental disability;
- when someone sexually penetrates another person and the victim is mentally incapable, incapacitated, or unaware the sexual act is being committed; or
- when someone sexually penetrates another person and knows that person is unaware that a sexual act is being committed and the offender is a health care worker and the offense takes place during the course of professional treatment. [AS 11.41.420.]

Sexual assault in the third degree is also a felony and is committed:

- when someone has sexual contact with someone who they know is mentally incapable, incapacitated, or unaware that a sexual act is being committed;
- when someone, while employed in a state correctional facility, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections;
- when someone engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services and the offender is the legal guardian of the person;
- when someone, while acting as a peace officer, engages in sexual penetration with a person with reckless disregard that the person is in custody or apparent custody of the offender, or is committed to the custody of a law enforcement agency;
- when someone, while employed by the state or a municipality of the state as a probation officer or parole officer or while acting as a probation officer or parole officer in the state, engages in sexual contact with a person with reckless disregard that the person is on probation or parole;
- when someone, while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual contact with a person 18 or 19 years of age with reckless

disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services. [AS 11.41.425.]

Sexual assault in the fourth degree is a misdemeanor and is committed:

- when someone, while employed in a state correctional facility, engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections;
- when someone engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services and the offender is a legal guardian of that person;
- when someone, while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual contact with a person with reckless disregard that the person is on probation or parole;
- when someone, while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual contact with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services. [AS 11.41.427.]

### **What are my options if I have been sexually assaulted?**

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

You have the option of going to the hospital, clinic, or Public Health Center. You also have the option to be screened for sexually transmitted infections (STIs) and received treatment for them, receive emergency contraception, and have a medical exam to gather forensic evidence (see the next section for more information about the Sexual Assault Response Team (SART) process). You can receive services from the hospital without law enforcement being involved. However, Alaska law requires that medical providers report certain injuries such as a stab or gunshot wound to law enforcement. Medical providers and advocates are also mandated to make reports of abuse involving children or vulnerable adults.

Victims of sexual assault have the option of getting a protective order against their perpetrator. For information on how to file for a protective order, please refer to the Protective Order section of this chapter.

### **Can I receive a medical forensic exam without having to report the sexual assault to law enforcement?**

Yes. Alaska has anonymous reporting. [AS 18.68.020.] This allows you to have a medical-forensic examination without giving your personal information or participating in the criminal justice system.

If you choose anonymous reporting, you will still receive a medical-forensic examination with evidence collection. The evidence will be given to the appropriate law enforcement agency for preservation. The evidence collection kit will be given a unique storage number that can be accessed in the event you change your mind about participating in the investigation and possible prosecution of the offender. It is important to understand that if you decide to make an anonymous report but then later decide to participate in the criminal justice system, the delay may affect the investigation and ability to prosecute the offender. You should discuss these concerns with an advocate prior to making this determination. If you decide to make an anonymous report, let the medical professional or law enforcement officer know.

### **SEXUAL ASSAULT RESPONSE TEAM (SART)**

One option a victim of sexual assault has is to go through the Sexual Assault Response Team (SART) process to report the sexual assault and receive a medical-forensic exam. Many communities in Alaska have a Sexual Assault Response Team (SART). SART is made up of a law enforcement officer, a specially trained health care examiner, and a victim's advocate. The three components of the team come together at the same time with the victim of a sexual assault.

When the victim arrives, a law enforcement officer and the medical provider will jointly interview the victim for the investigation and to meet their medical needs. The law enforcement officer then leaves during the medical exam, which is done by a specially trained health care provider (sometimes referred to as a Sexual Assault Nurse Examiner or SANE, though not all forensic examiners are nurses). The specially trained health care provider gathers forensic evidence from the victim. The health care provider also treats the victim for any medical needs that they have and can provide options for treatment. This can include emergency contraceptives. The victim's advocate will be there with the victim throughout the entire process. The advocate will inform you about the SART process and answer any of your questions as well as support you in the weeks and months after the assault. If the victim's report of sexual assault results in an investigation, the law enforcement agency will involve the local district attorney's office.

If a victim plans to report to law enforcement and have a medical-forensic exam, it is best to not change clothes, shower, douche, or brush their teeth because these activities could destroy evidence. If the victim has done these things, however, evidence can still be gathered. It is best to have a medical-forensic exam within 96 hours after the assault has taken place. But even if it is outside this time and forensic evidence may not be present, some injuries may not yet have healed and could still be documented. Further, regardless of the time delay, an interview by a trained law enforcement officer, can still result in a successful investigation and prosecution of the offender.

Because SART is not available in all communities in Alaska, a victim may be transported to the nearest SART program if they choose to receive a medical-forensic exam. There may also be similar services available to victims of sexual assault if the formal SART process is not available. You can call your local domestic violence and sexual assault program to find out if SART is available. The cost of the state's forensic evidence collection kit for forensic evidence collection cannot be charged to the victim. However, there may be some testing for certain sexually transmitted infections or pregnancy that may not be financially covered.

## **SEXUAL ASSAULT AND HIV/STIS**

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

## **DRUG-FACILITATED SEXUAL ASSAULT IS A CRIME**

The use of sexual assault drugs has increased in recent years. Drug-facilitated sexual assault occurs when drugs and/or alcohol are used to compromise a person's ability to consent to sexual activity. Some drugs such as Rohypnol (referred to as "Roofies") and GHB (Gamma Hydroxybutyrate) can be placed in someone's drink and the effects of the drug are much like amnesia. A person who has taken one of these drugs will not be able to fight an assault and will be uncertain of the events of the night. These drugs are colorless and odorless. Other drugs such as alcohol, opiates or benzodiazepines may be consumed voluntarily. Engaging in sexual activity with someone who is under the influence of alcohol and/or drugs and cannot consent is illegal, regardless if the victim had been drinking or was under the influence of another drug at the time of the attack. If you believe you were given a drug to compromise your ability to consent, be sure to inform the law enforcement officer and the nurse examiner.

## **SEXUAL ASSAULTS AND THE CRIMINAL JUSTICE SYSTEM**

The criminal justice system can be confusing. This section explains the terms used in the criminal justice system and what happens in sexual assault cases.

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

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

District Attorney: The District Attorney reviews the report prepared by law enforcement to decide if there is enough evidence to charge the offender. Charging the offender means the District Attorney files a formal case in court against the offender. The District Attorney is also called the prosecutor.

Defense Attorney: The attorney who represents the defendant. The Public Defender Agency is the state agency in Alaska that represents defendants accused of crimes who cannot afford a private criminal defense attorney. A public defender may be appointed to represent the defendant if the defendant cannot afford an attorney. Sometimes the Office of Public Advocacy, another state agency, provides this representation.

### **What if the District Attorney does not file charges?**

If this happens, it is because the District Attorney does not have enough evidence to prove the case to a jury. The case must be proved “beyond a reasonable doubt,” which is the highest standard of proof in the justice system. The decision not to file is not made because the District Attorney does not believe you. The decision is based on the evidence present in the case. This includes statements from the victim, suspect and witnesses, physical evidence such as injuries, forensic evidence such as DNA and other evidence that may be specific to that case. Even if the case is not prosecuted, the report remains with the law enforcement agency. This report may become very important in the future to convict this offender if more evidence is uncovered or if the offender sexually assaults someone else.

## **Can the victim drop charges?**

No. The District Attorney files charges, and only the District Attorney can drop the charges. This is because sexual assault is a crime against society as well as against you. Criminally convicting sexual offenders sends a message to offenders that there is no place for sexual assault in our communities.

## **What might a victim expect in the courtroom?**

Changes in the law have helped minimize a victim's re-victimization in the courtroom. While a victim can expect to be vigorously cross-examined by the defense attorney if the case goes to trial, there is a law that specifically addresses the victim's prior sexual activities. The "Rape Shield" statute prohibits questions about a victim's sexual history unless the judge specifically allows it. The limited circumstance where this would be relevant is if the defendant and victim had a recent (within one year) prior sexual relationship and the defense is consent. [AS 12.45.045.]

## **PARTS OF A CRIMINAL CASE**

Preliminary Hearing or Grand Jury: If the crime is a felony (most sexual assault cases), the District Attorney must prove to a group of citizens (called a grand jury) or to a judge (at a preliminary hearing) that there is enough evidence to bring the case to trial. The standard of proof used at this stage is "probable cause." It is a much lesser standard than that needed at trial.

At a preliminary hearing there will be a judge, a District Attorney, a defense attorney, and the offender. It is open to the public. The defense attorney can ask questions. Preliminary hearings are not often used in the State of Alaska because of the option of presenting the case to the grand jury.

At a grand jury proceeding there will be 12 to 18 grand jurors and a District Attorney. There is no judge, no defense attorney, no offender, and it is not open to the public. Witnesses testify one at a time. For each witness, including the victim, the District Attorney will ask that person questions and then the grand jurors may ask questions. If you are going through this process, your contact person in the District Attorney's Office will tell you the grand jury date. The District Attorney and most likely your contact person will meet with you before you testify to explain your role in court, tell you the questions that will be asked, and answer any questions you may have about the grand jury (or preliminary hearing) process.

Arrestment: At the arrestment the offender (now called a "defendant") appears before the

judge. The judge explains the charges and asks the defendant to enter a plea. If the plea is “guilty” or “no contest,” the judge sets a date for sentencing. If the plea is “not guilty,” the judge will set a date for trial. Even if a defendant is guilty, they are likely to plead not guilty to protect their own rights. The victim of the case does not have to attend the arraignment though the victim has a right to attend. If a victim does not attend, the contact person in the District Attorney’s Office will tell them the trial date or the sentencing date.

Change-of-Plea Hearing: If the defendant originally pleads “not guilty,” the defendant can change their plea to “guilty” or “no contest” at any time. Most defendants do change their plea, often as part of a plea agreement with the District Attorney. If a defendant pleads “guilty” or “no contest,” there will not be a trial. The victim of the case does not have to attend a change of plea hearing.

Trial: If the defendant does not plead “guilty” or “no contest,” a jury trial will be held and the victim will likely need to testify. Prior to testifying, the victim will meet with the District Attorney assigned to the case. The meeting will inform the victim about who will ask questions during the trial, the anticipated questions and topics to be asked and the courtroom rules. At the meeting, you may receive a copy of your prior statements and any other evidence that the assigned prosecutor may want you to review.

Delays: A judge, at the request of the District Attorney or the defense attorney may grant a “continuance” of any scheduled hearing, including the trial or sentencing. Continuances may also occur because of the judge’s or attorneys’ schedules, evidence analysis requests, and legal arguments about the evidence. Delays are common. Victims should let their contact person know about any dates they may be unavailable for court.

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

- how the crime hurt the victim and the victim’s family (emotionally, physically and financially) and affected their life;
- what the victim thinks should happen to the offender (jail, counseling, having to stay away from the victim and their family, paying the victim for their out-of-pocket expenses not covered by insurance, etc.); and
- if the victim did lose money because of the crime, the probation officer will ask for the

amount so they can request restitution for the victim (restitution is when the court orders the defendant to pay the victim for their loss).

The probation officer sends copies of the completed presentence report to the judge, the District Attorney and to the defense attorney (who will read the report with the defendant). The report is confidential. Some sections of the report are available for the victim to read. Those parts are:

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

The victim will receive a “Victim Right to Notification” form from the probation officer. If the victim wants to know when the offender will be released from prison, they can fill out the form and return it to the probation officer. If the victim chooses to request the notification, they will need to notify the Department of Corrections if their address or phone number change. It is important to keep the Department of Corrections updated with any contact information, as the victim has a right to speak at parole hearings.

In some cases, a plea agreement may include an agreement on the sentence the defendant will receive. A victim still has the right to speak at the sentencing or write a Victim Impact Statement, but a presentence report may not be ordered. It is important to let the District Attorney’s Office know if you intend to be present at the sentencing, want to speak at the sentencing, and/or write an impact statement. A victim should also give any restitution documents to the District Attorney’s Office prior to the sentencing.

Sentencing Hearing: The sentencing hearing is when the judge decides the defendant’s punishment. In deciding the sentence, the judge considers the presentence report and recommendations from the District Attorney, the defense attorney, the defendant, and the victim. The victim may express their views to the judge, either in writing or in person at the sentencing hearing (the victim may do this in addition to giving the victim impact statement to the probation officer). The victim is not required to attend the sentencing, but many victims and family members find it helpful to see and hear how the case ends. If the victim chooses not to attend, their contact person can tell them what happened. A victim’s immediate family also has a right to address the court at sentencing or write a victim impact statement.

Appeals: The defendant may appeal the sentence and/or conviction. If the defendant appeals, the victim has no responsibility during the entire appeal process except to keep their contact person informed of any address, phone or email changes. The appellate process can take

years before a decision is issued.

## **SEXUAL ASSAULT VICTIMS' RIGHTS**

A victim of sexual assault is entitled to:

- receive notice and an explanation of available possible protections from harm arising out of cooperation with law enforcement and prosecution efforts including protective orders, assistance in obtaining personal belongings, transportation to safe home or shelter, assistance in obtaining medical treatment, and other applicable services;
- make known in writing or in person their wishes to have no contact with the defendant or any person acting on behalf of the defendant or the defendant's counsel;
- have confidentiality with respect to the victim's address or phone number(s), including but not limited to criminal proceedings, divorce, dissolution, and child custody proceedings;
- refuse to make statements and/or recordings requested by the defendant or any person acting on the defendant's behalf;
- have private counsel, the District Attorney, or other accompaniment during statement or recordings;
- receive information about violent crime compensation and procedures for applying for compensation. This includes the possibility of recovering attorney's fees;
- in felony domestic violence and sexual assault cases, the District Attorney shall make a reasonable effort to confer with the victim about their testimony before the defendant's trial and about any pre-trial resolution of the case;
- receive notice and be present at any hearings at which the defendant is present; and
- request restitution for financial loss as a result of the crime as part of the judgment and or as a condition of probation. This is separate from what Violent Crimes Compensation may cover.

A victim can also contact the Alaska Office of Victims' Rights for assistance. *See Chapter Five for more information on victims' rights and the Office of Victims' Rights.*

### **Can I receive some form of compensation for a sexual assault crime?**

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

You can get a Violent Crimes Compensation application from your local domestic violence and sexual assault program or from the program website at [doa.alaska.gov/vccb/](http://doa.alaska.gov/vccb/).

## **SEX OFFENDER REGISTRY**

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

All sex offenders who are present in the state of Alaska must register with the state within 30 days of release from a correctional facility. Some sex offenders register for 15 years. Other offenders must register for life. The level of offense, an offender's criminal history, and the number of offenses or victims for which the offender was convicted all determine the length of registration. Registration begins when the person is released from prison, but the term of registration does not begin until the offender is off probation. Sex offenders are required to notify the Department of Public Safety when they make any changes to their address, living situation or employment. [AS 12.63.010.]

The individual requirements and length of registration is expected to change shortly. This is due to an Alaska Supreme Court decision, which mandates a change to the registration statutes. The District Attorney assigned to your criminal case can update you on these changes and the requirements related to your specific case.

## **SEXUAL ASSAULT PROTECTIVE ORDERS**

If a person has been sexually assaulted, they can ask the court to order the perpetrator to stay away from and not contact them. A request for a protective order is a civil matter, not a criminal matter. If a victim wants the perpetrator to be prosecuted criminally, they need to report the incident(s) to law enforcement. For more information about sexual assault protective orders, see *Chapter Seven: Staying Safe: Civil Protective Orders and Safety Planning*.

## **SEXUAL ABUSE OF A MINOR**

Alaska has many laws that protect children. These laws address physical abuse, neglect, sexual abuse, and exploitation. Child abuse and neglect can occur when a person who is responsible for a minor behaves in ways and/or creates circumstances that harm or threaten

the child's health, safety, or well-being. For example, parents may be criminally responsible for causing or allowing harm or injury to their children. Individuals who are not legally responsible for a child can also be criminally charged if they knowingly inflict harm or injury to a child. If you have questions about child abuse or neglect, call the Office of Children's Services or your local domestic violence/sexual assault program. If you believe a child is being physically or sexually abused please also contact your local law enforcement agency. *See the Resource Directory at the end of this handbook for contact information.*

There are four levels of sexual abuse of a minor. They range from serious felonies to misdemeanors depending on whether there is penetration, the age of the victim, and the relationship of the victim to the offender. [AS 11.41.434-440.]

Other crimes include:

- Incest: when a person who is at least 18 years old sexually penetrates a whole or half-blood relative including a sister, brother, aunt, uncle, niece, or nephew. This is a felony. [AS 11.41.450.]
- Unlawful exploitation of a minor: photographing or filming a minor child engaged in sexual activity. The sexual activity is separately defined in the statute. This is a felony. [AS 11.41.455.]
- Indecent exposure: when a person intentionally exposes their genitals to another person with reckless disregard of the effect it will have on such person. This is a misdemeanor or a felony, depending upon whether there was masturbation and if the victim was under 16 years of age. [AS 11.41.460.]
- Online enticement of a minor: using a computer to solicit or entice a minor to engage in sex with an adult. It is class C felony, unless the offender was already required to register as a sex offender, in which case it is a class B felony. [AS 11.41.452.]
- Possession of child pornography: possessing any material that depicts a child under 18 years of age engaged in any sexual activity defined in AS 11.41.455. This is a felony. [AS 11.61.127.]
- Distribution of child pornography: distributing any material that depicts a child under 18 years of age engaged in any sexual activity defined in AS 11.41.455. This is a felony. [AS 11.61.125.]

A conviction of any of the above offenses requires registration as a sex offender.

## STALKING

Stalking is a crime that can threaten anyone, without regard to age, sex, race, sexual orientation, or socio-economic status. High-profile celebrity cases have raised the public's

awareness about the crime, but the majority of stalking victims are ordinary people, almost always women, who are pursued and terrorized, often by someone with whom they have had a prior relationship.

Statistics show that:

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

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

- following on foot or by car;
- watching from outside a victim's home or workplace; or
- sending letters, emails, texts or making unwanted telephone calls.

Any of these acts, if committed more than once or continuously over a period, can constitute stalking. In Alaska, a person commits the crime of stalking when they knowingly engage in a course of conduct (repeated acts of nonconsensual contact) that recklessly places another person in fear of death or physical injury, or in fear of the death or physical injury of a family member. [AS 11.41.260-270.] Stalking can be either a felony or misdemeanor depending on the conduct of the stalker.

### **What is stalking?**

To qualify as stalking, the acts must be repeated acts of nonconsensual contact involving you or a family member, done knowingly, and which make you fear death or physical injury for yourself or a family member. [AS 11.41.260-270.]

### **What is nonconsensual contact?**

Some examples are:

- following or appearing within your sight;
- approaching or confronting you in a public place or on private property;
- appearing at your workplace or residence;
- entering onto or remaining on property that you own, lease, or occupy;

- contacting you by telephone;
- sending mail or electronic communications to you; and
- placing an object on, or delivering an object to, property that you own, lease, or occupy.  
[AS 11.41.270(b)(3).]

## **STALKING PROTECTIVE ORDERS**

If a person has stalked you, you can ask the court to order the person to stay away from you and not contact you. A request for a protective order is a civil matter, not a criminal matter. If you want the perpetrator to be prosecuted criminally, you need to report the incident(s) to the police. For more information on stalking protective orders, see *Chapter Seven: Staying Safe: Civil Protective Orders and Safety Planning*.

### **What is cyberstalking?**

Although there is no universally accepted definition of cyberstalking, the term is generally used to refer to the use of the internet, email, or other telecommunication technologies to harass or stalk another person. Essentially, cyberstalking is an extension of the physical form of stalking. There is a clear difference between the annoyance of unsolicited email and online harassment. However, cyberstalking is a course of conduct that takes place over a period of time and involves repeated deliberate attempts to cause distress to the victim.

### **How can technology be used to stalk people?**

Some examples include:

- using the internet to identify and track their victims;
- sending unsolicited email, including hate, obscene, or threatening mail;
- live chat harassment abuses the victim directly or through electronic sabotage (for example, flooding the internet chat channel to disrupt the victim's conversation);
- creating postings about the victim or starting rumors which spread through social media sites;
- setting up a website(s) on the victim with personal or fictitious information or solicitations to readers;
- assuming the victim's persona online, such as in chat rooms, for the purpose of harming the victim's reputation, posting details about the victim, or soliciting unwanted contacts from others;
- sending mass messages that virtually shut down the victim's email system by clogging it;
- sending the victim computer viruses, or sending electronic junk mail (spamming);
- sending or posting images of the victim in sexual compromising positions, even if those

images were consensual at the time they were taken with the person (revenge porn);

- installing spyware software that monitors all activities on a computer and runs undetected;
- installing GPS devices on cars; and
- enabling the GPS in victim's cell phones and monitoring their location through online programs.

Many of these acts are violations of Alaska state laws. If you are experiencing cyberbullying or cyberstalking, you can talk with an advocate at a local domestic violence/sexual assault program about applying for a protective order or about reporting to law enforcement. *See Resource Directory at the end of this handbook for contact information.*

## **THE FEDERAL VIOLENCE AGAINST WOMEN ACT AND THE GUN CONTROL ACT**

In 2019, Congress reauthorized the Violence Against Women Act (VAWA), which recognizes domestic violence as a national crime. VAWA was originally passed in 1994 and since its passage, significant gains have been made towards ensuring victim safety and access to critical resources while holding perpetrators accountable for their violence. In 1994, 1996, and 2013, Congress also passed changes to the Gun Control Act making it a federal crime, in certain situations, for batterers to possess guns. As of 2019, individuals with a misdemeanor conviction of domestic abuse or stalking are restricted from purchasing guns. Most of the domestic violence, sexual assault, and stalking cases will continue to be handled by your state and local authorities. In some cases, however, the federal laws may be the most appropriate course of action.

### **What are the federal crimes and penalties?**

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

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

It is a federal crime under the Gun Control Act to:

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

U.S.C. § 922(g)(8)]; and

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

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

### **What does bodily injury mean?**

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

### **What does it mean to enter or leave Indian Country?**

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

### **What is a qualifying domestic violence misdemeanor?**

Possession of a firearm and/or ammunition after conviction of a “qualifying” domestic violence misdemeanor is a federal crime under Section 922(g)(9). Generally, the misdemeanor will “qualify” if the conviction was for a crime committed by an intimate partner, parent, or guardian of the victim that required the use or attempted use of physical force or the threatened use of a deadly weapon (an Assault IV fear assault conviction under Alaska law will not qualify). In addition, Section 922(g)(9) imposes other legal requirements. The United States Attorney’s Office will examine your case and determine whether the prior domestic violence misdemeanor conviction qualifies under Section 922(g)(9).

### **What is a qualifying protective order?**

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

keep copies of all protective orders.

### **Who is an intimate partner?**

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

### **Can my concerns be heard in federal court?**

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

## **HUMAN AND SEX TRAFFICKING**

The United Nations defines human trafficking as: “The recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud or deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal of organs.” Sex trafficking is a type of human trafficking.

### **ALASKA PROTECTIONS FOR HUMAN AND SEX TRAFFICKING VICTIMS**

Alaska laws prosecute those individuals that have sexually trafficked other individuals. Victims of sex trafficking include being forced to engage in prostitution. Force is defined as, “any bodily impact, restraint, or confinement or the threat of imminent bodily impact, restraint, or confinement, ‘force’ includes deadly and nondeadly force.” [AS 11.81.900(b) (28).] Sex trafficking also included inducing or causing a person under the age of 20 to engage in prostitution or inducing or causing a person of whom you are the legal guardian to engage in prostitution. [AS 11.61.110-135.]

Though prostitution is still a crime in Alaska, if you engaged in prostitution under the above situations, the law is more interested in protecting you and investigating and prosecuting the person who made you engage in prostitution. As of 2020, the Alaska Legislature is working

on laws that will protect you from prosecution and help you expunge any prior convictions. Talk to an advocate at a local shelter or domestic violence/sexual assault program for your options.

It is illegal in Alaska to force another person to engage in certain types of labor. Human trafficking includes compelling another person to engage in sexual conduct, adult entertainment or labor using force, threat of force or deception. [AS 11.41.360-365.]

You can report a trafficker directly to law enforcement or talk to an advocate at a local shelter or domestic violence/sexual assault program for assistance in reporting.

## **FEDERAL PROTECTIONS FOR HUMAN AND SEX TRAFFICKING VICTIMS**

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

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

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

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

## Chapter Seven

# STAYING SAFE: CIVIL PROTECTIVE ORDERS AND SAFETY PLANNING

*If you or someone you know is the victim of domestic violence, sexual assault, or stalking, there are civil remedies at the federal, state, and tribal level to protect you. Domestic violence and sexual assault programs throughout Alaska provide information and support and will protect your privacy and confidentiality to the greatest extent permitted under the law. Staff are available 24 hours a day to provide safe shelter, advocacy, accompaniment to the hospital or police station, assistance through court proceedings, and many other services. They can also help you to develop a personal safety plan to remain safe. Please see the Personalized Safety Plan at the end of this Handbook and use it in coordination with this Chapter.*

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## PROTECTIVE ORDERS

Protective orders are civil legal remedies that individuals can petition the court for if someone else is making them feel unsafe. Under Alaska law, a state court can issue protective orders to victims of domestic violence, sexual assault, and stalking if certain requirements are met. Many tribal courts also protective orders.

It is important to do safety planning before, during, and after the process of obtaining a protective order. A protective order is only one tool that victims can use in creating a safety plan for themselves and other family members. *See the Personal Safety Plan section at the end of the handbook.* While a protective order can be an important tool to keep you safe, it is a piece of paper (albeit enforceable by the police) and you should think about whether it will deter the violence and/or what other safety measures you need to have in place to remain safe.

Contact your local domestic violence/sexual assault program and/or court clerk's office for help in filing for a protective order. You do not need an attorney to file for a protective order, although it might be preferable to have one represent you if you are requesting a long-term hearing and believe it will be contested.

## TYPES OF PROTECTIVE ORDERS

Substantively, there are three varieties of protection orders – domestic violence, sexual assault, and stalking orders. Domestic violence orders are for petitioners who have some

type of “household” or intimate partner relationship to the respondent. Domestic violence protective orders provide the broadest remedies. Sexual assault and stalking protective orders are for petitioners who do not have an intimate partner or household member relationship to the respondent. They offer more limited remedies.

### **DOMESTIC VIOLENCE PROTECTIVE ORDERS**

#### **What is domestic violence?**

Domestic violence includes a wide range of abusive behaviors such as physical violence, pushing, shoving, hitting, slapping, biting, choking, or other behavior that causes harm or puts someone in fear of being hurt. It also includes coercion, threats, intimidation, and sexual abuse. *See Chapter Six: Domestic Violence, Sexual Assault, Stalking and Human and Sex Trafficking* for a fuller definition.

#### **What does a petitioner have to prove to obtain a protective order?**

To obtain a domestic violence protective order, the petitioner (the person seeking protection) must prove to the court that the respondent (the person who you want protective from) committed a “crime of domestic violence.” Although a protective order is a civil remedy, the definition of domestic violence that the court uses is a criminal definition of domestic violence (but by a significantly lesser burden of proof than in a criminal case). To be considered domestic violence, these actions must occur by one household member against another. Although name calling, bullying, isolation, financial abuse, and degradation are harmful forms of domestic violence, they are not “crimes of domestic violence” under Alaska law and therefore cannot form the basis for a civil protective order. A full list of the domestic violence crimes that may qualify for a domestic violence protective order can be found at AS 18.66.990(3).

#### **Who can I get a domestic violence protective order against?**

Any person who is a victim of domestic violence by a “household” member is eligible for a protective order. Household member is broadly defined to include adults or minors who:

- are current or former spouses;
- live together or who have lived together;
- are dating or who have dated;
- are engaged in, or who have engaged in, a sexual relationship;
- are related to each other, such as child, parent, grandchild, brother, sister, grandparent, great-grandchild, nephew, niece, uncle, aunt, great-grandparent,

- great-great grandchild, grandnephew or niece, first cousin, great uncle or aunt, and great-great grandparent;
- are related or formerly related by marriage (including stepparents and stepchildren);
- have a child from the relationship whether they have been married or have lived together; and
- minor children of a person in a relationship described above.

### **How long does a protective order remain in effect?**

How long the protective order remains in effect depends on the type of order you have. There are three types of civil protective orders available to victims of domestic violence in Alaska. [AS 18.66.100-180.] Each type of order provides offers different remedies. The law requires different procedures to be followed in obtaining the three types of civil protective orders.

The three types of orders are:

- emergency 72-hour protective order;
- ex-parte 20-day protective order; and
- long-term 1-year protective order.

### **What are the types of remedies that I can get if I am granted a protective order?**

The remedies that you can obtain in a protective order will be tailored to keep you safe. They can prohibit the respondent from doing certain things to you such as:

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

To keep you safe, the court can also order the following things in a protective order:

- that you have temporary custody of your children;
- that law enforcement go with you to your home to provide protection while you get personal possessions or help you get a vehicle;

- that the respondent pay some amount of money for child support, spousal support, restitution or attorney fees; and
- other safety provisions. It is important to let the judge know if you need additional protections that are not listed on the standard protective order form.

Before you apply for your protective order, you should think about what you would want in the order to maximize your safety, including where you want the respondent restrained from. A domestic violence protective order cannot establish permanent child custody, dissolve your marriage, or address issues of property division. If you are concerned about custody and visitation and/or the perpetrator selling or destroying your property, it is important to contact an attorney about filing for divorce or child custody, and for an interim court order to stop the perpetrator from disposing of your property or other needed protections. *See Chapter fourteen for more information on visitation protections that are available in a protective order and in child custody and divorce actions in Alaska.*

### **STALKING AND SEXUAL ASSAULT PROTECTIVE ORDERS**

Stalking or sexual assault victims that do not have a “household member” relationship to the perpetrator also have protective order remedies available to them [AS 18.65.850-865.] To qualify for a stalking or sexual assault protective order, a person must prove that a crime of stalking or a crime of sexual assault (including sexual abuse of a minor) occurred (see these definitions in the prior sexual assault and stalking sections). They must prove this by a preponderance of the evidence in court. Like the domestic violence protection orders, there are three types of stalking and sexual assault protection orders:

- emergency 72 hour stalking or sexual assault protective order
- ex-parte 20-day stalking or sexual assault protective order
- long term 1-year stalking or sexual assault protective order

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

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

A stalking or sexual assault protective order may:

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

### **PROTECTIVE ORDER FORMS**

There are two options for forms to request a protective order from state court. You can apply for a protective order by filing in person at the courthouse or by filing electronically.

#### Option One

You can use the electronic wizard form to fill out a domestic violence, stalking, or sexual assault civil protective order petition in Alaska. This form is easy to fill out from home and is a great resource if you are applying for a protective order. It prompts you with questions to fill out the protective order form electronically, rather than requiring you to answer questions in writing on paper. You can find it on the Alaska Court's System's Self-Help Services Page under *Representing Yourself, Domestic Violence, Stalking or Sexual Assault, Domestic Violence Forms*. After completing the form using the wizard, you must print the forms and file them with the court, either in person or electronically. You may use the forms in Option 2 if you prefer not to use the wizard.

#### Option Two

You can print out the forms online and fill them out or use the fill-in PDF forms to complete the paperwork. Once you have filled out the information, you can then either file them electronically or you can bring them to your local court to file.

## **MODIFYING OR EXTENDING A PROTECTIVE ORDER OR GETTING A NEW PROTECTIVE ORDER BASED ON PAST VIOLENCE**

A court cannot deny a petition for a protective order solely because (1) there was a lapse of time between an act of domestic violence and the filing of the petition or (2) the act of domestic violence was what initiated a previous protective order and the court previously found that the incident was a crime of domestic violence committed against the petitioner. This means that even if you were the victim of an act of domestic violence in the past, you can still pursue a protective order if you continue to feel unsafe.

### **How can I modify my short- or long-term protective order?**

After the court has granted either the ex parte short-term protective order or the long-term protective order, if you want to change part of the order, you can file your request with the court, using a court form called DV-131. This is found on the Alaska Court System website.

Only the judge has the power to modify the order. If you are trying to modify an ex parte short-term protective order, the court will schedule a hearing with three days' notice or less. If you are trying to modify a long-term order, the court will schedule a hearing within 20 days after the date the request is made if the court finds that the request to modify the order has merit. [AS 18.66.120(a)(1) & (2).]

You and the respondent cannot change the order simply by agreeing outside of the legal process. Even if both of you agree to change part of the order, you must still go through the legal system for the change to be enforceable. It is not valid unless it is written in a court order. Allowing the abuser to ignore one part of the order could encourage violations of other parts. This is a safety concern for the victim and can also cause the offender to be arrested and charged with a crime. For more information, see the Alaska State Court System's website.

### **How do I extend my long term protective order if I still feel unsafe after one year?**

As of the result of a new law passed in 2019 you can request a one-year extension of a protective order. To extend your protective order, you must file a request using court form DV-132, 30 days before the existing order expires, or within 60 days after it has expired. The court clerk will set a hearing date and give the respondent at least ten days' notice. If the judge believes that the extension is necessary to protect you from domestic violence, then it can extend your order for one year. [A.S.18.66.100(f).] There are no limits on how many

times you can do this if you can prove that you continue to need the protective order to keep you safe.

Most parts of a long-term protective orders expire after one year. However, the part that prohibits the respondent from threatening to commit or committing domestic violence is in effect indefinitely, unless a judge rules otherwise.

### **SAFETY WITH A PROTECTIVE ORDER**

- Keep a copy of your protective order with you at all times.
- Check with local law enforcement to make sure your protective order is on record with them. If not, give them a copy of your protective order. It is also important to give copies of the protective order to law enforcement departments in the community where you usually visit family or friends.
- Inform your employer, children’s school, domestic violence advocate, minister, clergy, family members, and/or closest friends that you have a protective order in effect.
- If your perpetrator violates the protective order, you may call law enforcement and report the violation. You can also call an attorney, an advocate at a domestic violence/sexual assault program, and/or advise the court of the violation.
- If you received your protective order in a different state, be sure to bring a copy of it to your local court, law enforcement agency or the Alaska State Troopers and your children’s schools. Out of state orders are enforceable in Alaska. *See Out-of-State Enforcement of Protective Orders and Tribal Orders for more information below.*

### **What is the penalty for violating a protective order?**

Violating the no contact provisions of a protective order is a misdemeanor punishable by up to one year of jail and up to a \$5,000 fine. [AS 18.66.130(d)(1) & AS 11.56.740.] If a perpetrator is convicted of assault in the fourth degree committed in violation of a protective order, they will be sentenced to at least 20 days in jail. [AS 12.55.135(c).] It is important to report and document all violations of the no contact provisions to the police to best enforce your order. Other provisions of the protective order such as custody, support and property provisions, are enforceable only through a contempt of court process. This means that you will have to go back to the court that issued the order to ask the court to compel the respondent to comply with the order or face sanctions if they fail to willfully comply.

## TRIBAL PROTECTIVE ORDERS

Many tribal governments in Alaska have tribal courts that issue protective orders. Tribal court protective order proceedings may be a good option for many reasons including if you want a less formal proceeding or want procedures and remedies that will be more culturally appropriate. Since Alaska Native tribes are sovereign entities, each tribe will have its own laws, ordinances or codes that apply to protective order proceedings. If you are a member of an Alaska Native tribe, need protection from someone who is a member of an Alaska Native tribe, or have a child who is a member of an Alaska Native tribe (or eligible for enrollment), you may have the option of filing a protective order petition with that tribal court. To get information about the law and procedure that applies in tribal court, you should call the tribal court clerk. Some Alaska Native tribal courts have this information on their website but many do not. The 2018 Alaska Tribal Court Director prepared by Alaska Legal Service Corporation, found at <http://alaskatribes.org/wp-content/uploads/2018/12/Draft-TC-Directory-v.10-4.pdf>, is a helpful resource for determining the types of cases Alaska Native tribal courts are handling.

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

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

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

- the court order was entered by a judge or magistrate after a person who was abused by a family or household member filed a petition with the court asking for protection;
- the court that issued the order had jurisdiction over the people and case;
- the abuser had notice of the order and had a chance to go to court to tell their side of the story; and
- in the case of emergency orders, the abuser will have a chance to go to court to tell their side of the story at a scheduled hearing.

Each state must enforce out-of-state and tribal court protective orders in the same way it enforces its own orders and apply the same penalties that it applies to its own orders. This is

also referred to as “full faith and credit.”

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

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

It is important to keep a copy of your protective order with you at all times. It is also important to know the rules of states you will be living in or visiting so you can make a good decision about how to get your order enforced and whether you should register it in that state.

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

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

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

It is not necessary to have anyone assist you in getting your order enforced in another state. However, you may want to contact an attorney or an advocate from a domestic violence/sexual assault program to make it easier to understand the process for enforcement in your new state. Advocates for victims of domestic violence and sexual assault generally know the laws and rules about getting orders enforced and how their local court system works. In Alaska, many domestic violence/sexual assault programs have a designated legal advocate who is knowledgeable about laws that are important to victims. You may also want to hire an attorney.

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

In most places, you will need a certified copy of your protective order. A certified copy says it is a “true and correct” copy, is signed or initialed by the clerk of court that gave you the order, and usually has a court stamp or notary seal. If your copy is not a certified copy, call or go to the court that gave you the order and ask for a certified copy. If you have already relocated to a different state and do not have a certified copy, you can request assistance from a court clerk, advocate, or attorney in the new state to get a certified copy from the court that gave you the order. If you are moving to a new state, it may be helpful to take phone numbers for the court clerk in the state that issued the order and the number of the nearest domestic violence/sexual assault program in the new state. Some states maintain computerized registries of protective orders. If the state that gave you the protective order has a registry, try to get the phone number of the registry manager, or the number of the local or state law enforcement agency that has your order on file.

### **Can I get a short-term or ex parte order enforced by another state?**

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

The state where you are going cannot extend the date of a domestic violence protective order that was issued by another state. If you need to extend an out-of-state order, you will have to contact the state that issued the order and arrange to be at the hearing telephonically or in person. In some states, you may be able to obtain another domestic violence, sexual assault, or stalking protective order from the state where you have moved.

## **HOW TO ENFORCE OUT-OF-STATE PROTECTIVE ORDERS AND TRIBAL ORDERS IN ALASKA**

### **Can the State of Alaska prosecute violations of an out-of-state or tribal order?**

Alaska gives protective orders issued out of state or by tribal courts “full faith and credit,” which means that a protective order issued by a tribal or out-of-state court will be enforced by court and law enforcement personnel as if it were an Alaskan order. Alaska law used to require you to register your out-of-state order with the Alaska court prior to enforcing it, but that was changed to comply with federal law. Note that the State still encourages registration of the order if it is from another state or tribal jurisdiction, since it will give law enforcement easy access to the order through the state’s registry of protective orders. Be aware, however, that registration could alert the respondent to your location. If you are concerned about an

abuser tracking down your location through the registration of your protective order with the court closest to you, contact your local domestic violence/sexual assault program. They can assist in registering the order with another Alaska court and provide safety planning.

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

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

### **Once I register my out-of-state or tribal order, how do I get it enforced by local law enforcement or Alaska State Troopers?**

- Immediately call a local law enforcement agency or state trooper office if the abuser violates the order.
- When the police arrive, show them a copy of your registered order. They will check your order to see whether it has been filed with the Alaska Court System. The officer is required by law to enforce the order just as if it were issued in Alaska.
- If you do not have a copy of your registered order with you, a local law enforcement officer or state trooper can get the information they need to enforce your order from the Alaska Public Safety Information Network (APSIN). When you register your order with a court clerk's office in Alaska, the State of Alaska will enter the order into the Central Registry for Protective Orders which is contained in APSIN. However, it is still very important that you always have a copy of your registered order with you.
- If the abuser violates the order and you have not registered it with the Alaska Court System, you can still call a law enforcement agency immediately.

## **CONFIDENTIALITY, PRIVACY AND SAFETY PLANNING**

### **CONFIDENTIALITY FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL**

## **ASSAULT, AND STALKING**

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

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

Some victims may need to change their name or social security number to protect their safety and the safety of their children. This can be a very complicated process and is only recommended in cases of extreme safety concerns. *See Chapter Seventeen: Names, Names Changes, Social Security Number Changes, and Birth Certificates.*

### **What is a safety plan?**

A safety plan is a plan that includes things victims can do to increase their safety during violent incidents, when preparing to leave an abusive relationship, and when they are at home, work, and school. Many abusers obey protective orders, but some do not. It is important to remember that a protective order is a piece of paper and cannot protect you from an abuser who will not follow the law. Therefore, it is important to build on the things you have already been doing to keep yourself safe.

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

### **What can I do to enhance my personal safety?**

- Change your daily schedule and the route you take to work, school, and stores.
- Accompany children to and from school or bus stops.
- Limit your presence on social media and other internet locations and ensure that you have privacy settings in place if details about you are on the internet.
- Get an unlisted and unpublished telephone number.
- Get a “pay as you go” phone, that you always have with you. Make sure you always have a charger, and a paper list of emergency phone numbers just in case your primary phone is lost or taken away. A “go” phone allows you to pay as you go, and you do not have to worry about someone shutting service off or reporting a phone as stolen.
- Do not talk or text when you are getting into your car or walking places.
- Let people know where you are going, and what your schedule is.
- Do not wear headphones out in public.
- Choose carefully who gets personal information about you, such as your home address and phone number.
- Destroy discarded mail.
- Be sure that your children’s schools are aware of the situation and any court orders that may be in place.
- Learn about Caller ID and how to “block” your telephone number from appearing on Caller ID systems.
- Limit confidential conversations on cordless phones or baby monitors because the transmissions are easily intercepted.
- Use a private mailbox (through a company such as Mail Boxes Etc.) for your official mailing address, which ensures more privacy than a post office box.

### **What can I do to protect my home?**

- Change or improve locks on doors and windows and keep them locked.
- Use window bars, poles to wedge against doors, and/or an alarm system.
- Replace wooden doors with metal doors.
- Keep a light on all the time.
- Install an outside lighting system that lights up when a person is coming close to your home.
- Get a smoke detector and fire extinguisher.
- Tell neighbors you trust to call the police if they hear suspicious noises coming from your home.
- Identify visitors before opening doors.
- If you have a telephone, ask that a friend call you at least once a day.

- Keep your purse and vehicle key in a place where you can get them so you can leave quickly.
- Have someone stay with you if you live alone, or go stay with family, friends, or at a domestic violence/sexual assault program shelter.

### **How can I feel safer in my workplace?**

- Have co-workers screen calls, visitors and incoming mail.
- Give co-workers (managers, security) a photo or description of the perpetrator and any possible vehicles.
- Coordinate with co-workers when leaving the workplace; never leave the building alone, especially at night.

### **How can I feel safer in my vehicle?**

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

### **What can I do to feel safer online?**

- If you are receiving harassing messages and are under 18, tell a parent or adult you trust.
- Use a gender neutral and non-identifying screen name/username.
- Change your pin numbers and passwords frequently.
- Search for your name on the internet and find out what contact information is posted online.
- The perpetrator may have access to your computer and may be monitoring your activities. When you look for help or a new place to live, try to use a safer computer at a library, café, or friend's house.

## Chapter 7: Staying Safe: Civil Protective Orders and Safety Planning

- Create an additional email account if you suspect the perpetrator is accessing your email or sending harassing messages. Do not publicize this account and do not check this email account from a computer the perpetrator may have access to.
- Don't give out your primary email account to people you don't know and have a separate email account for newsgroups and social networks.
- Save every harassing or threatening communication digitally.
- Do not accept friend requests from individuals you do not personally know.

### **What can I do to feel safer if my perpetrator is in jail?**

Victims in Alaska have access to VINE: Victim Information and Notification Everyday. VINE is a free, anonymous, computer-based service that offers prisoner custody status information:

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

The telephone number for VINE is 1-800-247-9763. You can also register on [vinelink.com](http://vinelink.com).

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

## Chapter Eight

# INHERITANCE & ESTATE PLANNING

*Estate planning is the process of determining who will assist you when you are unable to make your own financial or health care decisions, how the assets you own at the time of your death – your estate – will be distributed after your death, and who will administer your estate. The distribution of your estate, both real and personal property, at the time of death is determined in four ways: (1) certain property (for example, life insurance or retirement accounts or real property with a transfer on death deed) will pass to the persons you have designated on a beneficiary designation form to receive the property; (2) certain assets that you own joint with rights of survivorship will pass to the surviving owner; (3) if you do not have a Will or your Will is invalid, your assets will be distributed according to state law; or (4) if you have a valid Will, your assets will be distributed according to your Will. Your estate may be distributed under one or all these ways. Some individuals will use a revocable trust in place of a Will. A revocable trust will direct how the assets owned by the trust will be distributed at your death.*

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

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

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## WILLS

The primary purpose of a Will is to tell your survivors how you want your property distributed when you die. A Will only governs property that is owned by you and does not pass by rights of survivorship, beneficiary designation, or transfer on death or pay on death provisions. Therefore, it is important that you know how each asset you own will pass to a survivor at your death. A Will can leave property in a variety of ways. For example, a Will can give property to specific people or charities, a Will can set up a trust for your minor children so that your assets are used for their care and education, a Will can be set up to ensure a beneficiary with disabilities will retain public assistance eligibility, or to provide for a spouse in a second marriage situation but ensure any remaining assets pass to your children. If you have substantial assets, you can also set up trusts in your Will to help reduce state and

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

Along with spelling out how you want your property distributed, your Will must name a Personal Representative (commonly referred to as an “executor”). This is the person who will administer your Will in the probate court. Your Personal Representative must be age 19 or older. Any property that you own that does not pass by rights of survivorship, through a beneficiary designation, or through a transfer on death (“TOD”) or pay on death (“POD”) provision, will go through the probate process. There are various probate processes available depending on the value and type of assets.

In general, the probate process involves many tasks, such as identifying and gathering your property; notifying your heirs (those who would receive your property if you do not have a Will), devisees (those who you have designated in your Will to receive assets), and your creditors of your death; paying your debts and taxes (including filing all necessary tax returns); and distributing your property according to your Will or according to state law. Your appointed Personal Representative does not need to live in the same community or even in Alaska, but it may be more convenient if they do. People usually choose a loved one or a close friend to serve. Regardless, the Personal Representative is entitled to receive a reasonable sum as compensation unless you indicate otherwise in your Will. Generally, a Personal Representative must obtain a bond to serve in that capacity. If you want your Personal Representative to serve without having to post a bond, you must specifically state that the Personal Representative may serve without bond in your Will. Keep in mind the cost of the bond will most likely come out of the assets of the estate.

A Will may also provide that a trust be set up at your death. A trust allows property to be held by one person for the benefit of another. For example, if you set up a trust in your Will for your minor children, you must name a trustee to manage the trust. The trustee oversees managing the trust assets for your children’s benefit according to the rules you have set forth in your Will for the creation of the trust. A bank or other financial institution can also serve as trustee, but you should find out how much they charge before naming them. Keep in mind that a trust is its own legal entity with its own expenses and requirements (trusts must be registered and file income tax returns) so a trust is not inexpensive to set up or administer. A Will can also establish a Uniform Transfers to Minors Accounts (“UTMA”) for your minor children if the value of an estate does not justify a trust. You would want to name a custodian to manage the funds for your minor child to a stated age (age 18 to age 25).

A Will also should nominate a guardian or co-guardians for your minor children or for a child or spouse for whom you are currently serving as a guardian. The guardianship will become effective upon filing the Will with the court. If an objection to the named guardian is made, the court will strongly favor your nomination, but the court cannot force that person to serve as guardian and will not appoint a guardian who might not act in the child’s or dependent’s

best interest. If your children have a surviving parent when you die, that person usually takes custody automatically. This occurs even if you are not married to the other parent at the time of your death, unless it is not in the child's best interest. If you do not want your ex-spouse to have custody, you can state that intent and your reasons in your Will and the court will consider those reasons in determining custody. The court also may consider the wishes of children over age 14 when appointing a guardian.

A Will also can disinherit someone who might otherwise inherit from you if you did not have a Will. For example, you may state that your spouse will not receive any assets under your Will. A spouse, however, will have the right to claim certain exemptions (totaling \$55,000) and may receive a share of the estate under the elective share statute (the elective share is a complicated formula). As another example, you may have a child you want to disinherit. You should specifically mention this person's existence and your intent to disinherit them. You do not need a reason for disinheriting someone. If you do not have a surviving spouse, a disinherited child may be entitled to a portion of your estate under the personal property exemption (\$10,000) (regardless of the age of the child), and the homestead (\$27,000) and family allowances (up to \$18,000) if the child is a minor or dependent on you.

You must follow certain formal requirements to ensure that your Will is effective. The person making the Will is referred to as the "testator." To make a Will, the testator must be at least 18 years old and of sound mind and free of undue influence. In Alaska, a Will must be in writing and signed by the testator or at their direction and witnessed by at least two people. The witnesses should also sign an affidavit that they witnessed the testator sign the Will. This affidavit can be found in the Alaska statutes. [AS 13.12.504.] A handwritten Will is also valid in Alaska if it is handwritten by the testator and signed by the testator. A handwritten Will does not require witnesses.

Your original Will is very important in the event of your death, and it should be kept in a safe place. Most courts in Alaska offer a safekeeping service for Wills for a small fee (currently \$50). If you keep the Will yourself, it is recommended you keep the Will in a fire-proof box and not in a safety deposit box. It is only your original Will that may be admitted to probate. If you admit a copy of the Will to probate, you will need to do a formal probate, which is a probate process that requires judicial supervision and takes more time and is more expensive.

### **What happens without a Will?**

If you do not have a valid Will when you die, state law determines who inherits your estate (those assets not passing by rights of survivorship/beneficiary designation or transfer on death or pay on death designations). These laws, called laws of intestate succession, give preference to your spouse, children, and parents. This means that if you own property with someone you are living with but are not married to, that person may not receive your share of

the property when you die. In order to provide for someone not included under state law, or to provide for someone in a different way than state law provides, you must have a Will or use a beneficiary designation, transfer on death or pay on death designation or joint ownership with rights of survivorship, where allowed.

If you are married and your spouse dies without a Will, you are entitled to inherit all their property if they have no surviving parents or children, or if both of you only have children from your marriage. If your spouse is childless but has parents living, you are entitled to the first \$200,000 of their estate plus three-quarters of the remainder, and their parents receive the rest. If they have children with you and you have children from prior relationships, you receive \$150,000 plus half of the remainder and your joint children get the rest. If they have any children from a prior marriage, you receive \$100,000 plus half of the remainder and their children get the rest.

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

For inheritance purposes, a “spouse” includes only someone to whom you are legally married. You are legally married even if you are legally separated or have filed for divorce. If you get divorced, your ex-spouse is treated like a spouse who has died. Therefore, if you are divorced and did not change your Will, your ex-spouse will not receive a share of your estate, even if they are still named in the Will. This is true for life insurance as well, but not necessarily for all qualified retirement plans. Most private retirement plans are governed by federal law. Federal law does not automatically remove a former spouse as a beneficiary. Therefore, it is extremely important that you change your Will, the ownership of your bank accounts and your beneficiary designations on any life insurance policies and retirement accounts to avoid any confusion or the possibility that a retirement account will go to your ex-spouse.

A spouse who is planning a divorce or is legally or otherwise separated is treated the same as one who is married. Under current Alaska law, a domestic partner or someone with whom you are living will not be treated as a spouse for inheritance purposes, even if you intend to marry or act as if you are married.

You can alter your rights under these rules with a prenuptial or a postnuptial agreement (including an elective community property agreement). A prenuptial agreement is a contract between you and your spouse-to-be, executed before the marriage that spells out what your intent is regarding property each of you own. A postnuptial agreement is the same type of contract but is executed after you are married. Either type of agreement requires you each to fully disclose the assets that you own. Each of you should have your own attorney when you do these types of agreements to make sure you are getting proper advice. Alaska also allows spouses to designate some or all their property as community property. Community property can be beneficial, but it is advisable to contact an attorney before signing a community property agreement or any agreement that alters your rights to property.

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

### **PROPERTY OWNERSHIP**

Not all property will pass according to what your Will says. How you own your property also plays a part in determining who will get that property. For example, most married couples own real property as tenants by the entirety with a right to survivorship such that on the death of one spouse the property automatically passes to and is owned by the surviving spouse. Most joint bank accounts also are owned with a right to survivorship. When you are making a Will or trust, you should review your assets to see how they are owned. Then you can decide if your overall plan makes sense or if you need to move some assets around. Real property cannot be owned with rights of survivorship by people who are not married; however, you can now pass your interest in real property with a transfer on death deed. A transfer on death deed allows you to designate a beneficiary (similar to a life insurance policy) to receive the real property at your death without probate. The transfer on death deed can be changed by you at any time and is revoked if you sell the property during your life. An agent under a power of attorney cannot change the deed unless you expressly allow it. A sample form of

the deed is found in the Alaska statutes.

### **What is your probate estate?**

The word “estate” has different meanings. In its broadest sense, your estate is all the property you own at your death. This may include real property (your house), the face value of life insurance policies, retirement accounts, the value of your interest in jointly held assets, bank accounts, and personal property (your car, household furnishings and jewelry). The total value of these assets as of the date of your death is your “gross estate” for federal and state inheritance taxes. Your “taxable” estate – the amount that will be used to determine whether you will owe federal estate taxes at your death – is the value of your gross estate less certain deductions. In 2020, the amount that an individual can pass free of estate taxes is \$11.58 million. That amount will increase each year for inflation. The current law is scheduled to sunset on December 31, 2025 and the federal estate tax exemption would be reduced to \$5 million, adjusted for inflation. A surviving spouse also has the right to file a “portability” election to assume the deceased spouse’s unused exemption, which must be filed within nine months of the date of death. Alaska does not have an inheritance tax; however, if you own real property in another state, an inheritance tax might be due in that state. If you have significant assets, you should consult an estate planning attorney to discuss the inheritance tax.

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

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

## **OTHER ESTATE PLANNING TOOLS**

### **What is a durable power of attorney?**

A durable power of attorney (DPOA) is a document you sign that gives another person, your “attorney-in-fact,” the power to make decisions for you when you sign the Power of Attorney or if you become disabled. The person you designate can be anyone you choose: a family member, a friend, or a co-worker. DPOA’s can be limited for specific acts such as purchasing a house or can encompass all day-to-day activities. By choosing someone you trust and who knows you, a DPOA allows you to choose how you would want to act if you become disabled. If you become disabled and do not have a DPOA, the court will appoint a guardian or conservator for you. The power of attorney form used to designate another person to act for you is set out in AS 13.26.645-655. You can also use a DPOA to nominate a conservator for you in the event you become disabled. You should carefully read, understand, and consult an attorney before signing a power of attorney. It is important to remember that even if you have a DPOA, your designated person would need to become your “representative payee” if you receive any social security benefits.

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

### **What are Living Wills?**

You may sign a declaration (“Living Will”) that life-sustaining procedures be withheld or withdrawn in the event of a terminal illness that will result in death within a short time. The Living Will is a part of the Advanced Health Care Directive (AHCD). The Advanced Health Care Directive can be signed in the presence of two witnesses or a notary. Both witnesses must be personally known to you and at least one of them cannot be the agent appointed in the AHCD; related by blood, marriage or adoption; or be a person who will receive a portion of your estate under your Will. You should provide a copy of the Advanced Health Care Directive to your primary care physician.

## **PLANNING FOR FAMILY MEMBERS WITH DISABILITIES**

Estate planning for children or adults with disabilities involves special concerns. Trusts (or even the right to receive funds or property from a trust) can result in disqualification for

Medicaid and other public assistance programs, therefore it is vitally important that you do not leave assets directly to a person receiving public assistance. A “Supplemental Needs Trust” is one way to provide for a disabled person without loss of benefits. The Supplemental Needs Trust restricts the trustee from distributing amounts that would disqualify the beneficiary for benefits such as Medicaid but allows distribution to add to the benefits already being received. The property held by the trust may not be owned by the disabled beneficiary. You should consult with a professional about setting up this type of trust.

**Do I need an attorney?**

Drafting Wills, estate planning, creating trusts, or giving a durable power of attorney are all distinct legal acts that have special statutory and legal effects. It is recommended that you see an attorney to discuss any and all aspects of these legal documents.

## Chapter Nine

# INVOLUNTARY COMMITMENT

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

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### **What are mental health commitments?**

If a court determines that a person is mentally ill and as a result of that condition is gravely disabled or likely to cause serious harm to self or to others, that person can be committed against their will to a facility for mental health treatment. “Gravely disabled” means that the person is, as a result of mental illness, in danger of physical harm because they are not taking care of basic needs like clothing, food, or shelter. [AS 47.30.915(7).] A person must be given every reasonable opportunity to accept voluntary treatment before involvement with the judicial system. If the patient is on voluntary status and elects to leave the treatment facility and the facility feels the patient is gravely disabled or likely to cause harm to self or others, the facility may initiate involuntary commitment procedures. The patient can be involuntarily detained for 48 hours pending the initiation of an involuntary commitment hearing. [AS 47.30.685.]

There are two ways that a person can be involuntarily committed. First, an adult (the petitioner) can file a petition with the superior court to seek the involuntary commitment of another individual (the respondent). The petition must allege that the respondent is believed to present a likelihood of serious harm to self or others or is gravely disabled as a result of mental illness and must specify the factual information on which the belief is based. [AS 47.30.700(b).] After the petition is filed, the judge conducts a screening investigation of the respondent or directs a mental health professional to conduct the screening investigation. This must happen within 48 hours. [AS 47.30.700(a).] Often a mental health professional will call the judge and the judge will issue an oral ex-parte order for a 72-hour mental health evaluation because the person has already been screened.

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

The second way that a person is involuntarily committed for mental health treatment involves an emergency where safety considerations do not allow for the procedures set forth above. In this situation, often referred to as a “police officer application,” an officer or mental health

professional may take the person into custody and deliver them to the nearest evaluation facility. The police officer or health professional then must complete an application for examination of the individual. [AS 47.30.705.]

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

Since the fall of 2018, Alaska Psychiatric Institute (API) has limited both its bed capacity and the numbers of evaluations it can do. As a result, some people have had to wait in hospital emergency rooms and even jails until a slot opens for an evaluation to be done. If you are in this position, you should get notice of your legal rights and you can ask your court-appointed attorney to ask the court to speed the process up or even to dismiss the case against you.

The court can order commitment for up to 30 days or order a less restrictive form of treatment. At subsequent hearings, a person could be committed for 90 to 180 day periods. [AS 47.30.740-770.] A person has a right to a jury trial and an examination by a physician of choice for 90 or 180 day commitments. The person must also be informed of the right to appeal any order of involuntary commitment. [AS 47.30.745-770.]

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

### **What are involuntary outpatient commitments?**

A person involuntarily committed to in-patient care may be transferred to out-patient care if the person is no longer likely to harm themselves or others and will recover more rapidly as an out-patient. Hospitals and other mental health providers refer to this process as “early discharge.” Requirements may include taking medication daily, keeping appointments at the community mental health center, and other conditions. If the patient shows signs that there is a likelihood of harm to self or others or grave disability, the out-patient provider must notify the patient verbally and in writing to return to in-patient care within 24 hours. If the patient does not arrive at the facility within the specified time, the police may bring the patient to the

facility. If the facility wants to extend the person's commitment beyond the time set by court order, the facility needs to initiate further commitment proceedings. [AS 47.30.795.]

### **What are forced medication orders?**

If an evaluation or treatment facility believes a patient is incapable of giving informed consent to take psychotropic medication, a physician can petition the court for an order to administer medication without the patient's consent. [AS 47.30.839.] A hearing on the issue must be held and a court visitor is appointed to assist the court in determining whether the patient has the capacity to give or withhold informed consent. The visitor is a person appointed by the court to arrange for evaluation and write a report. The patient has a right to have an attorney appointed to represent them. The court may not order psychotropic medication to be administered over the patient's objection unless it finds by clear and convincing evidence that the proposed treatment is in the patient's best interests and no less intrusive treatment is available. *Myers v. API*, 138 P.3d 238 (Alaska 2006).

### **PATIENT RIGHTS**

People who are receiving treatment in mental health facilities keep certain specific rights under Alaska law. These include the right to participate in setting up treatment plans, the right to know any medications being given and possible side effects, and the right to refuse certain kinds of treatment. The person has a right to privacy, to retain personal possessions, and to have documents and notices given in a language they can understand. People do not lose civil rights such as the right to vote or exercise religion just because of treatment for mental illness. [AS 47.30.825-860.]

### **SUBSTANCE USE COMMITMENTS**

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

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

facility. A person who asks to remain at a treatment facility may do so with the consent of the physician in charge. [AS 47.37.170.]

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

A spouse, relative, guardian, physician, or public treatment facility administrator may petition the court for long-term commitment of an intoxicated person. A petition for such commitment is filed with the superior court and must demonstrate that the person is a substance user and has threatened or attempted physical harm to another or is incapacitated by alcohol. As with emergency commitment, the petition must be supported by a doctor's statement unless the person has refused to submit to a medical examination. A hearing must be held on the petition within ten days. If the court finds grounds have been clearly established for involuntary commitment, the person may be committed for up to 30 days. At the conclusion of 30 days, the person must be released unless the director of the alcohol treatment facility files a motion for recommitment. If the court grants the motion for recommitment, the person can be committed for up to 180 additional days. [AS 47.37.190-205.]

A patient has a privilege to refuse to disclose and prevent other people from disclosing personal confidential communications by the patient with a licensed doctor, psychotherapist, psychologist, marital or family therapist (or person the patient reasonably believed was such a doctor or therapist) where the communication was for purposes of diagnosis and treatment, including alcohol and drug addiction treatment. The privilege can be claimed by the patient, their guardian or personal representative, and their doctor or therapist (on the patient's behalf).

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

- when the communication is information the doctor or therapist is required by law to report to the authorities, including suspected or known child abuse;
- when the communication is relevant to the physical, emotional, or mental condition of the patient in a proceeding in which the condition of the patient is an element of the patient's claim or defense;

- when the communications are relevant in proceedings for hospitalization/commitment of the patient; when the patient sues the doctor and the communications are relevant to the issues presented; and
- when the services of the doctor or therapist were secured to commit fraud or a crime.

Communications made during a court-ordered medical or psychological examination may not generally be disclosed unless the judge orders disclosure. [ARE 504.]

## Chapter Ten

# ADOPTION

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

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### **PLACING A CHILD FOR ADOPTION**

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

The adoption process will create a new parent-child relationship where one did not previously exist. The procedure will also end the biological parents' legal parental rights and responsibilities and give these rights to the adoptive parents. [AS 25.23.130.]

#### **Can I choose the family that will adopt my child?**

You have the right to choose the family with whom you want your child to live. An agency should present you with options and the chance to interview the family.

#### **Whose permission is needed to adopt a child?**

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

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

Consent may be withdrawn within ten days after the consent but before the court decree by written notice to the person collecting the decree. [AS 25.23.070(b).] You may also withdraw consent after the ten-day period if the court finds that the withdrawal is in the best interest of the person being adopted. If you or the child's other biological parent are a member of an Alaska Native tribe (village) or American Indian tribe, then the right to withdraw your consent may extend longer than ten days. [See, e.g., 25 U.S.C. § 1914.]

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

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

### **Can I see my child after they are adopted?**

The right to visitation between an adopted child and the child's natural parents does not continue after the adoption. [AS 25.23.130.] However, the adoption may be an "open" adoption that expressly permits visitation with the natural parents.

### **Can my identity be kept confidential?**

If you would like your identity unknown to the public, it will be kept confidential. There are some exceptions, and adopted children have the right to discover the identity of their birth parents once they are eighteen. [AS 18.50.500.] Adoption proceedings are held in a closed court, and court records are only available for inspection if all interested parties consent or if there is a court order for good cause. An example of good cause would be that the birth mother's identity is needed for assisting the adopted person in a medical emergency. If you are working through an adoption agency, they may not disclose the child's birth name.

## **ADOPTING CHILDREN**

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

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

- the date and place of birth of the person to be adopted, if known;
- the name to be used for the person to be adopted;
- the date of placement of the minor and the name of the person placing the minor;
- the full name, age, place, and duration of residence of the person adopting the minor;
- the marital status of the person adopting the minor, including the date and place of the marriage, if married;
- that the person adopting the minor has facilities and resources, including those available under a hard-to-place child subsidy agreement, suitable to provide the nurture and care of the minor to be adopted, and that it is the desire of the person adopting the minor to

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

Except in the case of stepparent adoptions or adoptions by a close relative, the Department of Health and Social Services will require an investigation (home study) of whether the adoptive parents will be good for the child. Home studies are not required if the adoption is by a stepparent, or by someone within four degrees of consanguinity of the minor child. Under this latter exception, the home study is not required if the child is being adopted by a grandparent, or an aunt or uncle. In many cases, the home study is usually not performed by the State, but by an agency or private individual. Anyone who can establish good cause to adopt may adopt. This includes a single person, unmarried adults, domestic partners, same-sex partners, or a husband and wife. [AS 25.23.020.]

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

An adopted person who is at least 18 years old can see a copy of their original birth certificate and any changes that have been made to it. [AS 18.50.500.]

## **FINAL COURT DECREE AND REQUIRED CONSENT**

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

If you adopt a child under age 18 in Alaska, you must obtain the consent of the mother or legal guardian. Any consent must state whether the child or parent is a member of an Indian or Native tribe and must adhere to strict procedural requirements. [AS 25.23.060.] You will also usually be required to obtain the consent of the father, even if there was no marriage. [AS 25.23.040.] If the child is more than ten years old, the child must also consent. If the child has a spouse, the spouse must also consent. [AS 25.23.040.] Consent by the Department of Health and Social Services will likely also be required unless the adoption is a stepparent adoption. Consent means that the person/agency freely agrees in writing and in conformance with strict court rules to the adoption.

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

## **ADOPTION OF ALASKA NATIVE & AMERICAN INDIAN CHILDREN**

The Indian Child Welfare Act (ICWA) is a federal statute that governs the adoption of Alaska Native and American Indian children and applies in foster care placements, preadoptive placements, adoption proceedings and termination proceedings. [25 U.S.C. §§ 1901-1963.] Importantly, ICWA does not apply to divorce proceedings or proceedings concerning custody as between two unmarried parents, even if only one parent is Alaska Native or American Indian. ICWA does not apply to tribal court proceedings—it applies to state court proceedings *only*. The purpose of the Act is to prevent the breakup of Alaska Native and American Indian families, and promote the stability of Alaska Native and American Indian communities, and to place those Alaska Native and American Indian children who must be removed from their families with another family or extended family member in the child's tribe (village) when possible.

Under ICWA, a Native child's tribe has the right to intervene and participate as a party in the proceedings and must be notified of that right. [25 U.S.C. § 1912(a).] In any foster or adoptive placement of an Indian (Native) child, under federal law a preference shall be given, unless there is good cause to the contrary, to placement with:

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

ICWA also requires that any consent to adoption of a Alaska Native or American Indian child be recorded before a judge and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained to the parent(s) or Native custodian and were understood by the parent(s) or custodian. [25 U.S.C. § 1913(a).] If the parent or custodian does not understand English, the terms and consequences of the parent's actions must be explained in a language the parent understands. After entering a final decree or order in an Indian child adoptive placement, the court is required to send to the Secretary of the Interior a copy of the decree or order and other information required by ICWA. [AS 25.23.173.]

ICWA contains very important requirements before adoption of an Alaska Native or American Indian child can occur. Anyone wishing to adopt a Native child should consult an attorney who is knowledgeable about ICWA.

Parties may also be able to adopt children through tribal court. You should consult the tribal court clerk with the tribe where you want to file a proceeding if you decide to file in tribal court. The process will likely be different than the one outlined above. Moreover, to ensure the enforceability of any tribal court order, it is best practice to consult with an attorney who is familiar with Alaska CINA Rule 24. This rule registers a tribal court adoptive placement order in state court. The Alaska Court System has developed a form to assist tribes and parents with the procedure for registering a tribal court adoptive placement order: <https://public.courts.alaska.gov/web/forms/docs/cn-600.pdf>.

## Chapter Eleven

# REPRODUCTIVE RIGHTS

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

*However, the government indirectly influences an individual's access to birth control, available medical procedures, and health care services by conditioning or eliminating funding for programs that provide these services.*

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### **What is the right to reproductive freedom?**

Every individual has a fundamental right to decide freely when and whether to have a child. This right includes the principles of individual liberty and right to privacy. Reproductive freedom includes the right to:

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

Reproductive rights include access to information and services related to sexuality, reproduction, methods of contraception, fertility control, and parenthood.

### **How can I obtain information and access to family planning centers in Alaska?**

The State of Alaska funds low cost, confidential family planning services at the following locations:

- Mat-Su Public Health Center in Wasilla
- Kachemak Bay Family Planning Clinic in Homer
- Municipality of Anchorage Health Department
- State Public Health Centers in Fairbanks, Juneau, Ketchikan, Kodiak, Sitka and Kenai

**Services available include:**

- Family planning counseling;
- Pregnancy testing;
- Sexually Transmitted Infection testing and counseling;
- HIV testing and counseling;
- Prenatal monitoring;
- Postpartum home visits;
- Emergency contraception;
- A wide range of contraceptive methods and supplies; and
- Screening and exams for cancer and other diseases or infections.

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

**Planned Parenthood of the Great Northwest and the Hawaiian Islands**

Planned Parenthood of the Great Northwest and the Hawaiian Islands (PPGNHI) is a non-profit organization that provides confidential family planning services to all people in Alaska. People in Alaska can access low cost, confidential family planning services at Planned Parenthood of the Great Northwest and Hawaiian Islands health centers, located in Anchorage, Fairbanks, Juneau, and Soldotna. Planned Parenthood is committed to preserving access to all reproductive health care options, including abortion care. Medical services available from PPGNHI include:

- gynecological exams & pap smears;
- well-person exams;
- a wide range of contraceptive methods and supplies;
- vasectomy services;
- emergency contraception;
- pills by mail;
- pregnancy testing and options counseling;
- STI testing and treatment including confidential HIV/AIDS testing and counseling;
- PrEP for HIV prevention;
- HPV vaccine;
- Hepatitis B vaccine;
- testing and treatment for urinary tract infections, vaginal infections, and bladder infections;
- gender-affirming hormone therapy;
- abortion (including both medication and in-clinic abortion care), adoption, & prenatal

- referrals;
- screenings for breast and cervical cancers;
- colposcopy, cryotherapy, and LEEP surgery;
- menopausal services;
- fertility awareness education;
- miscarriage management; and
- flu shots.

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

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

Many people in Alaska are eligible for free and/or low-cost contraceptive services, pregnancy testing, diagnosis/treatment of sexually transmitted infections, HIV testing, and other services. Planned Parenthood and Public Health clinics offer free or discounted services to low income Alaskans. Medicaid in Alaska covers contraceptives, prenatal care, testing for STIs, abortion care, and other services. Most private insurance companies cover preventive services at no cost, including contraceptives, annual well person visits, STI counseling, HIV testing and screening, PrEP, HPV testing, and domestic violence screening and counseling. *See Health Insurance section of this chapter.* Check with your health care provider to determine how to pay for your services.

### **SEXUALLY TRANSMITTED INFECTIONS**

There are two types of sexually transmitted infections (STIs) – bacterial infections and viral infections. Bacterial infections can be treated and cured whereas symptoms of viral infections can often be treated, but not permanently. Common bacterial STIs are syphilis, chlamydia, and gonorrhea. Common viral infections include the human immunodeficiency virus (HIV), hepatitis B & C, herpes simplex I & II, and the human papilloma virus (HPV).

It is important to get tested regularly for STIs, and you have the right to ask your partner to be tested as well. Most STIs are easily treatable. However, STIs that are left untreated may have long-term negative effects on your health and cause cancer or sterility. Many STIs do not have symptoms or at least do not have symptoms right away. Therefore, you may not be aware that you have contracted an STI and unknowingly pass it to your partner or vice versa. While your annual gynecological exam and pap smear may detect some STIs, many STIs will not show up on your annual exam. The only way to be certain whether you have an STI is to be tested for specific STIs.

HPV is very common and causes 70 percent of cervical cancers. To reduce your chances of getting cervical cancer, the Centers for Disease Control recommends that all people get the HPV vaccine starting at 11 or 12 years old. Individuals 19-45 who have no health insurance and meet financial criteria may be eligible for the Merck Vaccine Patient Assistance to receive the vaccine at no charge.

You can be tested for STIs at your local physician's office, public health clinic, or at Planned Parenthood.

## **BIRTH CONTROL AND CONTRACEPTIVES**

In Alaska, licensed physicians, physician assistants, and nurse practitioners can prescribe birth control methods including birth control pills, diaphragms, cervical caps, vaginal rings, patches, intrauterine devices (IUDs), injectable birth control (Depo-Provera), or implants. Any pharmacist can sell non-prescription birth control materials, such as male and female condoms, spermicides, contraceptive foams, creams, jelly, films, or suppositories over the counter. In consultation with a physician, community health aides can provide prescription birth control materials. (Community health aides are primary health care providers working in rural areas under agreements with Indian Health Service physicians.) In larger communities, Planned Parenthood and most public health clinics provide birth control method options. Planned Parenthood also offers certain birth control methods via the Planned Parenthood Direct app whereby patients can connect with a provider via the app and have birth control shipped directly to them.

### **What contraceptive choices are available?**

There are many forms of birth control and you should discuss effectiveness, side effects, and cost with your provider to find the best choice for you. There are many different kinds of birth control, and no one method will work for every person. Patients and their providers should determine what methods work best for each person. Please remember that condoms are the only form of birth control that also protect against sexually transmitted infections (STIs).

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

### *Barrier methods*

The most common form of barrier methods are condoms, which are widely available at pharmacies and stores without a prescription and for free at Planned Parenthood. They are the only birth control method that protects against both pregnancy and sexually transmitted infections. The male condom is 85 to 98 percent effective and the female condom is 79 to 95 percent effective. Vaginal spermicides such as foams, jellies, creams, films, and suppositories can be applied inside the vagina in combination with any barrier method of birth control for more effective birth control.

Other barrier methods include the sponge, which is available without a prescription, and the diaphragm and cervical cap, which requires an exam to ensure proper sizing and fit. These devices are inserted into the vagina before sex and are 76 to 88 percent effective. The sponge and cervical caps are less effective for people who have given birth.

### *Hormonal birth control*

The most common form of hormonal birth control is the birth control pill, which includes naturally occurring hormones that prevent your body from releasing an egg each month (ovulation), therefore preventing pregnancy. The pill is 91 to 99 percent effective when taken properly. There are many brands with varying doses of hormones so a prescription is required; the best pill is different for everyone.

There is also a birth control patch, which looks like a band-aid and slowly releases hormones through the skin. It is placed somewhere on the body for three weeks and removed for one week. Used properly, the patch is 99 percent effective and requires a prescription. There is also a vaginal ring (NuvaRing), which releases hormones to a more localized part of the body. The ring is inserted into the vagina for three weeks and removed for one week. Depo-Provera is an injection that lasts three months and is 94 to 99 percent effective.

### *Long-acting reversible contraceptives*

There are also multiple long-acting contraceptive methods that are inserted once and last several years.

The intrauterine device (IUD) is one option. The IUD is a flexible T-shaped device that is inserted into the cervix by a physician and prevents fertilization. It is 99 percent effective. There are many types of IUDs: the ParaGuard is a hormone-free copper version that can be left in place for up to 12 years and the Mirena, Kyleena, Liletta, and Skyla IUDs are a low-dose hormonal model that can be left in place between 3 and 7 years.

There is also the implant, which is a small flexible rod that is injected under the skin of a person's upper arm. The implant lasts up to five years and is over 99 percent effective.

Planned Parenthood has a free brochure describing each contraceptive method's effectiveness, advantages, possible side-effects, and cost. This information is also available on their website at <https://www.plannedparenthood.org/>.

### **Emergency contraception**

If you have had unprotected sex or your regular birth control method failed and you fear that you may become pregnant, you can obtain emergency contraception (EC) pills. EC is often referred to as the morning after pill, and it is the equivalent of the high dose of hormones found in birth control. EC can reduce the risk of pregnancy for up to 72-120 hours after sexual intercourse, depending on the brand used. If taken within the recommended time, it can reduce the risk of pregnancy from 75 to 89 percent. Another form of emergency contraception is the insertion of a copper intrauterine device (IUD) within five to seven days of unprotected sex. Some types of EC, such as Plan B, My Way, Next Choice, and other levonorgestrel morning-after pills, are less effective if you have a higher BMI – for people who weigh 155 pounds or more, ella or a copper IUDs may be a more effective method.

Emergency contraception does not cause an abortion. EC works by preventing the ovary from releasing an egg for longer than usual so pregnancy cannot occur. If you have already released an egg and gotten pregnant, the morning-after pill will not end or harm the pregnancy.

Emergency contraception is available over the counter at Planned Parenthood, other public health clinics and through your local pharmacist. *See the Resource Directory at the end of this handbook for contact information.* Planned Parenthood can provide emergency contraception prescriptions by phone for existing patients who are unable to get to a clinic within 72 hours. Some health insurance plans cover the morning-after pill, but you may need a prescription for your insurance plan to pay for it.

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

No. You can confidentially learn about birth control options and obtain birth control without parental consent. If you use your parents' insurance, keep in mind insurance explanation of benefits may be mailed home and include information on what services you have accessed; if privacy from your parents is a concern, contact your insurance company about keeping that information confidential.

### **Do I need my partner's consent to obtain or use birth control?**

No. Anyone can confidentially learn about birth control options and obtain birth control,

whatever their age or marital status.

## **STERILIZATION**

Any person capable of conceiving a child may seek sterilization through tubal ligation (“tying tubes”), in which the person’s fallopian tubes are closed to prevent a sperm from meeting an egg for fertilization, or transcervical sterilization, in which a tiny device is threaded in each fallopian tube to agitate the fallopian tube into growing scar tissue, which permanently blocks the tubes. Sterilization is more than 99 percent effective but in rare cases (about 1 in 100 per year) a person can still become pregnant after sterilization. Alaska is one of 20 states with no state law regulating these procedures, although there is a 30-day waiting period required by federal law for sterilization programs funded with federal money. Sterilization should be considered non-reversible and is a permanent decision that should be weighed very seriously with your healthcare provider.

### **Can a person be sterilized without their consent?**

Under extremely limited circumstances, and after a full hearing, a mentally incompetent person capable of conceiving a child may be ordered to be sterilized at the request of their guardian. The guardian must clearly prove that sterilization is in the best interest of the person; that they are not capable of making their own decision as to sterilization; and that sterilization is the only practicable means of birth control. Medical evidence must be presented at the hearing and an attorney (guardian ad litem) must be appointed to represent the person. *In re C.D.M.*, 627 P.2d 607 (Alaska 1981).

## **PREGNANCY**

### **What choices are available if I am pregnant?**

There are several options available. You may choose to:

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

There is no right or wrong decision for everyone; only you can decide which choice is right for you. You can talk about your feelings with your partner, someone in your family, or a trusted friend. All Planned Parenthood health centers have staff who can talk with you about your options. Your counselor will not pressure you into any decision against your will. You

may bring your partner, your parents, or someone else if you wish. Look for a health center that will give you complete, accurate, and timely information about your options. If you need help, call your local Planned Parenthood. *See the Resource Directory at the end of this handbook for more information.*

### **What types of financial assistance are available to pregnant people in Alaska?**

A person in financial need can seek aid when they learn they are pregnant. One source of help is a federally funded program called Women, Infants, and Children (WIC). WIC provides nutritional assistance to women, infants, and children. Information about the WIC program in your area is available through any public clinic or hospital. Public health clinics also provide free or sliding scale pre-natal care. Pregnant people at certain income levels can also qualify for health coverage through Denali Care, which is Alaska’s Medicaid program for children and pregnant women. *See the Resource Directory at the end of this handbook for more information.*

### **ABORTION**

Abortion is legal in Alaska. Alaska law states that it must be performed by a licensed physician in a hospital or clinic. Abortion providers are also required to obtain “informed consent” from a patient by providing state-mandated materials about potential medical and emotional implications of an abortion. Patients must undergo a medical examination before an abortion.

There are two forms of abortion available, depending on how far along a person is in the pregnancy.

Medication abortion (often referred to as the “abortion pill”) is a non-invasive method used to induce an abortion up to ten weeks after the start of the person’s last menstrual period. The medication abortion is a two-step process. First, a physician gives the patient Mifepristone, which is taken orally. Mifepristone acts to block the hormone progesterone, which breaks down the uterine lining so the pregnancy cannot continue. A second drug, Misoprostol, is then taken 24-48 hours later when the person is home. Misoprostol acts to empty the uterus. Many doctors also prescribe an antibiotic to prevent infection. More than half of people abort within a few hours of taking the second medication, the remainder within several days. A follow-up appointment is required to ensure the pregnancy has been terminated.

In-clinic abortion care is available in Alaska up to 15 weeks, at Planned Parenthood and several private physician offices. The most common procedure for an abortion is aspiration (also referred to as “suction”) and can be performed up to 16 weeks into the pregnancy. For abortions later in the pregnancy, a D&E (dilation and evacuation) is typically performed. First

trimester abortions—when nearly nine out of 10 abortions are performed—have less than 0.05 percent chance of complications.

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

Yes. A minor may access abortion care without the consent or notice to a parent. If you use your parents' insurance, keep in mind insurance explanation of benefits may be mailed home and include information on what services you have accessed; if privacy from your parents is a concern, contact your insurance company about keeping that information confidential.

**Does an adult have to obtain anyone's consent or notify anyone before getting an abortion?**

No. Alaska has no laws requiring a partner's consent or notification before a person obtains an abortion. In addition, the United States Supreme Court has ruled that states may not force a person to obtain their spouse's consent for an abortion.

**Can low income Alaskans obtain government funding for an abortion or other loans and grants?**

Yes, Alaska Medicaid covers medically necessary abortions for eligible people per a 2001 ruling by the Alaska Supreme Court.

Planned Parenthood has information about available funds to help cover some of the cost of an abortion, including transportation expenses, for people with financial need. In addition, the CAIR (Community Abortion Information & Resource) Project and the Northwest Abortion Access Fund are non-profit organizations that provide financial assistance to people seeking abortions who are otherwise unable to afford them. There are also funds available for travel support for Alaskans who elect to travel to Seattle to obtain an abortion. The Washington chapter of the National Abortion and Reproductive Rights Action League (NARAL) also provides housing, transportation, and logistical support to Alaskans to travel to Seattle for an abortion. *See the Resource Directory at the end of this handbook for more information.*

**Can a person obtain an abortion after the first trimester (after 13 weeks) in Alaska?**

Yes, a person can obtain an abortion after the first trimester in Alaska. Planned Parenthood can assist you in finding a provider.

## **Where can a person obtain abortion services or counseling?**

Contact your local Planned Parenthood listed in the Resource Directory at the end of this handbook.

## **ADOPTION**

*See Chapter Ten for more information about adoption.*

## **FERTILITY TREATMENTS AND SURROGACY**

Modern medical techniques and people willing to assist others in having a baby allow couples to bear children in a variety of ways. As artificial reproductive technology (ART) is part of a relatively new field, laws governing the legal relationships that result from use of such techniques are still developing. Anyone considering having a child through ART, such as through intrauterine insemination (IUI) or in vitro fertilization (IVF), or through a surrogate should consult an attorney about the obligations, duties, and rights of the persons (including the child, the intended parent, the donor, or the surrogate parent) involved.

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

## **HEALTH INSURANCE**

The 2010 Patient Protection and Affordable Care Act (ACA) requires that insurance companies cover preventative care at no cost, including a wide range of services for reproductive health care. Specifically, insurance companies (with few exceptions) must cover—with no co-pay—annual well woman visits, STI counseling, HIV testing and screening, PrEP, HPV testing, cancer screenings, and domestic violence screening and counseling. Additionally, the ACA also requires that most insurance companies (except some “grandfathered plans”) cover contraceptive services and counseling with no co-pay or out-of-pocket expense. If you have insurance that says it will not provide contraceptive services or requires a co-pay, the National Women’s Law Center provides free assistance on working with your insurance company and offers other resources on accessing contraceptives: 1-866-745-5487 or [CoverHer@nwl.org](mailto:CoverHer@nwl.org).

Every health insurance plan (with few exceptions) must cover prenatal care and delivery. However, the type of coverage and cost of coverage will vary between plans. If you are pregnant or planning a pregnancy, read your plan carefully. The amounts payable by the insurance provider can be limited only to the same extent as costs for other conditions. No additional, increased, or larger deductible can be imposed. The ACA also requires that health insurance plans provide breastfeeding support, supplies, and counseling at no cost.

## Chapter Twelve

# PARENT AND CHILD

*Generally, persons under the age of 18 are considered minors in the State of Alaska and have limited rights. Upon your 18th birthday, you reach the age of majority and the rights and responsibilities which attach to that age. [AS 25.20.010.] This chapter provides some information about the legal rights of minors but it is not comprehensive. The Alaska Bar Association has an excellent resource for youth on its website called the Alaska Youth Guide. You can access it at <https://alaskabar.org/for-the-public/alaska-youth-law-guide/>. Parents have certain rights and obligations regarding their children in Alaska. If they do not meet those responsibilities, the State of Alaska could intervene to provide services or, in extreme cases, assume custody of children and terminate parental rights.*

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### RIGHTS OF MINORS AND THE AGE OF MAJORITY

#### **What is the age of majority in Alaska?**

In Alaska, the age of majority is 18, which means that you are considered an adult for most legal purposes. An important exception to this is that people under 21 cannot consume or possess alcohol or marijuana and people under 19 cannot purchase or use tobacco products. “Minor” is a word used generally to describe someone who has not yet turned 18. Minors generally cannot do many things such as vote, join the military, sign contracts, or serve on a jury.

#### **Can I get married if I am not yet 18?**

Yes, if the minor is 14 or over with a court order or 16 or over with parental consent. [AS 25.05.171.] A minor may receive the benefits of being the age of majority in Alaska upon being legally married and being at least 16. [AS 25.20.020.]

#### **How does the law treat minors in criminal cases?**

Persons under 18 are normally treated as juvenile offenders (rather than as criminals), although there are many exceptions to this rule. Minors of any age are generally treated as adults and subject to adult penalties when they commit traffic or fish and game offenses. In addition, minors over 16 may be treated as adult criminals when they commit serious crimes involving violence. Generally, if a minor is subject to adult penalties, they are not put in jail with adult criminals but are usually put in a locked facility designated for juveniles until they are 18 years old.

### **What are the legal responsibilities of minors?**

Persons under 18 are generally not legally responsible for debts. In general, the law presumes that minors under 18 who have not been emancipated do not have the capacity to contract.

### **Can a minor obtain a protective order?**

If you are under 18, your parent or guardian can request a protective order on your behalf. If you cannot have a parent or guardian file on your behalf, you can file the petition yourself. The court may decide to appoint a guardian ad litem or attorney to represent you. A guardian ad litem is a person, appointed by the court, who will talk with you and represent to the court what they believe is in your best interests.

### **What is emancipation and how do I do it?**

Emancipation is a court process that gives a person who is between the ages of 16 and 18 the legal status of an adult for many purposes. A minor may petition the superior court for the right to be recognized as an adult. A minor must show that they are living apart from their parents or guardian, can support themselves, and can manage their own financial affairs. If the court agrees with the minor's petition and issues an order saying so, the minor is said to be "emancipated." [AS 09.55.590.] A guide to emancipation and sample petition for use in seeking emancipation is available at courthouses throughout Alaska. Once emancipated, the minor will be treated as an adult in all situations except where federal and state law requires them to be a certain age such as for voting and drinking alcohol.

## **PARENTAL RESPONSIBILITY AND OTHER PEOPLE**

### **What responsibilities does a parent have for damage caused by children?**

If your child purposefully destroys real or personal property of another, you as the parent or legal guardian of the child may be responsible for paying for up to \$15,000 of the damages, plus court costs. [AS 09.65.255.] You could have to pay for all the damages your child causes to another person, even if it was not intentional, if you negligently failed to supervise your child and that was the reason the damage was caused. If you have homeowner or apartment dwellers insurance, you may have some coverage for claims like these. If someone makes a claim or sues you, immediately notify your insurance company.

### **What duty does a parent have to provide medical care to their child and to educate their child?**

You must provide medical care for your children until they are 18 and failure to do so could be considered neglect causing the state to intervene. However, if you belong to a recognized church that treats sickness through prayer rather than by medicine, the court may consider this fact and may order the state not to intervene if you are not providing medical care. [AS 47.10.085.]

Every child between the ages of 7 and 16 must attend school. Parents have a right to have their child choose many alternatives to the public school system including private school, home school, and private tutoring. [AS 14.30.010.]

### **What can a parent do to discipline a child?**

Child development experts generally agree that positive reinforcement and parental role modeling are the best means of teaching a child positive behavior. Although physical discipline is not illegal in Alaska, it is disfavored. Alaska law provides that a parent, guardian, or other person entrusted with the care of a minor child may only use that force (or punishment) that is reasonably necessary and appropriate to promote the welfare of the child. The reasonableness of the punishment is measured by an objective standard – what a reasonable person would do under the circumstances.

If a child is subjected to unreasonable punishment or placed in danger, the parent or custodian may be charged with a crime and the state, through protective service workers and attorneys, could seek custody of the child. [AS 47.10.010 *et seq.*]

### **What is the duty of a parent to provide financial support to a child?**

Parents have an obligation to provide for the basic needs of their children including housing, clothing and food. If a parent does not live with the child, there will likely be a court order directing a parent to pay a particular amount of support for the child. Generally, in every child custody action decided in Alaska courts, child support must be included in the final orders. If the obligor parent does not pay this, they can be jailed or lose privileges like licensing. The State of Alaska Child Support Services Division is the agency in Alaska that handles child support for children. They are available at <https://childsupport.alaska.gov/> as well as by phone or email. *See Resource Directory at the end of this handbook and Chapter Fourteen for more information about child support.*

## **What are my housing rights if I have children?**

Parents of small children sometimes learn that children are not welcome in certain apartments. The Fair Housing Act makes it illegal for landlords to discriminate based on family status. [42 U.S.C. § 3601.] This law applies to most landlords. Family status includes households that have minor children or pregnant people. The Fair Housing Act prohibits discrimination in selling as well as renting. The Alaska Landlord Tenant Act provides further guidance regarding renting property and is available on the Alaska Court website.

## **WHEN THINGS GO WRONG: STATE INTERVENTION**

### **What is child abuse and neglect and how do I report it?**

Child abuse and neglect include abandonment and denying children necessary food, care, clothing, shelter, and medical attention. Physical, emotional and sexual abuse are also forms of child abuse, including exposing your children to these forms of abuse between family members or parents. [AS 47.17.290.]

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

Most people with jobs that require contact with children are required by law to report suspected child abuse. This includes mental health providers, substance abuse counselors, social workers, parole and police officers, crisis intervention workers, employees of domestic violence and sexual assault programs, teachers, child care providers, and school administrators. [AS 47.17.020.]

### **What happens if I cannot meet my responsibilities as a parent?**

If the state believes that you or someone living in your home is acting in a manner which puts your child at risk, the state may go to court and ask to take custody of your child. This is called a “child in need of aid” case. Typically you will have been contacted by a protective services worker with the OCS prior to this happening. If the state asks to take custody of your child, it may ask to remove the child from your home. Or in an emergency, it may have removed your child already, and may be asking the court to keep custody of your child. If the state takes emergency custody, it must file a petition with the court within 24 hours, explaining its legal and factual reasons for doing so and the court must hold a hearing on the child’s custody within 48 hours. [AS 47.10.142.]

If the state seeks to limit your parental rights, a court must hear the case and the state must prove its case that your child is in need of aid by putting on evidence and testimony to support its case. During the proceedings, you have the right to a court-appointed attorney if you cannot pay for an attorney yourself. Your child has a right to a court-appointed guardian known as a guardian ad litem. The guardian ad litem is appointed to advocate for and represent your child, not to represent your interests. [AS 47.10.050.] If your child is a member of or is eligible for membership in an Alaska Native or American Indian Tribe, the court may also allow the Tribe to participate in the court hearings. Generally, any hearings in your case will be closed to the public to protect the parties and the children involved.

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

If this happens to you, you can expect to have many meetings with a protective services specialist who works with the Office of Children’s Services (OCS). They will develop a case plan with you and you will be required to adhere to the plan. You will also need to attend court hearings with your attorney. Your child’s guardian ad litem will want to meet with you to learn more about what is going on and how to help.

A child in need of aid case gives the state temporary custody and control over your children. If the situation improves, the court can review the parents’ progress in addressing the state’s concerns and return the child to the parents. [AS 47.10.080(c).] However, if the situation does not improve, the state may ask to terminate your parental rights.

### **What is state termination of parental rights?**

In cases where there is continuous harm to a child, the state may try to terminate or end a parent’s rights in court. [AS 47.10.080(c)(3).] Termination of parental rights is usually final. The parents cannot, after termination, exercise any control over the child. The state cannot seek termination until it tries other ways to solve the problems. [AS 47.10.088.] If the state cannot reunify the family after 15 months, the state can pursue terminating parental rights. When non-Alaska Native or American Indian children are involved, the state must have made reasonable efforts to reunify the family. When Alaska Native or American Indian children are involved, the state must engage in active efforts to reunify the family.

### **Can a parent terminate the rights of the other parent?**

Yes, but only if a parent can prove that the child was conceived during an act of sexual assault and that terminating the rights of that assailant parent is in the child's best interests. The sexual assault does not have to be criminally charged but the petition must be able to prove the criminal elements of sexual assault to a court by a preponderance of the evidence (more likely than not). [AS 25.23.150; *Angelica C. v. Jonathan C.*, 459 P.3d 1148 (Alaska 2020).]

### **What is the Indian Child Welfare Act?**

The Indian Child Welfare Act (ICWA) is a federal law which addresses the state's role in removal cases involving Alaska Native and American Indian children. ICWA provides heightened protections for parents and caregivers when the state seeks to remove Alaska Native or American Indian children from their families. ICWA's purpose is to prevent the breakup of Alaska Native and American Indian families and promote the stability of those communities, and to place those Alaska Native and American Indian children who must be removed from their families with another family or extended family member in the child's tribe when possible.

ICWA does not apply in custody disputes between two legal parents. Your children do not have to be enrolled in a tribe to be covered by ICWA; they simply need to be eligible for membership. ICWA requires the state to make active efforts to reunite parents with their children (versus reasonable efforts for a non-ICWA case), has placement preferences for children and requires additional evidentiary proof for removal of Alaska Native and American Indian children. You should consult with an attorney who specializes in this field or your tribal corporation if you have questions about this area of the law. *See Chapter Ten for more information about ICWA.*

### **RUNAWAY CHILDREN**

When a report is made to any state law enforcement agency that a minor has run away from their parents or guardian, the police department must immediately file a missing person's report and transmit it to state and federal authorities. The police must make reasonable efforts to locate the child. Once the child is located, they may be taken into protective custody. Once in protective custody, the child will usually be returned home or placed at another location agreed to by the minor and their parent or guardian. [AS 47.10.141.]

A runaway child can also be placed at a state-licensed runaway facility or shelter and will be placed in such a facility if there is cause to believe the child has experienced physical or

sexual abuse in the parental home. The parents or legal guardian must be immediately notified when a child has been taken into protective custody. A court hearing will occur any time a runaway is placed in protective custody and not returned home.

If the child is habitually absent from home or refuses care, the state can file a petition with the court asking that the child be declared a “child in need of aid.” Both the parent and the child have the right to be present at the hearing and to be represented by a court-appointed attorney if they cannot afford an attorney. If the court finds the child is a child in need of aid, the court can order that the minor and/or their parents participate in treatment or that other actions be taken to protect the child. [AS 47.10.141.]

## Chapter Thirteen

# MARRIAGE AND DOMESTIC PARTNERSHIPS

*Marriage is a legal state. To enter it, you must observe certain formal legal requirements. Once married, you have rights and duties defined by law. Same-sex relationships have the same rights to marry as opposite-gendered couples and the same rights once married. Parties who have lived together in an intimate relationship and shared children and/or property may have rights under Alaska law as domestic partners. Rights of domestic partners are determined by different legal standards than those of married couples.*

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### **What are the age and other legal requirements for marriage in Alaska?**

Anyone 18 or older may generally get married. If a person is at least 16 years old, they may marry with the written consent of their parents or guardians. If they are more than 14 years old, they may marry by obtaining a court order – after notice to their legal guardians – stating that marriage is in their best interest. [AS 25.05.171.]

Marriage to more than one person is illegal. It is also illegal to marry a close relative. [AS 25.05.011 and 25.02.021.] Same-sex couples have the same rights to marry as opposite-gendered couples. *Hamby v. Parnell*, 56 F.Supp. 3 1056 (D.Alaska 2014); *Obergefell v. Hodges*, 576 U.S. 644 (2015). Under *Hamby* and *Obergefell*, Alaska’s constitutional and statutory provisions defining marriage as between a man and a woman [Alaska Constitution, Article I, section 25; AS 25.05.011, AS 25.05.013] were determined to be unconstitutional under the Fourteenth Amendment of the U.S. Constitution.

### **What are the marriage formalities required by Alaska law?**

To get married in Alaska, you must apply for a marriage license and have the marriage solemnized by a religious official, marriage commissioner, or judge. [AS 25.05.261 & AS 25.05.091.]

You can apply for a marriage license at most courthouses. It usually takes three days from the time you apply until you get the license. In some remote areas you may have to apply for the license through a notary public or the post office.

You may have any kind of ceremony you want as long as you “declare in the presence of each other and the person solemnizing the marriage and in the presence of at least two competent witnesses that you take each other to be spouse and spouse.” [AS 25.05.301.]

## **Does your name automatically change upon marriage in Alaska?**

When you get married, your name does not automatically change to your spouse's, but you may change your name to your spouse's name or to a hyphenated name by taking your marriage license to the Social Security Administration. Most other agencies (credit cards, banks, voter registration, the Department of Motor Vehicles) will accept the marriage license to change your name on their records.

Some people keep their prior names for business and professional reasons but use their spouse's name socially. This is fine, but your driver's license, social security, voter registration, credit accounts, and bank accounts should be in your legal name and your employer should be reporting your wages in your legal name.

## **What is a void marriage?**

In some states, the court will grant an annulment of a marriage that declares that the marriage was never valid. In Alaska, this process is called determining that the marriage is void. If the marriage is void, then it never legally happened. This is different from a divorce whereby the marriage legally occurred but the parties decide to dissolve it. A marriage may be void if either of the persons who are married were not able to give consent because of age or lack of understanding. The marriage may also be void if it was obtained by force or fraud; if the parties were closely related; if one of the parties acted fraudulently in entering into the marriage; if one of the parties was married to another at the time of the marriage; or if the marriage was not consummated. [AS 25.05.031.]

## **PRE-MARITAL CONTRACTS**

Some people draw up pre-marital contracts (also known as prenuptial agreements) regarding their property rights after marriage or in the event of divorce. These contracts are legal provided they are prepared properly. *Brooks v. Brooks*, 733 P.2d 1044 (Alaska 1987). To be valid, a contract should be fair, clear, involve property issues, include promises from both parties, and include a full disclosure of each person's property. It is usually advisable for each party to the pre-marital contract to be represented by their own attorney.

If you wish to cancel or revise the contract during your marriage, you should do so in writing. You will also need to check your Will, if you have one, to see if any changes need to be made to it to be consistent with the pre-marital contract.

Courts will usually not enforce a contract solely concerning personal duties. Courts will enforce financial agreements, including agreements to waive claims to the spouse's estate or to convey property.

Most pre-marital contracts concerning large amounts of property require legal help and knowledge of tax laws.

### **MARITAL PROPERTY**

#### **What are the property rights of marital partners?**

Alaska statutes regarding property rights of married people make each spouse liable only for their own property. [AS 25.15.010.] For example, if your spouse owns a boat in which you have no interest and the boat runs into a dock and destroys the dock, you will not have to pay for repairs to the dock just because the boat belongs to your spouse. On the other hand, if you have property of your own, you are required to maintain the property yourself. You can sell or transfer property to your spouse. [AS 25.15.030.] You are not liable for the pre-marital or separate debts of your spouse. For example, if your spouse is making payments on a college loan, you do not become obligated on these loans just because you are married. [AS 25.15.050.] Similarly, just because you are married, you do not become liable to pay your spouse's debts or bills if you have not agreed with the creditor to do so. However, if you and your spouse are both signors on a credit card, both of you are responsible for any debts either of you may incur. If you separate, you should terminate the joint account and get credit in your own name. Of course, both you and your spouse remain responsible for any debt from the account after it is closed.

If you maintain your own property, such as a checking account, your spouse has no automatic control over it. [AS 25.15.060.] You have every right to separate your property from your spouse's and prevent them from having access to it. For example, you could open a savings account in your name and your spouse would have no control over it unless you give them legal access to it.

#### **Can I sue my spouse?**

In Alaska, you can sue your spouse for negligent or intentional wrongs or torts that they have committed. If your spouse is injured by another, you can sue the wrongdoer for loss of your spouse's consortium or services. *Schreiner v. Fruit*, 519 P.2d 462 (Alaska 1974).

#### **What are types of jointly held property?**

Spouses who buy property together always own it as *tenants by the entirety*. Only married people may own property as tenants by the entirety. The unique feature about tenancy by the entirety is the right of survivorship. When one owner dies, all the property automatically goes to the surviving spouse.

*Tenancy in common* is ownership with no right of survivorship. Each owner has their own individual interest in the property that can be sold freely during life or passed by Will. Each tenant, or owner, is entitled to possession or use of the whole estate, but no co-tenant has the right to sole possession of any part. A tenant in common has a right to have a court separate the property.

## **NON-TRADITIONAL MARRIAGES AND DOMESTIC PARTNERSHIPS**

### **What are non-traditional marriages?**

Alaska law does not recognize common law marriage (unless the common law marriage occurred in a different state where such marriages are recognized and the parties then moved to Alaska). Common law marriage is essentially a marriage that is not formalized by law but which exists by the circumstance of living together over a period of years. However, in Alaska, cohabitation alone creates no property interests. An unmarried domestic partner may not have the same opportunity to a fair property settlement as a married person.

To protect your legal interests in property of any non-traditional union, you and your partner should put your agreements on these matters in writing. You should also carefully read any insurance policies covering health, life, and property to determine coverage.

### **What are the property rights of domestic partners?**

Parties who have lived together in “marriage-like” relationships are generally called “domestic partners.” Domestic partners can file a lawsuit called a “domestic partnership case” to determine their rights to property and debts from their relationship (if children are involved, the custody case would be filed in the same action). In this type of lawsuit, the court will determine when the domestic partnership started and ended, and what property/debts are part of the partnership. Property rights of domestic partners are determined by looking at the express or implied intent of the parties with regard to each piece of property at issue. To prove express intent, it is best to have written agreements regarding each partner’s interests in the property. If there is no written agreement, then the court will look at the implied intent of each party by analyzing, among other factors, whether the parties have:

- made joint financial arrangements such as joint savings or checking accounts, or jointly held titled property;
- filed joint tax returns;
- held themselves out as spouses;
- contributed to the payment of household expenses;
- raised children together;

- incurred joint debts;
- contributed to the improvement and maintenance of the disputed property; and
- participated in a joint business venture. *Bishop v. Clark*, 54 P.3d 804 (Alaska 2002); *Tomal v. Anderson*, 426 P.3d 915 (Alaska 2018).

All of these factors do not have to be present to show intent to share property pursuant to a domestic partnership.

## **OTHER CONSIDERATIONS FOR DOMESTIC PARTNERS**

Unmarried domestic partners should carefully consider their respective legal rights and liabilities arising from the relationship. If you want to own property together so that you and your partner will both have an interest in the property in case your partner dies or you separate, you should keep your property in *both* names, including joint checking accounts, ownership of real property as *tenants in common*, and a written agreement and last Will and testament that specifically sets forth your intentions and agreements. If you want to keep your property separate, you should also put that agreement in writing. You should be aware that you may be liable for the reasonable value of contributions (including money, labor or other services) to you or your property in the event of death or separation. If your partner dies or you separate and you and your partner have not put your agreement regarding property in writing, you should be aware that the law regarding your property interest in your partner's property and your partner's interest in your property is unsettled. If possible, obtain advice from an attorney to ensure a fair distribution. Do not assume that because the property was in the legal name of one person that the other person has no interest.

Be especially careful about insurance. In most cases, life and health insurance does not cover unmarried domestic partners although some insurance plans are broad enough to cover your partner. If you are purchasing an insurance policy, you can ask your insurance company to arrange for coverage of your partner.

## Chapter Fourteen

# DIVORCE, DISSOLUTION, CHILD CUSTODY, & CHILD SUPPORT

*For many people, the most difficult legal issue they ever face is getting a divorce or filing for child custody. A spouse or partner may threaten to take the children or not share assets. Divorce can cause a severe decline in the standard of living for one spouse, especially if you do not understand what you are legally entitled to. This section sets forth your rights under the present law and offers suggestions on how your rights can be protected in a divorce, child custody, or dissolution proceeding in Alaska.*

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## FINDING LEGAL HELP

### **Is it necessary to hire an attorney for divorce, dissolution, or child custody proceedings?**

If there are no children or property, a married couple may be able to handle their own divorce without attorneys. This is called appearing pro se (“for oneself”). Although this alternative is much less costly than hiring an attorney, it can be confusing and time consuming. Anyone who has children, property, or other complex issues should seek the advice of an attorney. *See Chapter Two for more information about Legal Representation.*

If you cannot afford an attorney, you may qualify for no-cost assistance through the Alaska Legal Services Corporation, the Alaska Native Justice Center, or the Alaska Network on Domestic Violence and Sexual Assault’s Legal Program (the latter two resources are for cases involving domestic violence or sexual assault). If you cannot find an attorney, then you should contact the Alaska Court System’s Family Law Self-Help Center. The Family Law Self-Help Center provides educational information and sample pleadings to people who are representing themselves in family law proceedings.

### **If your spouse has an attorney, do you need your own attorney for divorce/child custody proceedings even if the process is amicable?**

Yes. No matter how amicable the relationship with your spouse, you have interests separate from theirs in a divorce and should be represented separately. This is vital. Even if you eventually decide not to retain an attorney to represent you, you should consult with an attorney at least once to get impartial advice on your situation.

### **What should I expect when I meet with an attorney?**

Usually, you will have a first interview with an attorney before they will take your case. There is sometimes no fee for this interview, but you should confirm the rate when you make an appointment.

The attorney will ask for facts about the case. If you have been a victim of domestic or sexual violence, the attorney will ask about dates of past abuse and documentation. Police and medical reports are helpful. If you have witnesses to any abuse, be prepared to give their names. You will also need information about property, debts, and family income. All information provided to your attorney is confidential. Your attorney is not allowed to share this information without your permission, except in very special circumstances, such as if you sue your attorney. Generally, you cannot be required to tell someone else what you have discussed with your attorney.

## **DEFINING DIVORCE, DISSOLUTION, AND CHILD CUSTODY**

### **What is divorce versus dissolution?**

Alaska has two proceedings for ending a marriage – divorce and dissolution. The divorce procedure is for cases in which the parties cannot agree on all issues. Since divorce generally requires that strict procedural rules be followed (although there is a procedure to relax these rules, (see informal divorce below), it is best to be represented by an attorney. [AS 25.24.050.]

In a divorce, one party files a “complaint” for divorce in court and the other party has 20 days to answer. If the other side fails to answer, then the person who filed the complaint may obtain a default divorce, meaning that the terms of the final divorce will be what they asked for in the complaint. This type of uncontested divorce greatly simplifies and expedites the divorce process and generally only takes two to three months. Alaska Legal Services Corporation and the Alaska Court System Family Law Self-Help Center offer clinics to help people who might be able to get a default divorce. Contact your nearest office to find out if they offer this service. *See the Resource Directory at the end of this handbook for contact information and Chapter Two for more information on the Family Law Self-Help Center.*

If the other side does answer, then the parties will litigate the case toward a trial. This process generally takes six months to one year. However, even if the other side answers, it is possible that the parties will settle the case or reach an agreement on all the issues before trial.

### **What is a dissolution?**

A dissolution proceeding requires that both parties agree on all issues in the termination of the marriage. A dissolution is easier for a person not represented by an attorney to do on their own, although an attorney is recommended if there are significant property or child custody issues. In a dissolution, the court must review the agreement to see that it is fair. The court will apply heightened scrutiny to the agreement if:

- one person is represented by an attorney and the other is not;
- a domestic violence criminal complaint has been filed;
- there is a minor child;
- there is evidence that one party committed a crime involving domestic violence during the marriage;
- a domestic violence protective order has been filed in this or another state; or
- the property division seems inequitable on its face.

Once the forms are completed and signed by both parties, a hearing will be set (usually within 60 days). Either party can change their mind and stop the proceedings before the final hearing. If the dissolution does not require heightened scrutiny, one party may sign a waiver of appearance and not attend the hearing. In a dissolution requiring heightened scrutiny, both parties must be present at the hearing unless the court finds the presence would constitute a significant hardship and that a just agreement has been reached. One party may file separately if the whereabouts of the other spouse is unknown and there are no issues of child custody or support.

You can obtain instruction packets and all necessary forms for dissolution at your local courthouse. Many people seek advice from an attorney and then use the dissolution process. The Family Law Self-Help Center can also help with information on representing yourself through this process.

### **What is a child custody action?**

If the birth parent was not married to the other biological parent of their children, they can file a child custody action to determine custody, visitation, and child support. [AS 25.20.060.] They can also file a motion to determine property division of joint assets and payment of joint debts. *See Chapter Thirteen for more information on Domestic Partnership.*

## **OTHER OPTIONS TO RESOLVE THE CASE WITHOUT TRIAL**

### **I have heard about mediation. Is that a way to resolve my divorce, domestic partnership, or child custody action without a trial?**

Mediation is a voluntary process in which a neutral third party, a mediator, helps the parties reach a mutually acceptable agreement about their respective rights and responsibilities after divorce. It is less formal than court proceedings, and even if the people are represented by attorneys, the attorneys usually do not actively participate in the mediation process itself. The goal of mediation is to reach an agreement which will then need to be approved by the court and entered as a final court order. The mediator does not have authority to impose a decision on the parties.

Mediation can be used to settle any or all aspects of a divorce, domestic partnership or child custody action. Either party can petition the court to order mediation or the parties can engage in mediation without a court order. [ARCP 100; AS 25.20.080.] However, the court cannot order a victim of domestic violence to engage in mediation unless the victim wants to use mediation and mediation is provided by a mediator who is trained in domestic violence in a manner that protects the safety of the victim and any household member, taking into account the results of an assessment of the potential danger posed by the perpetrator and the risk of harm to the victim. The court cannot order or refer a victim of domestic violence to mediation if a protective order is in effect. [AS 25.20.080; AS 25.24.140.] Individuals are always permitted to have a person of their choice, including an attorney, in attendance. Mediation is held in private and is confidential. The mediator may not testify about the mediation proceedings. [ARCP 100(g).] The cost of mediation may be paid by one party, by both parties, or by the state if the parties are indigent. If mediation or negotiation fails, the matter will proceed through court.

### **What are the advantages and disadvantages of mediation?**

Mediation is generally less costly and less time consuming than the litigation process. It also allows you to craft your own resolution to the contested issues in your case rather than have a judge, who doesn't know you, do this. The Alaska Court System provides parties in custody actions who have combined incomes under \$100,000 with six hours of free mediation through a court-appointed mediator. Parties interested in this option should make a request in their case to be referred to this program.

The chief disadvantage of mediation is that it only works between parties of equal bargaining power who have made full disclosure of all the facts relevant to the issues in their case such as assets and debts. For this reason, victims of severe domestic violence including physical, sexual, or emotional abuse should be cautious about mediation. The mediation process relies

on good faith bargaining between parties who possess equal bargaining power, which does not exist in an abusive situation. It also could be dangerous for physical safety. Parties should feel comfortable being in the same room negotiating with the opposing party, although shuttle mediation (virtually or in person), whereby the parties are placed in separate rooms, is often an option.

If parties decide to try mediation, it is highly recommended that they hire an attorney to review any agreements that they reach, to ensure that their rights are protected. This can often be done cost-effectively, by just hiring that attorney to review your agreement, rather than to fully represent you in your case.

**Besides mediation, are there other options to resolve a contested divorce or custody action instead of having a formal trial?**

Yes. Once a case is filed, parties can ask the court for a judicial settlement conference. Settlement conferences are done with the assistance of judges (either your judge or another judge). A settlement conference is like mediation in that both parties are agreeing to attempt to negotiate a resolution to all or some of the issues in the case. However the judge in a settlement conference may be more forceful in attempting to convince the parties to agree than the mediator. Parties are generally asked to file a short settlement brief with their position on each issue in dispute prior to the settlement conference.

Another option to quickly resolving your case is the Early Dispute Resolution Program (ERP). Certain locations – including Anchorage, Juneau and Palmer – have this Program. In ERP, the court system pre-screens cases where there are no attorneys involved and where the issues seem basic. These cases are calendared for a short, expedited hearing before the court. Prior to this hearing, parties are given access to either volunteer attorneys or mediators to help them resolve the issues that are contested. If they resolve the issues, they then state their agreement during their expedited hearing before the judge, thereby resolving the case much quicker than a normal trial schedule.

Finally, parties can request an informal trial. [ARCP 16.2.] In an informal trial, one party still files a complaint and initiates the divorce, but at their first court hearing, they opt to follow “informal” rules [ARCP 16.2.] Both sides must agree to this process for the court to order it. An informal divorce is easier to do without an attorney because strict rules of evidence are not followed.

In an informal trial, you and the other person speak directly to the judge. The judge will ask questions to make sure you cover everything the judge needs to know to decide your case. When you are done speaking, the judge will ask the other person or that person’s lawyer if

there are other questions that they think the judge should ask. If it seems helpful, the judge will ask the questions suggested. The other person or lawyer does not question you directly or get to interrupt you. Most of the time, you and the other person will be the only witnesses. You can have an expert witness testify, such as a doctor, counselor, custody evaluator, or appraiser. Other witnesses are allowed only if the judge agrees they are needed. Fewer witnesses are needed in an informal trial because the Rules of Evidence do not strictly apply. You can explain the issues in the case to the judge without worrying if the information is admissible and provide any relevant documents or other evidence you want the judge to review. The judge will decide the importance of what each person says and the evidence provided.

Informal trials can proceed with or without attorneys, but attorneys have more limited roles in the informal trial. If you have an attorney, the attorney will help you prepare and will sit next to you during the trial to offer advice. Your lawyer can also: identify the issues in the case, respond when the judge asks whether there are other issues that the judge should inquire about, question expert witnesses, and make short arguments about the law at the end of the case.

The informal trial is a voluntary process. An informal trial will be used only if both people involved in the case and the judge agree to it. Before starting the trial, the judge will explain the process and how it works. This process may be easier if both parties are pro se (do not have attorneys) since litigants will be able to get a wider range of evidence before the court without formal rules of evidence. This process is generally recommended for domestic relations cases that are less complex, and do not involve serious issues of domestic violence or complicated property and debt issues.

## **BASIC REQUIREMENTS FOR DIVORCE, CHILD CUSTODY AND SUPPORT**

### **What are the grounds for divorce in Alaska?**

In Alaska, we have “no fault” divorce meaning that the parties do not have to prove why they want to terminate the marriage. One person’s assertion that they want out of the marriage because of “incompatibility of temperament” is sufficient, even without the other party’s agreement. In Alaska, you can also obtain a divorce on traditional fault grounds, but it is not necessary. [AS 25.24.050.]

### **Do you have to be an Alaska resident to file for divorce or dissolution?**

To file for divorce, one spouse must be living in Alaska with the intent to remain here when the complaint is filed. However, for the court to have authority over other issues in the case such as property and custody, there are other requirements called “jurisdiction” that the court

must have over those issues. For example, for an Alaska court to decide property issues, the parties must have lived in Alaska for at least six months within the six years before filing the divorce. [AS 09.05.015.] For an Alaska court to decide child custody, it must determine that it has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which generally requires that the children were in Alaska for six months before the complaint is filed. *See more specifics later in this chapter.* For the court to have jurisdiction to set child support against another person one of the following conditions must be met:

- the other parent can be served in the state;
- the other parent resided with the child in this state;
- the other parent resided in the state and supported the child at one time;
- the child resides in this state because of acts or directives of the other parent;
- the other parent engaged in sexual intercourse in this state through which the child may have been conceived; or
- the other parent acknowledges parentage in a writing deposited with the Bureau of Vital Statistics in Alaska.

Even if the court does not have authority to decide support, a parent should ask for it since the court can always defer the issue to the Child Support Services Division (CSSD), which can bring an interstate action. *See CSSD later in this chapter.*

## **STAYING SAFE AND RESOLVING ISSUES DURING YOUR DIVORCE OR CHILD CUSTODY ACTION**

### **What kinds of protections are available while the divorce and/or child custody action is pending?**

When a divorce or child custody action is filed with the court, a standing order issued by the presiding judge automatically takes effect even without either party asking for it. Standing orders vary depending on the court location, but they all include three important protections. They prohibit either party from:

- disposing of assets except for reasonable and necessary expenses;
- threatening or harassing the other party; and
- removing any minor child involved from the State of Alaska, without the written permission of the other parent or a court order.

### **What other protections are available?**

Once a divorce or child custody action is initiated, the parties may ask the court for other orders to be put in place. These are called temporary or interim orders because they will only be in effect until the final trial. Either party may request that the court order these things through a motion or a written request to the court. While the divorce or child custody case is pending, the court may order:

- that one party pay an amount of money to allow the other to pay for an attorney or other costs to carry on the divorce;
- that one party pay reasonable spousal support, including household expenses (in a divorce);
- that one party pay child support;
- that one party have access to the family residence;
- that one party is entitled to protective orders;
- interim custody and visitation order that will continue until there is a settlement or trial in the case;
- in certain circumstances, if both parties agree and after a hearing, that the parties engage in mediation or settlement negotiations.

### **Why would I want to obtain protections during a divorce or custody action?**

If your relationship involved domestic or sexual violence, you might be at increased risks for this violence when you attempt to leave it. When there has been a history of domestic violence, sexual assault or stalking in the relationship, there may be a high risk of separation violence when a victim attempts to leave an abusive partner. One reason for this is because the abusive partner is losing control. One party's actions to obtain custody, financial support, or the parties' home can greatly trigger a controlling and abusive partner. For these reasons it is critically important to safety plan with your advocate or attorney throughout your divorce, domestic partnership or custody case. *See Personalized Safety Plan and Resource Directory at the end of this handbook.*

### **PROPERTY DIVISION**

Alaska is an "equitable division" state. Alaska law requires that courts go through a four-step process in dividing marital property. First, the court must determine what is marital property. Generally, everything acquired during the marriage, except for inheritances and gifts, is marital property subject to division. Property acquired prior to the marriage usually is not marital property. However, it may be considered marital property if one party can prove that it was the intent of the owner to make it marital property for the purpose of dividing it in the event of divorce and there are acts to prove it (such as jointly titling the property).

The value of private retirement pension benefits, military retirement pay, health insurance benefits, and civil service benefits are available for distribution in a divorce. Even if they are not yet vested, the court can keep control of the case to divide them when and if they vest. If you or your spouse have rights in a pension or retirement plan, vested or not, try to learn the value of that benefit and check with an attorney or accountant about how this should be considered in making a division of the property. This is often an overlooked asset in a divorce and can have significant value.

The order which the court must sign to award one spouse a share of the other's retirement is called a Qualified Domestic Relations Order (QDRO). There are many technical requirements for these documents so you may want to contact the retirement plan's administrator to obtain the correct form.

Other employment benefits such as unused leave or vacation pay, supplemental benefits, and stock option plans are also subject to division. In addition, courts will consider fishing permits, stock in a Native Corporation, the cash value of insurance, stock in a closely held corporation, or an interest in a professional or other business.

In the second step, the court will value the marital property, generally as close to the time of trial as possible. The third step requires the court to divide the property with the assumption that a 50/50 division is equitable. However, the court will consider the following factors in deciding whether a 50/50 split is equitable:

- age of parties;
- their earning abilities;
- duration of marriage;
- conduct of the parties during the marriage (including if one party unreasonably depleted marital assets);
- circumstances and needs of each party;
- desirability of awarding the family home to the party who has custody of the children;
- health and physical condition of each party; and
- financial circumstances (including the time and manner of acquisition of property, its value and its income-producing potential). [AS 25.24.160(a)(4).]

Finally, in the fourth step, the court will, if necessary, invade the premarital property of either spouse if an equitable division is not possible based on the parties' marital property.

In general, the court does not look at one party's fault in leading to the end of the marriage, except as to how it might affect the parties' financial condition.

## **What are the tax consequences for property division?**

If each spouse just receives their own separate property or if the jointly-owned property is divided equally, there are no tax consequences. That means you do not pay income tax even if the property you receive has increased in value unless you sell it.

If there is an unequal division of joint property or one spouse transfers separate property to another, there may be a tax gain or loss. Contact an accountant, attorney, or the IRS about the tax consequences if you are considering this type of division. IRS publication 504 has helpful tax information for separated or divorced individuals and can be found online at <http://www.irs.gov/publications/p504/index.html>.

## **DEBTS**

Debts are considered “marital property” and are divided in the same four-step process as marital assets. However, unlike assets, who owns the debt is important. While the divorce court can divide the debt or give it to one party to pay as part of the divorce decree, it is the named person on the debt who remains liable to the creditor. Therefore, it is important when you separate to stop incurring mutual debt. Additionally, you will want to take responsibility for those debts in your name, assuming this can be accomplished within an equitable division of property.

## **MODIFYING DIVORCE DECREES**

Other than for issues involving children – custody, visitation, and support – the court’s ability to modify issues in the divorce once the decree is final is limited. There are a few narrow grounds including fraud and newly discovered evidence that would allow the court to reconsider issues within one year. After one year has elapsed, it is extremely difficult to re-litigate any property or debt issues.

## **CHANGE OF NAME**

The court may order either party’s name changed in a divorce or dissolution, but if it is to a name other than a prior name, the ordinary requirements for name change must be followed. [AS 25.24.165.] *See Chapter Seventeen for more information about change of names.*

## **SPOUSAL SUPPORT**

### **Can I receive spousal support from my ex-spouse?**

In the area of spousal support, or financial support for one spouse from the other (often called

“alimony”), Alaska law provides that either spouse may be ordered to provide support for the other. However, there is strong preference to provide support through division of property. [AS 25.24.160.] The courts seldom provides long-term spousal support for a spouse unless there is evidence of health problems, the spouse is past middle age, is unemployable, or the marriage was long-term and there are not enough assets to provide for long-term financial stability of one spouse and the other spouse has a significantly better financial situation.

There are two types of short-term spousal support in Alaska – reorientation and rehabilitative. Reorientation spousal support is support for a short period of time that allows one spouse to adjust financially to the effects of the divorce. This might be awarded in a case with an immigrant spouse who does not yet have work authorization. Rehabilitative support is support to allow one spouse to do certain things to improve their financial situation, such as education or job training. This type of support is usually awarded in long-term marriages where one spouse has left their career or training to raise children or followed their spouse in their career. The court requires that any amount that is awarded as rehabilitative support be closely linked to the costs of the education or job training sought.

Any award of spousal support is to be based on the division of the marital assets, the length of the marriage and station in life, the age and health of the parties, their earning capacity and financial condition (including cost and availability of health insurance), and the parties’ conduct during the marriage, including any unreasonable depletion of marital assets. [AS 25.23.160.]

### **What are the tax consequences of spousal support?**

As of January 1, 2019, the person paying spousal support may not deduct it on their federal taxes and the person receiving it does not need to declare it as income.

## **ATTORNEY FEES**

### **Who pays for attorney fees in a divorce?**

The earning powers of the parties are considered in deciding whether to make one party pay the other’s attorney fees. Attorney fees can be made payable in advance or at the end of the proceedings. Parties who are having trouble paying for legal representation may want to petition the court for attorney fees in advance. Alaska Legal Services Corporation has packets that can assist pro se individuals with filing for attorney fees at the beginning of a case.

## **CHILD CUSTODY**

### **What are the differences between legal and physical custody?**

There are two types of custody – legal and physical. Legal custody determines who can make decisions for the child, such as the type of medical care they receive and where they go to school. Physical custody determines who has the child living with them. Legal custody may be sole or joint. Physical custody may be primary (one parent) or shared (if both parents have the child for more than 30 percent of the time).

Joint legal or physical custody requires that parents work together. Therefore, they need to be able to communicate well with each other. It is usually easier if the parents live close to one another. If one parent having joint custody decides to move from the community of the other, the court will have to decide where the child will live, unless both parents agree.

There is a preference in the law for parties to share legal custody. There is not a similar preference for shared physical custody.

### **What does a court look at in deciding physical custody?**

Alaska courts determine which parent should have physical custody in accordance with the best interest factors, which are a set of nine factors set out in Alaska statute. In a custody case, the court will evaluate each parent, based on the evidence presented, against the relevant factors to determine what physical custody arrangement is in the best interest of the child. Those factors are:

- the physical, emotional, mental, religious, and social needs of the child;
- the capability and desire of each parent to meet these needs;
- the child’s preference, if the child is of sufficient age and capacity to form a preference;
- the love and affection existing between the child and each parent;
- the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, except that the court may not consider this willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in domestic violence against the parent or a child, and that a continuing relationship with the other parent will endanger the health or safety of either the parent or the child;
- any evidence of domestic violence, child abuse or child neglect in the proposed custodial

- household or a history of domestic violence between the parents;
- evidence of substance abuse by either parent or any other member of the household that may affect the physical or emotional well-being of the child; and
  - other factors that the court finds important. [AS 25.24.150(c).]

In any given case, the court will focus on those factors that are most relevant to the issues in that case. One factor that the court might look at that is not set out in statute is the desirability of keeping children together so they can grow up as siblings, rather than separating them, unless their welfare clearly requires such a course.

A parent's personal life and history will be closely scrutinized in a custody case and this can feel very uncomfortable. However, it is important to note that a parent's conduct, including sexual preference, cannot be considered in determining custody unless it can be shown that it has or reasonably will have an adverse impact on the child. For example, the fact that you have committed adultery or are or have been on state benefits is not a factor to be considered by the court unless it can be shown that it either affects the well-being of the child or is evidence of a lack of stability on your part.

It is generally advisable for parents to be concerned about the factors that may be brought up regarding stability and predictability of the child's environment and to minimize these for your child's benefit, especially while going through a custody matter. These could include:

- use of alcohol and/or drugs if that has been a problem in your life;
- excessive changes in living situations, overuse of other caretakers, particularly for extended periods of time;
- negative comments to children about absent spouses; and
- denial of visitation.

### **How does domestic violence affect custody issues?**

Even though there is a best interest factor addressing domestic violence, another part of Alaska law addresses how custody should be handled when one parent has a history of domestic violence. A history of perpetrating domestic violence includes one incident of violence that causes serious physical injury or more than one incident of domestic violence. If one parent can prove that the other parent has this history – either through their testimony, prior criminal convictions or protective orders – then the offending parent should not be awarded sole or joint legal or primary or shared physical custody until they satisfy certain requirements. These requirements include successfully completing a batterer's intervention program or other rehabilitative program ordered by the court, not engaging in substance abuse, and proving to the court that the best interests of the child requires their participation

as a parent. If the offending parent cannot show that they have satisfied these requirements, they generally are permitted only supervised visitation. [AS 25.24.150(g)-(h).]

If the court finds that both parents have a history of perpetrating domestic violence, the court is supposed to either award sole legal and primary physical custody to the parent who is less likely to perpetrate violence and order that person into a batterer's intervention program or award custody to a third party if necessary to protect the child. [AS 25.24.150(i).]

If the court finds that a parent or child is a victim of domestic violence, the court may order that the address and telephone number of the parent or child be kept confidential in the proceedings. [AS 25.20.060.]

## **RELOCATION ISSUES AND CUSTODY**

Parents may have to move with their child because of safety issues or because they need the support of family or a community with more economic opportunities. Parents may be allowed to move if they can show that the move is in the child's best interests and there is a legitimate reason for the move. Parents who move without a court order or who deny the other legal parent access to the child may be charged with custodial interference. It is highly recommended to speak with an attorney if you are considering moving out of state with your child or even out of their home community. If you have a custody order that is in place and your move will disrupt that order, you will have to modify that plan before you move unless the custody order already anticipated one parent's relocation.

## **CHILD CUSTODY INVESTIGATORS AND GUARDIAN AD LITEMS**

If custody is at issue in your case, then the court may refer the parties to a child custody investigator (CCI) or a guardian ad litem (GAL) to investigate the case. The parties can also request that the court appoint a CCI or GAL. CCIs are experts that are appointed by the court to give an expert opinion as to what custodial placement is in the children's best interests. A GAL is a person, attorney or non-attorney, who is appointed by the court to represent the child's best interests.

Both the CCI and the GAL are required to have similar qualifications including an understanding of child development, the impact of divorce on children, issues related to child custody, the impact of domestic violence and substance abuse on children, Alaska rules and statutes relating to custody, and the ability to communicate effectively with children. Depending on a parent's income, the cost for these professionals will be paid by one parent, both parents, or the state. [ARCP 90.6. and 90.7.]

Alaska has greatly reduced its use of CCIs over the last several years due to budgetary concerns. CCIs are no longer used by the court for a broad child custody investigation (except in limited circumstances) but may be used for more finite tasks like interviewing a child or doing a limited scope investigation. They are also used to mediate cases.

If an important issue in your case is understanding your child’s perspective because they have witnessed violence, been direct victims of violence, or have other serious concerns that it is important for a court to hear, a CCI or GAL may be an good option to get that information since it is very disfavored to bring a child into the courtroom to testify.

## **CUSTODY MODIFICATION**

Final custody orders are always modifiable if one parent can prove that there has been a significant change in circumstances that affects parenting. The change must be a circumstance that did not exist at the time of the original custody order. If a parent can show the requisite change, the court is required to hold a hearing to determine what custodial placement, given that change, is in the child’s best interests. A significant change of circumstance generally involves larger issues that could affect the child such as one parent struggling with meeting a child’s educational needs, a parent’s struggle with substance use, or a new arrest/conviction for a criminal offense. It also could be a positive change for one parent such as a parent who did not have stable housing now does. A finding that a crime involving domestic violence has occurred since the last custody or visitation determination is always considered a significant change of circumstances. [AS 25.20.110(c).]

In deciding a custody modification, the court is supposed consider the history of child support payments. In post-divorce motions to modify custody or visitation, the court may award attorney fees based on the parties’ ability to pay and the good faith of their action in litigation.

## **VISITATION**

If one party has primary physical custody of a child, then the other party has what is called “visitation rights.” A typical visitation schedule would be for the non-custodial parent to have the child every other weekend from Friday night until Sunday night, one weeknight evening, alternate holidays (i.e., Thanksgiving in even years and Christmas in odd years, Spring Break in even years, etc.), and half of summer vacation. Parents should take into consideration the age and emotional health of their child in deciding on a visitation schedule. The CCI’s office has guidelines for visitation which may be helpful in setting a schedule. Any costs for visitation are generally split by the parents with each parent paying the cost of transporting the child to that parent.

Grandparents may also petition the court for an award of visitation rights. [AS 25.20.065.] However, the court shall consider whether there is a history of domestic violence attributable to the grandparent's child when fashioning any order regarding visitation.

## **SANCTIONS FOR INTERFERENCE WITH CUSTODY OR DENIAL OF VISITATION**

Interference with the custodial rights of another, even if the children are their natural children, may constitute a crime. Custodial interference in the first degree involves taking a child from the lawful parent/ guardian and leaving the state. Custodial interference in the second degree is taking a child from the custody of another for a long period of time. [AS 11.41.320-330]. There does not have to be a court order granting custody to one or another parent in place to commit custodial interference. Both legal parents have a right to custody of their child.

If a divorce or child custody complaint has been filed, there may be an automatic court order prohibiting either party from taking the child out of the judicial district or out of state and a parent must get permission from the judge or the other parent to do so.

If no court orders have been entered regarding the child, a parent can take the child with them when leaving a relationship, as long as they do not intent to *permanently* deny the other custodial parent access to the child. This means that it is not a crime for a parent to take their child (natural or adopted) with them to a shelter or to a friend's home when immediate safety is at issue. The court will look at many factors to determine a parent's intent to keep a child away from another custodial parent. It is highly advisable to get the advice of an attorney if you are considering taking your child away from another custodial parent for a longer period of time to ensure that you are not committing a crime.

If a custodial parent does not permit court-ordered visitation, they could be fined unless they had a good excuse. A good excuse includes illness of a child which could affect health and safety but does not include the child's reluctance to visit or the custodial parent's convenience.

### **What can a parent do if there are constant problems with custody or visitation transfers?**

In cases where there has been a final custody order but there continues to be problems with the visits requiring repeated court intervention, the court can appoint a parenting coordinator to help facilitate visitation issues. If the parents combined income is less than \$100,000, the parenting coordinator will be a court-appointed person at no cost to the parties.

## **SPECIAL CONSIDERATIONS WHEN THERE ARE SAFETY CONCERNS WITH VISITATION**

Parents can craft, and courts can order, various restrictions on visitation if the health and safety of the child are at risk during a parent’s visitation. These restrictions could include, but are not limited to, the following:

- the transfer of the child for visitation must occur in a protected or public setting;
- visitation supervised by another person or agency and under specified conditions as ordered by the court;
- requiring a parent to attend and complete, to the satisfaction of the court, a program for the rehabilitation of perpetrators of domestic violence;
- requiring a parent to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours before visitation;
- requiring a parent to pay costs of supervised visitation as set by the court;
- the prohibition of overnight visitation;
- requiring a parent to post a bond to the court for the return and safety of the child.

## **CONFIDENTIALITY PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE**

If the court finds that a parent or child is a victim of domestic violence, the court may order that the address and telephone number of the parent or child be kept confidential in the divorce or child custody proceedings. [AS 25.20.060.]

## **UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)**

An Alaska court’s authority to hear a child custody case is determined by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). If the case involves an inter-jurisdictional dispute, then the federal Parental Kidnapping Prevention Act (PKPA) and the other state’s custody jurisdiction law will be relevant to determining if Alaska has jurisdiction.

In general, Alaska has jurisdiction if Alaska is the child’s home state or former home state. “Home state” is defined as the place where the child has resided for six months preceding the date the action was filed. The UCCJEA also has an emergency temporary custody provision that allows Alaska to enter an emergency custody order if necessary to protect the child because the child or a parent or sibling of the child is threatened with mistreatment or abuse (the procedure for requesting emergency custody is generally through a domestic violence protective order proceeding). Once a custody case is heard in this state, Alaska maintains

exclusive continuing jurisdiction to modify its custody decree unless the child and a parent no longer have significant connections with Alaska or if all the parties (the child and both parents) leave the state.

The UCCJEA also permits a court to determine that it is an inconvenient forum and that a court of another state is a more appropriate forum to make a custody decision. In making this determination, the court will look at a number of factors that include the convenience and safety of the parties and child and where the best evidence is regarding custody of the child. In the beginning of a custody case, parties must fill out a form called a DR-150 that outlines the information necessary for a court to ensure that Alaska has jurisdiction under the UCCJEA. If there are safety issues with disclosing that information, a party can ask that the information be sealed and prohibit disclosure to the other party if the court finds that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information.

If your case involves an inter-jurisdictional dispute, it is highly recommended that you seek the assistance of an attorney since these cases tend to be complex and require coordination of cases in two different states/tribes.

## **CHILD SUPPORT**

### **Who has a legal duty to support a child?**

In Alaska, legal parents, even if they do not have custody of their child, have a duty to support them. In a custody case, whether you pay child support will be based on whether you have primary or shared custody of your child. The court is legally required to set a child support amount in a case even if parents are not interested in one.

### **How is child support calculated?**

In Alaska child support is calculated according to court guidelines contained in Alaska Rules of Civil Procedure 90.3. If one parent has sole or primary physical custody of the child, the other parent pays a percentage of their adjusted annual income as child support. If the parents share physical custody, then the child support calculation is based on the parent's respective incomes and the percentage of time that they have with the child. A parent is considered to have shared physical custody if the child is with that parent for at least 30 percent of the year (based on overnights, equaling greater than 110 overnights), regardless of who has legal custody. If the parents have shared physical custody, then each parent calculates under the guidelines what they would pay to the other if the other parent had primary custody, and then they multiply that amount by the percentage of time the parent will have physical custody of the child. The parent with the larger figure then pays the other parent the difference between

the two multiplied by 1.5. The Alaska Court System has a form that you can use to do this calculation, the DR-305, available on the Family Law Self -Help Center website.

### **What is included as income for child support purposes?**

Adjusted annual income is a parent's total income from all sources minus any mandatory deductions, such as federal income tax, social security tax, mandatory retirement deductions and union dues, other court-ordered child support, and work-related childcare expenses for the child. The parent without custody pays a percentage of their adjusted income per month for child support. This equals 20 percent of adjusted income for one child, 27 percent for two children, 33 percent for three children, and an extra three percent for each additional child.

If the parent has an adjusted annual income of over \$126,000, the court cannot award more than the parent would pay based on a \$126,000 adjusted annual income unless it is just and proper, considering the needs of the child and their standard of living. Alaska Civil Rule 90.3 specifies that the minimum child support which should be paid is \$50 per month (except in cases of shared, divided, or hybrid cases).

### **Is there any way to vary to the support amount calculated in Civil Rule 90.3?**

There are some narrow exceptions to setting child support according to Civil Rule 90.3 guidelines including a large family, significant income of a child, divided custody, and/or extraordinary high or low expenses. However, the parents cannot just agree to reduce the child support amount below the guidelines unless the court finds that unusual circumstances justify varying the child support obligation.

The court can allow the non-custodial parent to reduce child support payments for any period the parent has an extended visitation (defined as over 27 consecutive days), but the order needs to specify the amount of the reduction which cannot be greater than 75 percent of the total monthly award.

### **How about health insurance?**

Alaska Civil Rule 90.3 also requires parents to provide health insurance for their child if it is available to either parent at a reasonable cost (assuming that the child is not covered by publicly provided health insurance or Indian Health Services). It is presumed that the parents should share the cost for providing the insurance and any additional medical costs unless the court finds good cause to vary from an equal split. If one parent is paying for health insurance, that parent will get a credit for it on their monthly child support if they are the obligor (the person who pays child support) or it will be added to their child support if they are the obligee (the parent owed support).

The Alaska Court System has an abundance of helpful information about child support on their Family Law Self-Help Center Website. You can also calculate support on the Child Support Services Division's child support calculator at <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

### **Is there a duty to support a child past age 18?**

As a general rule, parents do not have a legal obligation to provide support for their child past the age of 18, including paying for post-secondary education. However, there are important exceptions to this rule: (1) for an unmarried 18-year-old child who is actively pursuing a high school diploma or an equivalent level of technical or vocational training and living as a dependent with a parent or designee of the parent and (2) when an adult child is incapable of self-support due to physical or mental disability.

### **Are there criminal sanctions for non-support?**

It is a crime for any person not to support their child if they have the financial ability to pay support through available funds or could obtain funds through reasonable efforts. [AS 11.51.120.]

### **What are the tax consequences of child support?**

Child support is not deductible on federal income tax by the person paying it or taxable to the person receiving it. If you are unmarried and a child lives with you, you may be eligible for special tax treatment as head of household. If you have the child with you more than 50 percent of the time, you are entitled to claim the child as a dependent for tax purposes unless you waive that right. You can waive it each year, and you can condition your waiver on the other parent being current in child support throughout the year.

Under Alaska law, a parent who is delinquent in child support up to four times the amount of their monthly obligation at the end of the tax year may not claim the child as a dependent for tax purposes. [AS 25.24.152.]

## **CHANGES TO CHILD SUPPORT**

Either party or the state has the right to request a review of a child support order. There are several reasons why an order could be modified. Some of the situations that could result in a modification include:

- child support guidelines were adopted or significantly amended after the existing support order;

- the income of the obligor changes so that the support order is 15 percent higher or lower than the present support order; or
- there is no medical support order in effect.

If either party requests a review, both parties will be required to provide Child Support Services Division (CSSD) with financial information. Private agreements between parties are not valid unless they are approved by a judge or entered in a court order of a case in which the child support order is being enforced by CSSD. It is important to note that child support payments cannot be changed retroactively except in very limited circumstances. Therefore, if you are paying too much or receiving too little, you should act immediately to modify the support calculation.

## **CHILD SUPPORT SERVICES DIVISION (CSSD)**

Every state has a child support enforcement program to collect child support from parents who are legally obligated to pay it. In Alaska, the Child Support Services Division (CSSD) provides these services. State enforcement programs locate absent parents, establish paternity, establish and enforce support orders, and collect child support payments. While programs vary from state to state, their services are available to all parents who need them. CSSD has an excellent website which includes a lot of helpful information for parents, including forms and frequently asked questions. <https://childsupport.alaska.gov/>.

### **What services are available in Alaska from CSSD?**

The Child Support Services Division can:

- provide child support services when either parent or a third-party custodian applies;
- establish paternity if it has not already been established;
- establish a child support order;
- enforce a child support order, even if the paying parent is not in Alaska;
- obtain an order to modify an existing child support order;
- send orders to withhold funds for child support to employers, banks, the Permanent Fund Dividend Division, and other places the paying parent may have income or assets;
- collect and mail out payments; and
- revoke the driver's licenses and occupational licenses of obligors who do not pay child support.

If you or the other parent are receiving public assistance, CSSD will automatically collect child support payments to repay the state debt. [Important Note: Public assistance recipients are normally required to cooperate with efforts by CSSD to establish paternity and to collect

child support. However, a recipient may not be required to cooperate if there is good cause not to require such cooperation. Inform CSSD and your public assistance worker if recovering child support or establishing paternity would put you and/or your child's safety at risk due to domestic violence.] *See Chapter Fifteen: Public Assistance for special protections for domestic violence victims.*

### **Does CSSD protect contact information in domestic violence situations?**

CSSD may be required to provide information about you or your child to others included in your child support case. If it would put your safety at risk for the obligor to receive information about you and your child, you can request that your address and other information not be released to the obligor. [AS 25.27.275.] It is a good idea to make this request in writing so that a copy of your request gets into your file. There is a special form on the CSSD website for this called Affidavit and Request for Nondisclosure of Identifying Information.

CSSD will not release information to the public. However, if your case is filed with the court, information in your court case is available to the public. If you and/or your child have been a victim of domestic violence, you may request that this information not be released. [AS 25.27.275.]

### **How is a support order established by CSSD?**

Child support orders may be established by a court or set administratively by CSSD. If CSSD establishes a child support order administratively, it will set the support amount using Alaska Civil Rule 90.3. If the obligor does not provide income information, CSSD will use the best information available to determine the parent's total income from all sources.

CSSD uses an Administrative Support Order when it issues a child support or medical support order. Both parties receive a copy of this order and either party can appeal the findings. If you appeal, you must present evidence supporting your claim. After an administrative review, CSSD will decide whether it should change the findings. Either party may appeal CSSD's decision to a formal hearing officer appointed by the Commissioner of the Department of Revenue. The hearing officer's decision may be appealed to the superior court by either party.

### **How are support payments made to CSSD?**

Money that CSSD collects will be paid to the child's custodian unless the custodian or child is receiving cash public assistance or Medicaid, in which case they are required to assign the child support payments to the State of Alaska. Custodial parents receive a \$50 pass through

payment on each child support payment received.

### **How long does it take for the custodial parent to receive support payments made to CSSD?**

In most cases, CSSD mails support checks to the custodial parent the next business day after CSSD receives the payment.

### **How can I find out about the payment status of my case?**

The quickest way to access your case information is through a portal on the CSSD website at <https://www.childsupport.alaska.gov/Home/My-Case.aspx>. CSSD also has a computerized telephone system called the KIDS line. You can leave messages for your caseworker and hear informational announcements about CSSD services. You can call the KIDS line 24 hours a day, seven days a week at 1-800-478-3300.

### **What happens if support payments are not made?**

If child support is owed and CSSD locates an employer or a financial institution of the obligor, CSSD is required to issue an Order to Withhold and Deliver wages or assets. Earnings are withheld directly from the payroll office or from an account in a financial institution.

Failure to make support payments may also result in other enforcement actions for collections. These actions include liens, judgments, Permanent Fund Dividend and IRS refund attachments, credit bureau reporting, taking possession of money in checking and bank accounts, and other actions allowed under civil and criminal law. Anyone owing more than four months of child support might also lose their occupational or driver's license. CSSD can file liens on real estate if arrears are at least equal to one month of unpaid support.

CSSD may take the obligor's federal income tax refunds to pay support debts. The IRS money will only be applied to debts that are in arrears (as of the date of certification to IRS); it will not apply to current support.

### **What if either parent moves out of state?**

CSSD can continue to collect payments and can coordinate enforcement of the support order with the child support agency in the other state, if necessary.

**What happens if there is a custody order in place and the non-custodial parent under the order takes over custody without changing the order?**

If the parent who has physical custody under the existing court order does not object or agrees to the other parent taking custody for nine months or more, then the court can enter an order precluding that parent from collecting child support arrears that accumulated under the order. However, this is not automatic and you have to prove the requisite facts to the court before it will order it.

**What happens if there is a custody order in place and the non-custodial parent under the order takes over custody without changing the order and starts to collect public assistance?**

CSSD will apply to the court for an interim order requiring the person who formerly had custody to pay support during any month that the other person had custody and collected public benefits. CSSD will not address the custody situation, but it will secure an interim order that reimbursement can be sought from the now non-custodial parent.

**Can CSSD establish paternity?**

Yes. If paternity has not been established and child support is pursued, CSSD can establish paternity. Both parties can sign an affidavit when they agree about paternity. If they do not agree, then CSSD will require genetic tests to determine the biological parent of the child. CSSD will not establish paternity for a child born out of incest or forcible rape unless the birth parent is legally competent and requests the establishment of paternity.

**Does CSSD charge for services?**

No. CSSD does not charge a fee for services. However, if paternity is established through genetic testing, that parent must pay CSSD for the cost of the testing.

**How do I apply for CSSD services?**

Either parent can apply for CSSD services at any time. To apply for services, you must fill out an application online through the myAlaska website. You can link to that through the CSSD website home page, <https://childsupport.alaska.gov/>.

**What are your rights and responsibilities in working with CSSD?**

During any CSSD proceeding, you are not required, but may hire and bring your own attorney. You can attend and participate in case proceedings and hearings that concern your

child support order with or without an attorney. Participating in child support proceedings can help you protect your interests.

If you are working with CSSD, you are required to notify it of the following:

- new addresses;
- custody changes of the child;
- visitation of the child when a court order for visitation exists;
- payments received directly from the non-custodial parent;
- new employment or changes to earnings;
- availability of medical insurance coverage for the child; and
- any action that you start on your own which may affect support such as seeking a new or modified court order, custody changes, or other collections.

## Chapter Fifteen

# PUBLIC ASSISTANCE

*State and federal governments have many public assistance programs available through various agencies. Applicants must meet eligibility requirements for each program and have basic rights under all programs.*

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### FEDERAL BENEFITS

The federal government provides many different types of assistance through various agencies such as the Social Security Administration, the Department of Veterans Affairs, and the Bureau of Indian Affairs. These benefits are too detailed to list here, but the federal government provides booklets on public assistance rights under federal law. One program will be highlighted here: Social Security.

#### **What is Social Security Disability?**

The federal government offers disability benefits called either Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI). Benefits are available to people who can't work because of a medical condition that is expected to last for at least one year or result in death. Both programs use the same medical rules to establish disability.

SSDI is based upon a person's work history and has no income limits. Some family members may also be eligible based on the parent or spouse's death or disability. The amount that the recipient gets is based on their work history. It does not consider the individual's income or resources.

SSI benefits are available to low-income elderly or disabled persons with little work history. SSI is based on need, so it has income and resource limits. The maximum amount an individual can receive is set every year based on whether the individual is living alone or with others. Everyone on the program gets that amount unless they have income. Because the program is based on income, the benefit amount will decrease if the individual has other income.

To qualify for either SSDI or SSI benefits, a person must have a medical condition that prevents them from participating in any sustained work activities. The rules used to qualify for disability benefits are very complex and the process can take several months to several years to qualify. People who need help quickly should consider applying for other programs

while they wait for a decision from Social Security.

### **How do I apply for SSDI or SSI?**

Applications can be done online at [www.ssa.gov](http://www.ssa.gov), by phone at (800) 772-1213 or in person at a Social Security office. The applicant will need detailed information about marital status, children, work history, medical conditions, military service and education.

The Social Security Administration (SSA) will ask for various documentation, including proof of birth, proof of U.S. citizenship or lawful alien status, W-2s and other work records, a list of the applicant's medical providers and permission to get medical records, and any other documents the applicant may have that will verify eligibility for benefits. If the applicant does not have some of the requested documents, they should submit the application with what they have.

After the application is submitted, the applicant will get confirmation that the application was received. SSA will contact the applicant to request whatever additional documents are needed. If the applicant cannot get some of the documents, they should contact SSA to discuss what kind of alternative documentation might work or to ask for help getting what they need. SSA will mail their final decision, along with information on how to appeal.

Applicants who are denied have 60 days to appeal the decision. They may also ask for a reconsideration by the local office. This is recommended, as it is faster and does not prevent the applicant from pursuing their rights. If the reconsideration is unsuccessful, the applicant can request a hearing. This is generally held in Anchorage in front of an Administrative Law Judge who does only Social Security appeals. SSA will pay travel expenses for the applicant and their attorney, if necessary. Before the hearing, the applicant will get a file with all of the records SSA has gathered. The hearing will include reference to these documents and witnesses. The applicant can have an attorney, testify, and call other people to testify on their behalf. If the hearing decision is against the applicant, they can appeal to Federal Court.

### **What are the basic requirements for SSDI or SSI?**

SSDI is based on the applicant's work history. The applicant must have worked recently for a certain number of years, depending on their age. Generally, you can take the age of the applicant when they became disabled and subtract 22. This results in the number of quarters of work history the applicant must have.

SSI is available to people who are disabled or at least 60 years old but do not have adequate work history to qualify for SSDI. Because SSI is for low income people, applicants must prove that their income is low enough to qualify. Also an applicant cannot have more than \$2,000 in resources (\$3,000 for a couple).

For either Social Security Disability program, the applicant must prove that they are disabled. This is a very high standard. SSA will consider the person's age, work history and physical, mental and educational limitations to determine whether there are jobs that the person is capable of doing. They do not consider the availability of jobs or work opportunities in the area where the person lives. Therefore, many people with limitations that prevent them from finding a job in their region may still not be able to get benefits.

### **How can an advocate help me apply for SSDI or SSI?**

It is very difficult to win an appeal from a denial of Social Security benefits. Therefore, it is important to file a good application with adequate supporting medical records. The best way to help an applicant for Social Security benefits is to help them file a good initial application. The application should include all of the applicant's conditions that may limit their ability to work, not just the biggest problem. Sometimes, a combination of medical issues can make the person eligible even if no single problem would be enough.

The disability standard for Social Security programs is very high. It is important for applicants to have good medical records. Social Security is especially interested in objective measures of health, such as lab results, MRIs and other medical testing. Applicants should make sure that their diagnoses are supported by their medical records. If their test results are old, they may want to have the testing redone in order to have results that will reflect their current conditions. Applicants should also make sure that they include information for all of their medical providers, including specialists that they may have seen only a few times.

### **STATE ADMINISTERED BENEFITS**

The State of Alaska's Department of Health and Social Service, Division of Public Assistance (DPA) administers several state and federal assistance programs, including:

- The Supplemental Nutrition Assistance Program (SNAP – formerly the Food Stamp Program);
- Alaska Temporary Assistance Program;
- General Relief;
- Medicaid;
- Adult Public Assistance (APA); and
- Chronic and Acute Medical Assistance (CAMA).

These programs are available to everyone who qualifies based on need and other eligibility factors such as state residency, disability, and age.

DPA has offices throughout the state. It accepts applications and documents by mail, email,

fax or in person at its offices. Interviews are typically conducted by phone, although in person interviews can be faster for people who are able to go to an office. DPA has a general toll-free number, which accepts messages. However, calls are not returned or acknowledged, so there is no way to confirm that a message was received or delivered to the appropriate party. Each regional office has an email and phone number available to the public on the DPA website (see below). Some of these offices may answer their phones but most do not.

This manual provides only a general overview of the programs available. For specific questions, it is best to check the policy manual for the program in question. All programs have policy manuals available online at <http://dpaweb.hss.state.ak.us/node/15>. More information on the programs available and eligibility factors can also be found at the Division of Public Assistance website: <http://dhss.alaska.gov/dpa/>.

### **FEE AGENTS**

In rural areas, fee agents help people fill out application forms and verify necessary information. Fee agents then forward the forms to the Division of Public Assistance. Fee agents are not salaried employees of DPA but are paid by DPA for each application they process.

Fee agents offer many advantages for people in remote areas. First, they are accessible. Fee agents are local residents who can be reached without the plane rides or phone calls. Second, they can help gather documents. Fee agents can help applicants gather all the documentation and submit it all together. Third, they can conduct interviews. Application processing is often delayed due to the state's cumbersome process of scheduling interviews by mail. If the individual is not available at the appointed time or the interview does not take place due to problems with phones, the interview has to be rescheduled. The State has no process by which an applicant can request a rescheduled interview and people often end up having apply all over. Fee agents prevent this entire process by conducting an in-person interview in the local community.

The main problem with the fee agent system is that many communities do not have a fee agent, leaving their residents without the opportunity to submit documents or have in person interviews. Also, fee agents are not employees and do not have the extensive training and experience that DPA caseworkers get from working with these programs every day. They are not equipped to help people who have complicated situations or to deal with problems that may arise in the application process. They are limited to assisting with initial applications and recertifications.

To find out if a community has a fee agent, you can call the nearest DPA office. A master list of all fee agents statewide is available at <http://dpaweb.hss.state.ak.us/node/12>.

## **APPLYING FOR STATE ADMINISTERED BENEFITS**

The application process includes filing an application, having an interview, submitting required verification, and getting a notice explaining the decision that has been made on the application.

**The Application:** Applications must be made in writing on DPA's form. Unless otherwise noted, the application form in the GEN50(c) form, which is available at DPA offices or on their website at <http://dpaweb.hss.state.ak.us/e-forms/pdf/GEN-50C.pdf>. This application is used for Medicaid, SNAP, APA, ATAP, heating assistance, General Relief, and Chronic and Acute Medical Assistance (CAMA). Medicaid Long Term Care, Medicaid Waiver and Senior Benefits have different application forms.

If you ask for an application, DPA must give it to you immediately. If the application covers more than one program or if the applicant has more than one application in at the same time, these are all combined into one case and the same caseworker will handle the applications for all programs together. DPA uses a statewide system, so that workers from one part of the state can work on applications from other parts of the state. Applications that are submitted by fax or email will be entered into the system wherever they are received. Therefore, it does not matter where in the state the application form is sent to, as long as it gets to a DPA office.

For SNAP and ATAP, DPA must accept any form that has at least a name, address and signature. The date it receives the application with those three items establishes the start date for calculating the initial benefit if the application is accepted. However, it is best to fill out as much as possible, as that will prevent unnecessary delays.

**The Interview:** Most programs require an interview. In the interview, the DPA worker is supposed to make sure the information on the application is correct and to find out any other circumstances that may affect the household's eligibility for benefits. Workers may see problems that did not show up on the application or identify other programs that could benefit the household.

If the applicant submits the form in person at an office, they can usually get an interview right then. This is preferable, as it avoid delays while an interview is scheduled. Otherwise, interviews are usually done by phone. For SNAP, applicants have the right to an in person interview if they ask for one. When DPA gets an application by any other means, it will send out an interview notice, which states a date and time and the phone number DPA will call for

an interview. This can create several problems. Sometimes, the applicant's phone is out of service, they change phone numbers, or the number is incorrect. It is not unusual in rural areas for the mail to take so long that the applicant gets the notice after the interview date has already passed. Also, the interview time may not be possible for the applicant if, for example, they are working or in a medical appointment at that time.

In these kinds of situations, the applicant should contact DPA as soon as possible. They can call the number on the interview notice. However, they are likely to get a recording. Therefore, it is advisable to also send an email or fax explaining the problem and asking for the interview to be rescheduled. This provides proof of the request in the event that the application is denied for the applicant's failure to participate in the interview.

**Verification:** After the interview, DPA sends a notice asking for verification of eligibility factors. Each program has different rules on what must be verified and what kind of documents they accept. Generally, the facts that determine eligibility, such as residence, age, and household income and resources, must be verified. Applicants have ten days from the date the notice was mailed to submit the documents by fax, email or mail. If a particular document is not available, DPA has to accept any document that will verify the fact in questions; it cannot require any particular document or form. Therefore, if an applicant does not have what was requested they should explain why they don't have that and submit whatever proof they do have. If an applicant is having trouble getting a document, DPA is obligated to help. The applicant should ask for help before the 10-day deadline.

**Notices:** DPA will send a notice every time it makes a decision or takes an action. The notices are sometimes hard to read so it is important to take some time to decipher them. They include the action taken, reason for the action and the effective date. If the applicant gets benefits as a result of the notice, it will say when the benefits begin, how much they will be and what household members are included. If the notice is asking for further verification, it will include exactly what DPA wants and the deadline for submitting the documents. If it is scheduling an interview, it will include the phone number DPA will call, as well as the date and time. DPA generally must give ten days' notice before taking any action.

There is a phone number on the front of the notice. This number usually goes to a machine, which may say that DPA does not return calls. It is useful to leave a message anyway, with the relevant details of the case, like name and case number. DPA caseworkers do listen to the messages and put notes in the computer system if they can understand the case number and the message. However, DPA will not respond and the applicant may get a denial notice instead of a response. Therefore, it is advisable to also email the office. Email addresses can be found at <http://dhss.alaska.gov/dpa/>.

Because the deadlines run from the date of the notice, it is possible that the notice will arrive after the deadline has passed. Also, if the applicant has moved, the notice may take some time to catch up to them. In these cases, an advocate can be very helpful in contacting DPA to explain the circumstances and ask for more time.

**Fair hearings:** Fair hearings are informal proceedings offered by the State of Alaska. Any applicant or participant in a state-administered program can request a hearing if they disagree with an action on their case. At a hearing, the State will explain to an independent Administrative Law Judge (ALJ) why it took the action and the individual can tell why they disagree. Both sides can have witnesses and submit documents. Hearings are generally done by phone, so documents are submitted in advance by fax or email. Most applicants represent themselves but they can have someone else represent them (a friend, neighbor, relative, or an attorney from Alaska Legal Services Corporation if you qualify). The process is designed to be simple for the self-represented person and the ALJ will explain what is going to happen. An attorney is not necessary. If you have legal fees because of the fair hearing, DPA is not responsible for them. The hearing is tape-recorded and the ALJ will send a written decision to the parties.

Generally, you must ask for a hearing within 30 days of the date the notice of decision was mailed to you. For SNAP, you have 90 days. If benefits have been discontinued or reduced, participants can continue receiving benefits while the hearing process happens. However, to get this, they must request the hearing within ten days of the date of when the notice was sent. If the State wins the hearing, the participant may have to pay the benefits back.

## INDIVIDUAL PROGRAMS

### What is the Supplemental Nutrition Assistance Program (SNAP)?

SNAP provides low-income households benefits that can be used to purchase food, some kinds of subsistence hunting and fishing gear, and seeds and plants used to grow food. Food stamp benefits are issued on QUEST cards, which work like a debit card but can only be used for authorized products. These benefits can also be used to purchase Meals on Wheels, group meals for the elderly and to buy products at some farmer's markets.

For precise eligibility information, check with the nearest public assistance office. *See the Resource Directory at the end of this handbook for contact information.*

If you are destitute and in immediate need of assistance, you may be entitled to emergency food stamp benefits. If you are eligible for emergency food stamp benefits, DPA must make them available to you no later than seven days after you apply. If you are not entitled to

emergency food stamp benefits, DPA has 30 days to process your application and give you SNAP benefits if you are eligible.

### **How do I apply for SNAP benefits?**

Applications for SNAP must be made in writing on DPA's form. If you ask for an application, DPA must give it to you immediately. It must accept an application if it has a name, address and signature, even if the rest of the application is blank or missing information. An interview is required. This is usually done by phone but applicants have the right to a face to face interview if they ask for one.

DPA will send a notice asking for verification of eligibility factors. Applicants have ten days from the date the notice was mailed to submit the documents by fax, email or mail. If a particular document is not available, DPA has to accept any document that will verify the fact in questions; it cannot require any particular document or form. Therefore, if an applicant does not have what was requested, they should explain why they don't have that and submit whatever proof they do have. If an applicant is having trouble getting a document, DPA is obligated to help. The applicant should ask for help before the 10-day deadline if possible. If it is not possible to meet the 10-day deadline, the applicant should explain why and ask for more time.

### **What are the basic requirements to be eligible for SNAP benefits?**

To be eligible for food stamp benefits, a household must meet specific income and resource guidelines. In general, households must meet both a gross income (before deductions) and net income (after deductions) test. The gross income test is 130 percent of the federal poverty level for the household size. The poverty level is set by the federal government and is updated annually. Some types of income do not count, such as student loans, ANSCA corporation dividends and the earnings of minors. The gross income limit does not apply to households that include an elderly or disabled person.

The net income limit is 100 percent of the federal poverty level for the household size. This applies to all households. The net income is calculated using a formula set by federal law. It counts the household's gross income but provides deductions for earned income, high housing and utility costs, child care expenses and out of pocket medical costs for disabled or elderly people.

The resource limit is \$2,250, or \$3,500 for households that include a disabled or elderly person. Generally, money in the bank is the biggest reason people may go over the resource limit. Many types of assets are not counted such as household goods, burial plots, cash value of life insurance, money in retirement savings accounts, pension plans, 529 college savings

plans, and some vehicles. The home one lives in is exempt, as is property needed to produce income. For specific questions, check the policy manual.

There is now a limit on the length of time many adults without children in parts of the state may receive SNAP benefits. The areas where the time limit does not apply may change from time to time. To find out if your area is subject to the time limit, check DPA's website. The time limit does not apply to people who are working, participating in an employment training program, or volunteering at least 20 hours per week, on average. It does not apply if the person is meeting a work requirement in another program, is caring for an incapacitated person or a child under six, receives or has applied for unemployment or is making at least \$217.50 per week. If a person is participating in a substance use treatment program or not able to work due to physical or mental impairments, they can be exempted from this requirement by submitting a letter from a medical professional.

DPA recognizes that homeless people are often not able to work. An applicant can request to be exempted based on homelessness, but it is not automatic. DPA will look at the person's entire circumstances to see if they are "unfit for employment." Homeless people often have traumas or stresses that can cause or exacerbate mental health issues. A statement from a behavioral health provider should qualify these people under the medical exception.

### **How can an advocate help me get SNAP benefits?**

Many people have trouble getting the requested documents to DPA on time. Some people may need help getting verification of their exemptions from the time limit. Advocates can help them get the documents or ask for more time, if necessary. Shelter staff are able to verify some aspects of eligibility, such as household size and residence. Homeless people get different deductions in the budgeting process, so it is important to verify that. Also, if it is not possible to get the documents because they are not accessible to the applicant or because former employers are uncooperative, advocates can ask DPA to help get verification. Advocates can do this by phone; it does not have to be in writing.

### **What is the Alaska Temporary Assistance Program (ATAP)?**

ATAP is a cash assistance program available to low-income families with dependent children under age 18, without regard to whether both parents are in the household. It is also available to low-income people in their last trimester of pregnancy. Minor parents are not eligible for ATAP unless they are living with their own parents or guardians or in an approved adult-supervised setting. Also, instead of regular Temporary Assistance payments, some families may be able to get a short-term "diversion" payment to help them start or remain working.

ATAP has a 60-month lifetime limit on assistance for most families, requires families to participate in work activities within 24 months of receiving benefits, and penalizes individuals who refuse to develop a Family Self-Sufficiency Plan, participate in work activities, or refuse to cooperate with Child Support Services. Other policies include no extra payment amount for a second parent and seasonal benefit reductions of 50 percent for two parent families during July, August, and September. There is also a reduction in benefits for families with no housing costs.

### **How do I apply for ATAP?**

ATAP uses the GEN 50(c) application form. Applicants should submit verification of basic eligibility factors with the application if possible. However, it is best not to hold up the application if the documents are not available because the amount of benefits they get depends on the date DPA gets the application.

ATAP requires an interview and the usual notice and verification rules apply. Because the household size depends on family relationships, it may be necessary to document the child(ren)'s relationship with the caretaker-relative.

### **What are the basic requirements of ATAP?**

For a family to be eligible for ATAP, it must include dependent children and an adult relative who is taking care of them. The relationship can be quite distant and the adult does not have to have custody of the children. The household income must be low enough to meet criteria set by the State of Alaska annually. However, not all earnings counts against the ATAP income limit. Some earned income is not counted, as work incentive. Check with the local DPA office for more information. The amount a family receives depends on their household size, income, and resources.

To receive ATAP, the family must have less than \$2,000 in countable resources, or \$3,000 if the family includes an individual who is 60 or older. Resources that do not count include the family's home, household goods and personal property, and most vehicles.

Under Temporary Assistance, the family must make a "Family Self-Sufficiency Plan" with their DPA case worker to help them find employment to become self-supporting without assistance. This is called "Work First." Participants must look for employment. If they cannot find a job, they can engage in activities designed to develop their skills and get them employed. ATAP provides some supports to help them complete these activities, such as transportation costs, interview clothing, special tools, and equipment needed for employment. Child care assistance is also available for most working families on ATAP.

### **Are there special exceptions to ATAP requirements for victims of domestic violence?**

Yes. Alaska has chosen the Family Violence Option that allows victims of domestic abuse temporary respite from welfare-to-work requirements while obtaining needed services. Alaska is responsible for implementing three special provisions for victims of family violence:

- screening applicants and recipients for past or current domestic violence;
- referring victims to specialized community-based services; and
- waiving program requirements including work activities and child support cooperation for victims and survivors when compliance with these requirements would:
  - endanger the safety of the adult victim and/or dependent children;
  - interfere with the ability of the victim to escape domestic violence; or
  - unfairly penalize individuals who have been harmed by domestic violence or are at risk of further domestic violence.

Domestic violence victims may receive a “good cause” exception for program requirements, including refusal of, or voluntary separation from, suitable employment, failure to comply with a condition of the Family Self-Sufficiency Plan, failure to participate in work activities when participation would interfere with the recipient’s attempt, or the attempt by a member of the recipient’s immediate family to escape domestic violence or its escalation. [7 AAC 45.261.] There is also a “good cause” exception for failure to cooperate with Child Support Services Division (CSSD). You will be provided information about your right to request non-disclosure of information by CSSD in the child support packet you will be requested to complete. You also may be allowed additional time beyond the 60-month time limit if because of domestic violence, you are unable to participate in work activities or to accept or retain employment at a level that allows your family to be self-sufficient.

### **What is General Relief (GR)?**

GR is a state-funded program designed to meet the immediate basic needs of Alaskans experiencing extreme financial crisis. Those basic needs include shelter, utilities, food, and clothing. In addition, limited funds for a dignified burial of a needy deceased person may be provided. GR will help an individual who has an “immediate and specific need” for shelter, utilities, food, clothing, and/or burial. GR is a program of last resort. This means that if any other program or resource is available that can meet the need, GR will be denied and the individual will be referred to that program.

## **How do I apply for GR?**

GR applications are made using the GEN 50(c) form. Interviews are generally required. However, if an interview is not possible, an application can be approved based on the application and statements from others who know the circumstances underlying the application. Both the specific need and financial eligibility must be verified.

## **What are the basic requirements of GR?**

To be eligible for GR, the household cannot have more than \$500 in resources. DPA will consider the ability of “Legally Responsible Relatives” to meet the need. These legally responsible relatives include spouses, children, parents, grandparents, adult grandchildren and siblings. Income in the month of need is considered, and must be insufficient to meet the emergency need.

The income limit for a household of one is \$300, with an additional \$100 per person. GR will pay only to meet the immediate one-time need. The maximum payment is \$120 per person per month. A payment to prevent an eviction or utility shut off requires that the vendor receiving the payment verify they will accept the GR payment in lieu of the eviction or utility shut off.

GR will pay up to \$1,250 per vendor for certain burial and funeral expenses. The covered services are listed in the program manual. The state may make a claim against the estate for the amount paid for burial and funeral expenses.

## **What is Medicaid?**

Medicaid in Alaska now covers most financially eligible people. However, the income limits vary depending on the category of Medicaid that covers the person. It is possible to get Medicaid benefits for the three months before the month you actually apply for Medicaid if you would have been eligible had you applied earlier. This can be very helpful for people who apply for Medicaid after encountering unexpected medical bills.

Medicaid covers a wide range of medical services, including prescription drugs, doctor’s services, hospital charges, and long-term care. It covers transportation costs if the care is not available in the local community. Some services require pre-approval before Medicaid will pay for them.

## **How do I apply for Medicaid?**

Applications for Medicaid can be submitted online or by using the paper GEN 50(c) application form. Most categories of Medicaid are handled by the same caseworkers that handle SNAP and cash assistance programs. However, eligibility for long-term care or home care using the Choice program is determined by a separate team. In addition to the usual eligibility criteria, those programs require a determination as to the level or amount of care the individual needs. Documenting this requires close coordination with the applicant's medical care providers.

## **What are the basic requirements of Medicaid?**

The different Medicaid programs each have their own income and resource eligibility levels. The income limit for insured children to qualify for Denali KidCare is 177 percent of the Federal Poverty Limit (FPL) for Alaska. The income limit for uninsured children and pregnant people is about 200 percent of the FPL. Parents of children are generally eligible up to 133 percent of FPL. The limit for elderly, blind, or disabled people who are in nursing homes or getting home health services under "Choice Waiver" is \$2,349 per month. Adults who do not fit in to any of these categories can still get Medicaid if their income is under 138 percent of FPL. Most Medicaid categories do not have a resource limit. Different rules apply for people in Long Term Care or receiving some home care services.

Eligibility for Medicaid is determined by the calendar month, not the date of application. This means that if a person applies during the month, DPA will look at whether the person was eligible on the first day of that month. Likewise, if the person stops being eligible at some time during the month, they continue to get benefits for the month because they were eligible on the first.

Some people who are over income for Medicaid may need to put their income in a trust in order to become eligible. These are called Miller Trusts. To do this, the applicant appoints a trustee to manage their money. The applicant can only receive the amount of money equal to their eligibility limit. The extra income can go to pay out of pocket medical expenses or other personal expenses. However, it cannot be used to pay for food or housing. Miller Trust forms are complicated legal documents requiring an attorney. People needing a Miller Trust should be referred to the Alaska Legal Services Corporation for assistance.

## **How can an advocate help me apply for Medicaid?**

Successfully applying for Medicaid requires the same kinds of verification, with the same challenges, as are required by other programs. Long Term Care and Choice programs have additional verification requirements to show medical need. Advocates can be crucial in

coordinating with medical professionals. Advocates can also direct applicants to Alaska Legal Services Corporation if they need Miller Trusts.

### **What is Adult Public Assistance (APA)?**

The APA Program is a 100 percent state funded program that provides cash assistance to low-income aged, blind, and disabled Alaskans to help them remain independent. The APA program gives cash to Supplemental Security Income (SSI) applicants and recipients and others who have very low income and resources. APA recipients are also eligible for Medicaid benefits.

### **How do I apply for APA?**

Apply by submitting the GEN 50(c) application form. The interview and processing is done in the same manner as for other programs. It requires evidence that the applicant is over 65, blind or disabled. Submitting evidence of a pending SSI or SSDI application can satisfy the disability requirement.

### **What are the basic requirements of APA?**

APA provides assistance to only three categories of people:

- the elderly (those who are 65 or older);
- the blind; and
- the physically or mentally disabled (who are 18 or older).

To qualify for assistance under any of the three sub-programs, an applicant household must also meet income and resource guidelines. The income limits vary based on the participant's circumstances. They are set by state law and do not always align with the Federal Poverty Level. The income limits can be found at <http://dhss.alaska.gov/dpa/#programs>. Resources may not exceed \$2,000 for an individual or \$3,000 for a couple.

People who have applied for Social Security Disability benefits are considered disabled as long as the application is pending. However, if the application is denied, the individual will lose their APA benefits. This is true even if the Social Security denial is being appealed.

### **How can an advocate help me apply for APA?**

Advocates can advise people to apply for APA when they apply for SSI or SSDI or have an application pending. People who have been denied in the past may become eligible while the Social Security application is pending.

## What are Senior Benefits?

The Senior Benefits Program pays cash benefits to Alaskan seniors who are age 65 or older and have low to moderate income. There is no resource limit for Senior Benefits. Cash payments are \$76, \$175, or \$250 each month depending on income. The income limits for each payment level are tied to the Alaska Federal Poverty Guidelines and change each year as the poverty level changes.

## How do I apply for Senior Benefits?

The GEN-152 form is used to apply for Senior Benefits. Because there are fewer eligibility requirements for Senior Benefits than for other programs, the application is only a couple of pages. It requires verification of age and income. The GEN 50(c) can be used to apply but it is much longer and harder to complete than the GEN-152, so the GEN-152 is better for people who are not applying for other benefits programs.

## What are the basic requirements of Senior Benefits?

Eligibility for Senior Benefits is relatively simple. Applicants must be Alaska residents over 65 and have income below the eligibility levels set by the State. Some immigrants are not eligible. People in institutions, such as nursing homes, are not eligible. Senior Benefits payments cannot be garnished to pay debts.

The benefit amount varies depending on the household's income. They are as follows:

Below 75% FPL	\$250/month
Between 75% and 100% FPL	\$175/month
Between 100% and 175% FPL	\$76/month

Eligibility is based on annual income. DPA considers the income that has been received or is expected to be received during the calendar year of the application. Once approved, the applicant will receive benefits for one year unless some change in circumstances causes the worker to reevaluate the application. Benefits are usually paid by direct deposit into the participant's bank account. The participant must reapply before the end of the year. Unlike with most programs, if the renewal is approved, no notice will be sent. Notice is only sent if there is a change in benefits.

## **How can an advocate help me apply for Senior Benefits?**

The simplicity of the Senior Benefits Program means that people encounter fewer problems obtaining and continuing to receive benefits. Occasionally, advocates may be called upon to resolve issues around the direct deposit or explain confusing notices.

## **What is Chronic and Acute Medical Assistance (CAMA)?**

The Chronic and Acute Medical Assistance program (CAMA) is a state funded program designed to help needy Alaskans who have specific illnesses get the medical care they need to manage those illnesses. It is a restricted benefit program primarily for people ages 21 through 64 who do not qualify for Medicaid benefits, have very little income, and have inadequate or no health insurance.

## **How do I apply for CAMA?**

Applications for CAMA are made in writing to DPA on the GEN 50(c) form that includes a name, address and signature. An authorized representative can apply for the person needing coverage. An interview is required unless the caseworker determines that it is impossible or inadvisable due to illness, distance or other reason. Eligibility factors, including household income and resources, must be verified. However, in areas served by a fee agent, a certification by the fee agent can satisfy the verification requirement.

Before an application can be approved, the applicant must also submit a MED 11 Certification of Medical Status form. This must be completed by a physician, physician assistant or advanced nurse practitioner verifying that the applicant has a CAMA-covered medical condition.

## **What are the basic requirements for CAMA?**

CAMA has stricter financial need standards than other public benefits programs. The household cannot have more the \$500 in resources and \$300 per month income for a household of one. The countable resources are similar to those in other programs with one notable exception: CAMA counts credit as a resource. That is, if the household has credit available with which to pay covered expenses, it cannot get help from CAMA. The income limit goes up by \$100 per household member. CAMA is available to some legal immigrants who may not be eligible for other Medicaid programs due to their immigration status.

Also, to be eligible for CAMA, the applicant must have a “CAMA covered medical condition.” These conditions are terminal illness, cancer requiring chemotherapy, diabetes, diabetes insipidus, chronic hypertension, chronic mental illness, or chronic seizure disorder.

Alaska Medicaid will cover the following services provided to eligible CAMA recipients:

- Out-patient physician services for a CAMA-covered medical condition.
- Three 30-day prescriptions filled or refilled in a calendar month.
- Limited medical supplies necessary for monitoring or treating a CAMA-covered medical condition, but not durable medical equipment (such as wheelchairs and walkers).
- Prior-authorized outpatient hospital radiation and chemotherapy services for cancer treatment.

### **How can an advocate help me get CAMA?**

CAMA is available only to people with serious or chronic illnesses. As a result, many of them may need help navigating the process. Advocates can help these applicants get necessary documents, including the MED 11 form. Advocates can also facilitate the interview or request that the interview be waived for people who are too sick to be interviewed.

### **OTHER STATE BENEFITS**

The State of Alaska has other benefits for its residents such as tax rebate programs, alternative energy loans, business loans, student loans, cash or prescription drug benefits for seniors, day care assistance, heating assistance programs, low income housing, and Permanent Fund dividends. For up-to-date information on all programs, write to the Governor's Office in Anchorage, Fairbanks, or Juneau. *See the Resource Directory at the end of this handbook for contact information.*

### **RIGHTS OF PUBLIC ASSISTANCE APPLICANTS AND RECIPIENTS**

You have the same basic rights under all State-administered public assistance programs. They include the right to "due process," which typically includes the right to:

- Receive a written notice telling you if you are eligible (time limits for how soon these notices must get to you vary by program).
- Have your benefits on the way within 30 days for most programs (emergency SNAP should be paid within seven calendar days).
- Receive fair and equal treatment regardless of age, sex, race, color, handicap, religion, national origin, or political belief.
- Be notified in writing in advance of any changes in your benefits; however, there may be instances when notice arrives after the benefit change.
- Request and have a fair hearing whenever DPA acts on your case with which you

do not agree, or if DPA fails to take action on your case within the required time frame. If you are already receiving benefits, you can request that benefits be continued pending a fair hearing decision if you request a fair hearing in a timely manner.

SNAP provides additional rights to:

- Receive an application form when you ask for it.
- File an application form the same day you receive it with only your name, address, and signature on it. (With some public assistance programs, e.g., ATAP and SNAP, it is important to file an application as soon as possible because you will only receive benefits from the date you file your application).
- Have a face-to-face interview.

Federally-administered programs (such as Social Security's Supplemental Security Income (SSI) program) offer similar due process protections, but each program has its own process.

## Chapter Sixteen

# WORKING WITH IMMIGRANTS AND IMMIGRANT CRIME VICTIMS

*Special protections exist for immigrants and immigrant crime victims. This chapter has important information and resources to help you if you have been victimized or discriminated against based on your immigration status.*

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### **Who is an immigrant?**

Immigrants to the United States are individuals who have come to live in this country from their country of origin. Immigrants have diverse reasons why they come to the United States and have different types of legal status. As an immigrant, you may have entered the United States as a refugee fleeing persecution in your country of origin, as a relative with family members in the United States, as a student, as a child, as a tourist, or as a worker seeking better economic conditions. Your legal status could be as a U.S. Citizen, a Lawful Permanent Resident or you could have a temporary visa or be undocumented.

### **What special concerns are there for immigrant victims of domestic or sexual violence?**

Domestic violence is a pattern of assaultive and coercive behaviors that can include physical, sexual, and psychological attacks, as well as economic coercion that a person uses against their intimate partner. Domestic violence can include a batterer's control and manipulation of the immigrant's unsettled immigration status. A batterer may:

- threaten to report the immigrant and/or their children to the Department of Homeland Security (formerly INS) to get them or their children deported;
- withdraw or threaten to withdraw the petition to legalize immigration status;
- threaten to take their children away from them;
- fail to file papers to legalize their immigration status;
- hide or destroy important papers (e.g., passport, ID cards, health care card);
- destroy their only property from their country of origin or threaten their family and/or reputation in their country of origin;
- isolate them from friends, family, or anyone who speaks their language; and/or
- not allow them to learn English.

If you need assistance with your immigration status or have questions about child custody and divorce, there are resources available in Alaska. *See the Resource Directory at the end of this handbook for legal assistance options.*

### **What protections are available for battered immigrant spouses?**

The Violence Against Women Act (VAWA) allows abused spouses married to United States citizens and lawful permanent residents to apply for a green card without their abuser's involvement. Children of the abuser or the survivor can also be eligible for green cards. Abusers are not involved in the application process and are not even aware that the survivor has filed an immigration application. This removes one powerful means of control from the abuser. VAWA also allows abused spouses to apply for cancellation of removal (formerly suspension of deportation) if they are in removal proceedings.

The Victims of Trafficking and Violence Protection Act provides that victims of certain crimes including domestic violence, sexual assault, and trafficking may be eligible for a four-year visa and employment authorization if the victim is helpful in the investigation of the crime committed against them. After having the visa for three years, victims can apply for their green card.

The Alaska Institute for Justice through their Alaska Immigration Justice Project (AIJP) legal program is a non-profit agency that provides immigration legal services, including applications for citizenship, permanent resident status, and work permits, family petitions and petitions for domestic violence and sexual assault survivors. You can call AIJP to make an appointment at 1-907-279-AIJP (2457) or toll free 1-877-273-2457. AIJP has offices in Anchorage and Juneau. There are staff members who speak English, Spanish, Korean, and Hmong and AIJP will utilize interpreter services if they do not have a staff person who speaks your language.

### **Can an immigrant obtain a protective order?**

Yes. You do not need to be a citizen or legal resident to obtain a protective order. You will not be deported if you seek a protective order. You have the right to be safe. If you do not feel comfortable speaking English when you seek a protective order, you should ask the judge to appoint an interpreter.

AIJP can assist you with your legal status or with a domestic violence protective order. *See the Resource Directory for contact information.*

### **Can an immigrant call the police?**

Yes. Domestic violence, sexual assault and stalking are against the law. The police can escort you and your children out of the house if you want to leave and can transport you to a safe place. Always ask the police to complete a report about the incident and get an incident report

number so that you can get a copy of the report. Also, ask for the name of the officer and write down the name and badge number of the officer making the report.

You do not need to answer any questions about your immigration status, where you were born, or how long you have been in the United States. This information is irrelevant to the police investigation and your safety.

If you have any issues or concerns with calling the police, contact AIJP immediately. *See the Resource Directory for contact information.*

### **NATIONAL ORIGIN DISCRIMINATION**

Immigrants are protected from employment discrimination by laws enforced by the Equal Employment Opportunity Commission (EEOC). *See Chapter Three for more information about EEOC.*

The law protects people against employment discrimination based on their national origin. Discrimination because of a person's looks, customs, language, and/or accent is against the law. The following are examples of discrimination based on a person's national origin.

- Discrimination because of a person's place of birth, or place of birth of their ancestors: It is not necessary for a person to show that their ancestors are from a particular country or region to prove national origin discrimination. For example, a person may look like they are of foreign birth or ancestry and may be discriminated against, which is against the law.
- Discrimination based on association with persons of a different national origin: The law prohibits discrimination because a person associates with people of a national origin group, discrimination because of attendance at schools or places of worship used by persons of a particular nationality, and discrimination because a person's name or the name of their spouse is associated with a national origin group.
- Practices that may have an adverse effect on particular national origin groups: Minimum height requirements, arrest and conviction records, educational requirements, and citizenship requirements may screen out people of a particular national origin. These practices are illegal unless the employer can prove that they are necessary and related to the job.
- Harassment based on national origin: Ethnic slurs or other verbal or physical conduct because of nationality are illegal if they are severe or pervasive and create an intimidating, hostile, or offensive working environment, interfere with job performance, or negatively affect job opportunities and advancement. Examples of potentially unlawful conduct include insults, taunting, or ethnic slurs. Employers are prohibited from specifically

requesting a copy of someone's green card if they can use other documentation, such as an unrestricted social security number, to prove they have authorization to work.

- Discrimination based on a person's accent: Under the law, treating employees differently because they have an accent is only allowed if having an accent keeps a person from being able to do the job. However, if the person has an accent but can communicate and be understood in English, they cannot be discriminated against based on their national accent.
- Speak English-only rules: The EEOC has stated that rules requiring employees to speak only English in the workplace violate the law unless they are reasonably necessary for the operation of the business. Rules requiring that employees only speak English in the workplace, including at breaks and lunch time, will rarely be justified.
- Discrimination based on appearance: It is a violation of the law to discriminate against someone because of their ethnic appearance. Similarly, if an employer refuses to allow a person to wear clothing unique to their cultural background, but imposes no dress code on any other employee, this may be in violation of the law.

### **THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA)**

Discrimination based on citizenship is expressly prohibited by the Immigration Reform and Control Act of 1986 (IRCA). IRCA is enforced by the United States Department of Justice, Office of Special Counsel (OSC) for Immigration Related Unfair Employment Practices. A memorandum of understanding between the EEOC and the Office of Special Counsel provides for the EEOC to refer to OSC charges filed with EEOC that allege IRCA violations.

## Chapter Seventeen

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

*If you wish to change your name, other than through marriage, Alaska Civil Rule 84 sets out the procedures for both adults and minors. Identity change for victims of domestic violence, sexual assault and stalking – through both a name change and social security number change – is a very complicated process and should not be done without thorough safety planning with an advocate and consultation with an attorney.*

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### CHANGING YOUR NAME UPON MARRIAGE

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

The Social Security Administration recommends that whatever name you choose, you should use it all the time to make sure you get credit for all benefits. If you do change your name, you can fill out a Social Security form for a change of name. You must show documents proving identity under both your old and new name. The IRS uses your name from Social Security records. Be certain your names for these two agencies match so you get prompt tax refunds.

### What are the name change procedures in Alaska?

Alaska Civil Rule 84 sets out a formal procedure for any person to change their name. If you follow the procedures set out in Rule 84, you can choose any name. Every Alaska court has forms for you to use to apply for a name change. You do not have to go through this procedure if you are getting a divorce. The judge can change your name back to your prior name as part of the divorce decree without a separate proceeding. If you desire to change your name to something other than your prior name, the process is more complicated and further hearings and publication are necessary. [AS 25.24.165.]

Pursuant to Civil Rule 84, if you want to change your child's name other than as part of an adoption proceeding, you need to have the consent of the child's legal parents or legal guardians. If you do not have all the required consents, you must prove to the court that you properly served a copy of the name change petition and date and time of hearing on the legal parents/guardians at least 30 days prior to the hearing. If a legal guardian or biological parent objects at the hearing to the name change, the court will determine if the name change is in your child's best interests. The court will consider the desires of older children. These

procedures can be complicated; therefore, it is wise to consult an attorney if you cannot obtain the required consents.

## **NAMING A CHILD AND LEGAL PARENTS ON BIRTH CERTIFICATES**

There is no requirement in Alaska that a child have any particular name. There is a requirement that a birth certificate be filed within five days after birth. The birth certificate states the birthing parent's name. If the birthing parent was married at the time of the baby's birth to a man, the birth certificate will also list their spouse's name as the name of the baby's other biological parent unless a court (in a paternity suit) has decided that a different person was the biological parent. [AS 18.50.160.] Alternatively, the birthing parent, the birthing parent's spouse and the other biological parent can all execute an affidavit attesting that the birthing parent's spouse is not a biological parent and replacing the birthing parent's spouse's name on the birth certificate with the biological parent's name. [AS 18.50.160.]

If the birthing parent was not married at the time of the baby's birth, the other biological parent's name can be left blank on the birth certificate. If a later paternity action establishes the other biological parent, the registrar can add or change the name on the birth certificate. [AS 18.50.160.] If both biological parents, though unmarried, request that both biological parents are listed on the birth certificate and acknowledge parentage, the registrar must do this.

## **NAME CHANGE WITHOUT PUBLICATION/DOMESTIC VIOLENCE SITUATIONS**

In certain highly lethal domestic violence situations, a victim might consider changing their identity for safety purposes. The first step in that process is generally a name change. A victim of domestic violence can request a Rule 84 name change from the court without publication. An attorney can prepare legal documents and provide information to the court on why you need a name change and how publication of the name change would put your safety at risk. The attorney should also request that the court keep the file sealed. While a Rule 84 name change normally does not require a lawyer, requesting a Rule 84 name change without publication and under seal is complicated and has many long-term repercussions. This is especially true if the person seeking to change their identity has children. Seeking attorney assistance is highly advised.

## **CHANGING YOUR SOCIAL SECURITY NUMBER/DOMESTIC VIOLENCE SITUATIONS**

A victim of domestic violence can request a new social security number by providing information to the Social Security Administration of social security number misuse by the

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Social Security Number Changes, & Birth Certificates

perpetrator and/or the severe nature of harassment/abuse or life endangerment. Your local social security office can provide forms and assistance in applying for a new social security number. The social security office will request information verifying your identity and documenting the harassment/abuse or life endangerment to you, including police reports, medical records, other court documents or letters from any agencies assisting you. You are required to apply in person. Social Security Administration publication 05-10093 has information about the process of applying for a new social security number at <https://www.ssa.gov/pubs/EN-05-10093.pdf>. If you are planning to change your name, you may want to do so before changing your social security number to ensure that there is no record of the old name on the new social security number. As with the process of changing your name for domestic violence victims, completely changing your identity in this manner has many long-term effects. It is not necessarily a complete assurance of safety. It is highly recommended that individuals seeking these remedies consult with their local domestic violence/sexual assault program and an attorney prior to changing their social security number and name.

## Chapter Eighteen

# WORKING WITH LAW ENFORCEMENT: REPORTING DOMESTIC VIOLENCE CRIMES

*Several different branches of law enforcement work in Alaska to protect public safety. If you need law enforcement protection, it is important to know who to contact, the information that you should share with them, and how your information will be used. This chapter gives an overview of that process, specific to a domestic violence crime. Note that the procedures for reporting other crimes will likely vary from the information in this chapter but the contacts and resources are equally applicable.*

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### **Who is law enforcement in Alaska?**

Law enforcement in Alaska consists of several different groups or agencies – the Alaska State Troopers at the state level, municipal police departments and Village Public Safety Officers (VPSOs) at the regional or city/village level, and the Federal Bureau of Investigation and Alcohol, Tobacco and Firearms at the federal level. Which entity responds will depend on the place where the crime occurred, and which agency has jurisdiction or authority over that area. On occasion, the type of crime also dictates which agency will investigate. Crimes can be based on municipal codes, state or federal laws.

### **What branch of law enforcement covers rural Alaska?**

Law enforcement in rural Alaska is primarily the responsibility of the Alaska State Troopers, however the state does not have enough troopers to place them in each rural community. Unfortunately, this often results in delays with responding to crimes in many of Alaska’s rural areas. Some rural communities have VPSOs. Although VPSOs do not handle felony level investigations (more complex investigative situations), they are the “first responders” to situations in their communities. VPSOs provide the community with limited emergency medical services, search and rescue operations, fire prevention and suppression, emergency response and preparedness, public safety education, and community policing. They monitor public safety in their community and supplement the efforts of the Alaska State Troopers. For example, VPSOs can stabilize volatile situations and preserve a crime scene until the troopers can arrive, conduct and complete misdemeanor investigations with advice, guidance and support provided by the Alaska State Troopers, and may assist the Alaska State Troopers with a felony investigation at the direction of the investigating trooper.

In addition, some rural or remote communities have Tribal Police Officers whose authority derives from their tribal government. Their role is defined by their tribal government and their authority is to enforce tribal law.

### **Who do you call if a crime has been committed?**

Victims of crime or bystanders to crimes do not need to determine which law enforcement agency to call. The victim or a bystander should always call 911 if there are immediate safety concerns. In addition to 911, a victim or bystander may choose to call the office number for their village or tribal police officer or VPSO. In some instances, these offices may not be staffed 24/7. If the victim or bystander cannot reach someone immediately at these numbers, they should call 911.

The type of call will determine how the police respond. For purposes of the rest of this chapter, we will be talking about law enforcement responding to a domestic violence call.

### **What information should be provided to 911?**

If 911 is called, there are some important things to tell the dispatcher/call taker. First and foremost, they will need to know the victim's location (city/village and physically where they are), the victim's name, the name of the perpetrator and whether there are any injuries that require immediate medical attention. Specific to injuries, if the victim was strangled, it is important to let them know this happened. It may be essential for the victim's health and safety to have emergency medical services respond since there can be life-threatening complications to this type of assault.

The dispatcher will also need to know where the perpetrator is in the residence or in the location relative to where the call comes from. If the perpetrator has left the residence/location, the dispatcher will most likely ask if they were driving or walking, what they were driving, and what they were wearing. It is important to let the dispatcher know if the perpetrator has access to any weapons such as firearms. It is also important to share with the dispatcher if there are other people, including children, in the house.

If the perpetrator has made threats about harming or killing law enforcement if they are called, it is critical that this information is shared with the dispatcher so that the officer(s) are able to respond safely.

If the victim is unable to provide some of the information above to the dispatcher, it is okay. The best thing a victim can do is stay on the line with the dispatcher and follow their directions or requests.

It is also important to note that some victims choose not to call law enforcement for many good reasons. Victims of domestic violence may be threatened with further physical harm or death to themselves or their children if they report to law enforcement. Some perpetrators

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threaten to harm or kill law enforcement if the victim calls for help. Before calling, a victim may be considering the long-term impacts of the call such as if the perpetrator will be able to work if they are arrested or if the perpetrator will retaliate. Whatever choice a victim makes is okay. Everyone has the right to be safe in their home and to live without fear.

### **What will happen after 911 is called?**

If the call is a domestic violence call, the officer will come to the location where the call was made from. If the call came from a rural or remote area of the state and the community does not have a law enforcement officer working in that community, the 911 call will get routed to the troopers via a dispatch center.

Once law enforcement arrives, they will ensure the safety of all parties. One of the first things they will check on is whether anyone is injured or hurt and assess whether anyone needs immediate medical attention. They will also separate the victim and the suspect during the on-scene interview so they may be interviewed independently. In separating the parties, the officer is attempting to create immediate safety for the victim. Hopefully, this will provide an opportunity for the victim to safely disclose information to the officer.

It is important to note that in some circumstances the officer does not immediately know which person is the victim or suspect. For safety reasons, if people are not following the instructions that the officer is giving to the parties to separate and disengage with each other (physically and verbally), the officer may determine that one or both of the parties needs to be handcuffed. Domestic violence cases are some of the most dangerous cases for law enforcement officers to encounter; officers are trained to work to ensure the immediate safety of all parties and to maintain control of the scene.

If separation of the parties does not occur, a witness or a victim may ask to be interviewed away from other people. In many instances, a victim may not feel safe making this request in front of their perpetrator and the victim may contact the law enforcement officer after the fact to report additional details. These details may be critical to the prosecution of the case.

### **What if a victim is not able to share all information with law enforcement when they arrive because of fear or for other reasons?**

Prior to making an arrest, law enforcement has a duty to consider all relevant factors at a crime scene. While a victim may be scared or reluctant to provide certain information to law enforcement, not doing so may have a potential negative impact on the arrest decision. It is common that a victim may not want to share important information when law enforcement arrives. This is for many valid reasons including fear of retaliation from the perpetrator, distrust of law enforcement, fear of not being believed, embarrassment or shame, economic reasons, ongoing trauma from the incident, or fear of losing custody of their children.

However, it is helpful to the overall investigation that victims provide as much information as they are able to remember. This includes what happened immediately before the incident, during the incident and after the incident as well as the history of all forms of domestic violence (emotional, physical, sexual, financial, etc.) between the parties.

If a victim is not able to share all information when they are interviewed by law enforcement, they have several options. They can contact their local victim service advocacy program listed at the end of this Handbook. The advocacy program, with the victim's consent, can contact the investigating law enforcement agency and/or prosecution on their behalf to advocate for their concerns or can help them to find legal assistance if they have legal concerns about sharing information. Victim advocates can speak with law enforcement supervisors to review the case. Alternatively, a victim could share their information directly with the officer who is investigating the case. If the victim can provide additional facts, then the police should conduct a further investigation.

### **If law enforcement doesn't ask the victim a certain question, but they have important information to share, should the victim let them know?**

Yes, if there is something that law enforcement did not ask, but the victim feels they should know, it is okay to tell the officer. For example, it would be important to share if the victim knows that the perpetrator harmed their prior partner or if there were witnesses to criminal acts of domestic violence. The victim should also give law enforcement any photos they have of current or old injuries from the perpetrator. Even if the photos are from a different event, they can be used in helping the prosecutor decide whether to bring charges. Likewise, if the victim sought medical attention for past or current abuse/injuries, law enforcement needs to know this information, so that they can obtain those medical records. All this information is used to corroborate the victim's story of the abuse.

### **What if the victim was acting in self-defense and injured the other party?**

When law enforcement arrive on the scene of a domestic violence incident, sometimes both parties have injuries. It is the officer's job to determine who the perpetrator is and whether the other party acted in self-defense. Officers have many tools to do this. First, they should determine if the victim thought they were going to be physically harmed, and if yes, why. This means numerous questions need to be asked of both parties. One of the main questions that should be asked of both parties is whether there is a history of domestic violence between the parties. If there is a history, the officer should ask a series of questions to obtain a detailed account of the history.

A person's prior criminal history is available to law enforcement. However, many victims choose not to report incidents of criminal domestic violence to the police. Thus, law enforcement do not always have access to all the information that is vital for their decision

making. Victims, if they are able, should disclose prior acts of domestic violence that have been committed against them including those not reported to the police. Witnesses to these non-reported incidents are another key factor as they can corroborate the victim's statements.

These prior acts are critical to understanding a victim's level of fear of the perpetrator. Evidence of prior incidents are all essential to the initial investigation, even if they have not been reported to the police. These prior incidents may include threats, violence or physical harm, destruction of property or sexual violence. This evidence can help law enforcement establish why a victim was in fear during the current incident and help officers understand what they thought might happen in terms of the suspect's behavior.

If the victim, while acting in self-defense, inflicts physical injuries on the perpetrator but chooses not to disclose what was leading up to the event and/or reasons why they were fearful, then law enforcement could potentially arrest the victim, believing that they are the perpetrator.

The negative impacts of a victim being arrested are far reaching. If arrested, the victim now has a criminal history. If convicted, this could also impact the victim's ability to gain employment in certain sectors. Most importantly, victims who are arrested will most likely distrust law enforcement and will not call for assistance when needed in the future. A victim's arrest further emboldens the perpetrator and can increase the victim's isolation and safety. If you are a victim and you have been wrongly arrested, you should make sure to talk with an attorney before you do anything, including speaking to the police. If you cannot afford an attorney, the court will appoint one for you at your initial court hearing.

### **What happens if a victim reports a crime of domestic violence hours or days after it occurs?**

Some victims of domestic violence choose not to report their victimization to law enforcement right away. If a victim reports a crime of domestic violence within 12 hours of when it occurred, the police are required to arrest someone except in limited circumstances. *See Chapter Five for more information.* If a victim reports a crime involving domestic violence after the first 12 hours, an arrest may be made if the police find that there is probable cause that the crime occurred. Probable cause is generally defined as reasonable and trustworthy information.

If there is a delay in reporting, the investigating officer will need to assess and determine why the victim did not immediately report the incident. One reason the Officer does this is to determine whether additional crimes could be charged. For example, if the victim attempted to call the police but the perpetrator took the phone away or broke their phone so that the call

to law enforcement could not be completed, the charge of interfering with a report involving domestic violence officer could be applied.

Another reason is to determine the level of control the perpetrator has over the victim and can aid in assessing lethality. For example, a victim may not report for several weeks because the perpetrator took her phone and would not let her leave the house, showing a high level of control. This information is also vital for the prosecutor as they can educate the jury as to why there was a delay in reporting.

**What happens immediately after a perpetrator of domestic violence is arrested? Are they allowed to contact the victim after they are arrested?**

The perpetrator will be taken to jail. State law does not allow a person charged with a crime involving domestic violence to bail out of jail until they have a hearing in front of a judicial officer. This first hearing is known as an arraignment. This occurs in the first 24 hours after arrest and usually the next day. At this hearing the judicial officer will set bail and conditions of release. The judicial officer must consider the victim's safety and the safety of their other household members. The victim has a right to attend this hearing, either in person or by telephone. It is recommended that victims call the prosecutor's office handling the case. Their contact number should be listed on the back of the victim rights booklet that the investigating officer provides to the victim.

It is against the law for a perpetrator of domestic violence to contact the victim in the time between their arrest and their arraignment. Specifically, they are not allowed to call or contact the victim from jail before they see a judicial officer. Also, they are not allowed to have indirect contact with the victim. Indirect contact includes having a relative or friend contact the victim on their behalf. If they contact the victim between their arrest and arraignment, they can be charged with another crime. If this happens, the victim should immediately inform the investigating officer and the prosecutor's office.

After the perpetrator is arraigned by a judicial officer, they may be released from jail. This will depend on the seriousness of the offense and whether they are able to post bail. If the victim does not attend the arraignment hearing in person or on the phone, they will be notified by the prosecutor's office about the perpetrator's conditions of release. This is usually done by sending the victim a letter or calling them with the information. However, if the victim attends the hearing in person or by phone, they can request that the prosecutor's office send them a copy of the conditions of release. If the perpetrator violates any of the conditions of release, the victim should immediately report these to the police. The perpetrator can be arrested for violating conditions of release, which is a separate criminal charge.

Victims have certain rights and one of those rights is to be informed when the perpetrator is released from custody (jail). You can sign up for notifications regarding the perpetrator's custody status (in or out of jail) and case information. The victim-witness paralegal in the prosecutor's office can register the victim for VINE (Victim Information and Notification Everyday) to receive court hearing notifications and to receive notifications about the perpetrator's custodial status. *See Chapter Five for more information.*

### **How does a victim keep informed of how their case is progressing?**

At the end of the interview the officer will provide the victim with a booklet of victim's rights. The officer is required by state law to read this booklet to the victim and to give them a copy. On the back of this booklet the officer should provide the agency case number (#) as well as a good contact number. The contact number will most likely be the main number to the department or post. If the victim has a further emergency, they should dial 911 and not the contact number. If they need to reach the investigating officer in a non-emergency situation, they can call the number they were provided. Most likely they will need to leave a message, as law enforcement officers work multiple cases at a time and have days off. If it is not an emergency (911) but the victim must speak with an officer right away, they can contact the non-emergency number and ask to speak with the shift supervisor. If possible, the victim should have their case number ready.

In most cases, the officer will need to conduct a follow-up interview with the victim. It is important that the victim provide them with the best contact information. This contact information could be a cell phone or email or a friend's contact information. If the victim decides to stay with a friend for safety reasons and the perpetrator does not know this friend and/or the location of their residence, it is vital to let the officer know this information.

If a victim has any questions about their case, the officer should be able to answer most of these during a follow-up interview. In addition to the officer contacting them for follow-up, they can also obtain information about the status of their case from the prosecutor's office. However, this is only if the case has been referred or if the perpetrator has been arrested. The victim-witness paralegal assigned to the case should be in contact with them regarding their case during different stages of the criminal justice process. *For more information on victim witness paralegals see Chapter Five: Criminal Law and Victims' Rights.* The number for the local prosecutor's office should be on the back of the victim's rights booklet the officer gives to the victim.

Lastly, if the victim feels that their questions are not being answered by the officer, the officer's supervisor or the prosecutor's office, they should contact the Office for Victims' Rights (OVR). OVR has a toll-free number which is 1-800-844-754-3460. They may also look them up at <https://ovr.akleg.gov/>. *See Chapter Five for more information on the Office of Victim's Rights.*

**What if a victim remembers additional details after the fact (several days or weeks later)? What should they do?**

Remembering additional details days or weeks later is completely normal. It is a good idea to contact the investigating officer and share the additional information.

Experiencing a traumatic event such as a domestic assault can impact one's memory of the event. Often victims are concerned that if they do not remember certain parts of what happened that law enforcement will not believe them or think they are not telling the truth. If a victim is having difficulty remembering what happened in the order of how events occurred, it is okay to share with the officer what they can remember. If the victim does not remember, it is okay to say that they do not remember or do not know. It is best not to guess. Again, it is totally normal to remember additional details and facts later.

## GLOSSARY OF LEGAL TERMS

**Accused:** the person charged with a crime; also known as the defendant.

**Acquittal:** a release from a criminal charge by a court, usually when the jury or judge finds the defendant “not guilty” after a trial.

**Active Efforts:** under the Indian Child Welfare Act, the state must make active efforts to provide remedial services and rehabilitation programs designed to prevent breakup of the Indian family. The social worker must actively help the parent through the steps of the plan and help the parent develop the skills necessary to retain custody.

**Adjudication (CINA):** judge’s decision about whether the facts proven make the child a child in need of aid, as defined by statute. The adjudication hearing is one trial phase of a CINA proceeding.

**Adjudication (Criminal, Juvenile cases):** a juvenile court proceeding at which a judge decides whether or not a juvenile is delinquent. If the judge finds a juvenile delinquent, the court decides whether the juvenile needs programming, supervision, or institutionalization.

**Admissible Evidence:** evidence the judge or jury can consider in deciding a case.

**Adoption:** a legal proceeding in which an adult becomes the legal parent of a child who is not the adult’s biological offspring. That adult assumes legal and all other responsibilities for a child, creating a permanent parent-child relationship.

**Affidavit:** A written statement that is signed under the penalty of perjury and sworn to before a person who is officially permitted by law to administer an oath, like a notary or officer of the court.

**Affidavit of Paternity:** The Bureau of Vital Statistics has a form, *Affidavit of Paternity*, VS-16, on which the mother, the father if not married to the mother, and mother’s husband if she is married, can each state who is the child’s biological father. The completed *Affidavit of Paternity* should be provided to the Bureau of Vital Statistics to list the biological father on the child’s birth certificate. The VS-16 form is not available on the internet but can be picked up at the Bureau of Vital Statistics or your local court.

**Affirmative Defense:** Criminal cases: an explanation for a crime that makes the act noncriminal, such as duress, or that changes the sentence, such as heat of passion or insanity. The defendant has the burden of proving the defense by a preponderance of the evidence.

**Civil cases:** A claim the defendant would make in his or her answer that attacks the plaintiff's legal right to bring an action, as opposed to attacking the truth of a claim raised in the complaint. The defendant's goal in raising an affirmative defense is to stop the case from moving ahead because it is legally improper. If you don't raise an affirmative defense in your answer for the court to consider, you may lose the opportunity to raise it later in the case.

**Aggravating Factor:** a fact about the crime or offender that lets the judge increase a presumptive sentence, such as a history of similar offenses or a particularly vulnerable victim.

**Alimony:** Money paid by a divorced husband or wife to the ex-spouse for personal support. In Alaska, this is generally called spousal support, and is only awarded under certain circumstances.

**Alternative Dispute Resolution (ADR):** Alternative Dispute Resolution (ADR) is the common name for the different ways of settling a disagreement outside the courtroom. ADR includes mediation, arbitration, mediation-arbitration, early neutral evaluation, and settlement conference.

**Annual Review:** for a child placed in a parent's custody, a court review is held one year after disposition. This review determines whether the child continues to be a child in need of aid, what progress is being made, and whether continued supervision is necessary.

**Annuity:** A contract sold by an insurance company designed to provide payments to the holder of the annuity at specified regular time periods, usually after retirement.

**Annulment:** In some states, courts will grant an annulment of a marriage which declares that a marriage was never valid. In Alaska there is no court action called an annulment, but a court may declare a marriage void for specific reasons. See Voidable Marriage.

**Answer (always filed by the defendant or respondent):** The response to the complaint in a civil case. The answer is the first document filed by a defendant in a court case. It responds to the plaintiff's complaint. The defendant may deny the plaintiff's allegations, may present new facts to defeat them, or may show why the plaintiff's facts are legally invalid. In the answer, the defendant may also make affirmative defenses and counterclaims.

**Appeal:** the legal procedure by which a person asks a higher court to review the decision of a lower court.

**Appellant:** the person who appeals a decision of a lower court.

**Appellate Court:** a court that reviews decisions made by a lower court on questions of law and procedure. The appellate court can affirm, reverse, or remand the original decision for more proceedings.

**Appellee:** the person who won in the lower court.

**Arbitration:** In arbitration, a neutral third party called an arbitrator hears arguments, reviews evidence and makes a decision. This is different from mediation, where the parties, not the mediator, make the decisions. There are two kinds of arbitration: binding and non-binding. Binding arbitration - parties agree in advance that they will follow the decision of the arbitrator. Non-binding arbitration - parties agree in advance that they will be advised by the arbitrator's decision, but do not have to follow it.

**Arraignment:** usually the first court proceeding in a criminal case. The judge tells the defendant what the alleged offenses are, and what rights defendants have. The judge asks the defendant to plead guilty, not guilty or no contest.

**Arrears or Arrearage:** Money owed that is unpaid and overdue. Generally, you will hear this term as it relates to past due child support. Your current, or on-going child support obligation does not become an arrearage until after it is overdue. When you have an arrearage, CSSD may garnish much more than your on-going amount to try to pay off the arrearage and sometimes this can get very confusing to figure out what is going on. If you have a CSSD case, they will collect the money for you. However, there are collection procedures that would allow you to get the debtor's PFD, wages etc.

**Arrest:** the legal restraint of a person for the purpose of charging the person with a crime. Police also can arrest a person for investigation in some circumstances, or for violation of a court order.

**Arrest Warrant:** a legal document issued by the court or parole board authorizing the police to arrest someone.

**Arson:** intentionally causing a fire or explosion in a building.

**Assault:** causing or threatening physical harm to another person. Alaska has four degrees of assault, depending on the seriousness of the victim's injuries, the weapon used, and the offender's intent. Fourth degree assault is a misdemeanor; the more serious assaults are felonies.

**Assets:** Money, property, and money-related rights that you own.

**Attorney:** a graduate of a law school, admitted to practice before the courts of a jurisdiction. The attorney advises, represents, and acts for the client or government.

**Attorney General:** the chief lawyer for the State of Alaska, Department of Law. Assistant attorneys general represent OCS, a state agency, in CINA proceedings.

**Bail:** the release of a person who was arrested or imprisoned. The court can tell the defendant to pay a bond or deposit, require another person to take responsibility for the defendant, or let the defendant go on the defendant's promise to appear in court ("own recognizance"). Bail is intended to assure the defendant's presence in court and to protect the victim and public.

**Bail Hearing:** a proceeding at which a judge or magistrate decides whether to release a defendant before a trial or pending appeal, and under what conditions. Defendants often must deposit a sum of money with the court to assure their appearance in court.

**Bail Bondsman:** an individual who arranges with the court for a defendant's release from jail. The bail bondsman promises the court that he will pay the full bail if the defendant does not come to court when required. The defendant pays the bondsman a fee for this service.

**Bailiff:** a person appointed by the court to keep order in the courtroom and to have custody of the jury.

**Bench Warrant:** an order issued by a judge for the arrest of a person – the defendant, a witness, or other participant in the judicial proceeding – who failed to appear in court as required. Judges also issue warrants for the arrest of defendants when charges or indictments are filed.

**Best Interest of the Child:** In deciding custody, the court must consider only those facts that directly affect the well being of the child. See AS 25.24.150.

**Beyond a Reasonable Doubt:** the degree which a juror must be sure of the facts in the case before finding the defendant guilty.

**Bifurcate; Bifurcation:** To separate legal issues for decision. The judge usually issues one final order that decides all the issues in a case. For example, in a divorce case, the final decree ends the marriage, divides the marital property and debt, and provides for a parenting plan if there are children. Sometimes, however, the judge will find it necessary to separate or "bifurcate" the issues. The court could, for example, divorce the parties (i.e., end the marriage), but bifurcate the property division issues, which are decided later.

**Bill of Particulars:** a document that tells the defendant about the specific occurrences that

the prosecution plans to prove during the trial. It limits the prosecution to asking about only these occurrences.

**Brief:** A written summary or statement explaining a particular issue to the judge. In family law cases, this would generally be done as part of a motion or opposition. The “brief” would be your affidavit and memorandum, in which you explained your position and cited any legal authority (such as statutes, rules or case law) that you might have to support your position. You will also file a trial brief shortly before trial.

**Burden of Proof:** the requirement of proving a fact or facts in dispute in a case. For instance, the prosecutor must produce enough evidence to prove “beyond a reasonable doubt” the guilt of the defendant in a criminal case.

**Burglary:** entering a building with intent to commit a crime in the building. It is first degree burglary if the building is a dwelling, if the defendant carries a gun or uses a dangerous instrument, or if the defendant tries to hurt a person inside. Otherwise, the offense is second-degree burglary. Both crimes are felonies.

**CASA:** court-appointed special advocate, a volunteer trained to investigate and report on child abuse and neglect matters, focusing on the best interests of the child. CASAs work with a small number of families and children, under the supervision of a guardian ad litem.

**Certificate of Service:** A written, dated and signed statement telling the judge that you gave or sent a copy to the other side. A copy of every document filed in court must be given to every person involved in the case. The Certificate of Service proves that this happened.

**Certified Mail:** In Alaska, you must serve a summons by certified mail/restricted delivery/return receipt or process server. Certified mail is a type of special delivery by the post office. Ask at your local post office for more information.

**Chain of Custody:** documentation of all persons who have had responsibility for a piece of evidence to prove that no one has damaged or tampered with it. The court often requires proof of custody for items stolen in theft, drugs seized in a narcotics case, and so forth.

**Character Evidence:** the prosecutor cannot use evidence about the defendant’s character to show that the alleged crime was consistent with that character. The court may admit evidence about the defendant’s character when it would help to prove some aspect of the offense such as intent, preparation, method or motive.

**Charge:** an accusation briefly describing the crime or crimes the suspect allegedly committed. The police or prosecutor spell out the charges in an indictment, information, or

complaint.

**Child Abuse or Neglect:** physical injury or neglect, mental injury, sexual abuse or exploitation, or maltreatment of a child that harms or threatens the child’s health or welfare.

**Child in Need of Aid (CINA):** the legal term for a child who comes within the jurisdiction of state court because of child abuse or neglect, as defined in the state statutes. Pronounced “China.”

**Child Protection System:** the combination of social workers, courts and legal agencies that act collectively to prevent child abuse and neglect, intervene in families to protect children from harm, and find new homes if necessary.

**Child Support:** The financial obligation that both parents have to their child(ren). In Alaska, Civil Rule 90.3 says how child support must be calculated. CSSD is the state agency involved in establishing and collecting child support for many families.

**Circumstantial Evidence:** indirect evidence that this person committed this crime. Examples of circumstantial evidence include finding the defendant’s gun at the scene of the crime and testimony that someone saw the defendant near the scene shortly before the crime occurred.

**Clear and Convincing Evidence:** a standard of proof requiring a firm belief in the facts shown; a standard higher than preponderance of the evidence and lower than beyond a reasonable doubt.

**Clerk:** A court employee responsible for maintaining permanent records of all court proceedings and exhibits, and administering the oath to jurors and witnesses.

**Closing Statement:** The statement made by each party (or their lawyer) at the end of a hearing or trial. Typically, this statement highlights the version of the facts that best supports each side of the case, how these facts were proven during the testimony, how the law applies to the case and why the judge should rule for one side and not the other. The statement itself is not evidence, and you may only refer to what has been accepted as evidence.

**Collaborative Law:** In civil cases. An alternative way to settle disputes in which both parties hire specially trained attorneys who work to help them respectfully resolve the conflict outside of court. The participants agree to work together to seek a solution that works for both parties. If the dispute can’t be resolved through the collaborative process, or if one of the parties threatens to go to court, then the collaborative law process ends and neither lawyer can continue to work on the case.

**Common law marriage:** In some states, a marriage created by a couple holding themselves out to the public as married and living together as if they were married. The State of Alaska does not recognize common law marriage as a legal marriage.

**Community Work Service:** as a part of a sentence, a judge may order a defendant to do a certain number of hours of volunteer work for a community or government organization.

**Complainant:** the victim of a crime who brings the facts to the attention of the authorities.

**Complaint (Criminal):** a written statement of the essential facts about the offense charged; usually filed at the beginning of the case.

**Complaint (Civil):** The first document filed with the court by the plaintiff stating his or her claim(s) against the defendant.

**Concurrent Sentences:** a judge's decision to allow the defendant to serve more than one sentence at the same time.

**Conservator:** A person appointed by a judge in a special court proceeding who is legally responsible for the management of another person's financial matters because that person is unable to handle his or her affairs, whether that be because of disease, disability or being under 18. Compare with guardian.

**Consolidation:** the act of joining together two or more charges or defendants for a single trial.

**Contempt:** Disregarding or disobeying a court order.

**Continuance:** the postponement of legal proceedings until some future time or date.

**Conviction:** the court's judgment that the defendant is guilty of a criminal offense, based on the verdict of a judge or jury, or on the defendant's plea of guilty or no contest.

**Corroborating Evidence:** evidence that supplements evidence already given and tends to strengthen or confirm it.

**Count:** one of the parts of a complaint, indictment or information. Each count alleges a separate offense.

**Counterclaim:** Defendant's requests for relief made when he or she files an answer to the complaint.

**Court Clerk:** an individual who keeps a record of court proceedings each day and records future dates for the judge's calendar. This person takes charge of all case files and paperwork for each day.

**Creditor:** The person who loaned the money is the creditor; the person who borrowed the money is the debtor.

**Crime:** any act that the legislature has decided to punish by imprisonment and to prosecute in a criminal proceeding.

**Criminal Justice System:** the combination of police, courts and corrections agencies that operates collectively to prevent crime, enforce the criminal law, and punish, supervise, and rehabilitate offenders.

**Criminal Mischief:** the offense of intentionally damaging property. It can be a felony or misdemeanor, depending upon the amount and type of damage.

**Cross-Examination:** the questioning by a party or attorney of the opponent's witness, after the direct examination. The court usually limits cross-examination to the credibility of the witness and to matters raised on direct examination.

**CSSD; Child Support Services Agency:** The state agency primarily responsible for collecting and enforcing child support. CSSD may also establish and review support obligations.

**Custody (Criminal):** detained by authority of the law; arrest and detention. The courts often release defendants to the custody of a responsible third person before trial. They also often let juveniles stay in the custody of a parent or guardian during proceedings and after disposition.

**Custody (Civil):** The rights and responsibilities between parents for their child(ren). The custody and visitation or parenting plan must describe the legal custody and physical custody that is in the child(ren)'s best interests. When unmarried parents need the court to determine a custody arrangement for their child(ren), the type of case they file is called a "custody case." For married parents, the court decides custody in a divorce or dissolution case.

**Custody (CINA):** legal authority to determine the care and supervision of a child, including the ability to decide where a child will be physically placed.

**Custodian:** an adult to whom a parent has transferred temporary care, custody, and control of a child.

**Custody Investigator:** A court appointed expert who is educated, experienced and trained in child development and the effects of divorce or separation on children. The custody investigator assesses a family and recommends to the judge a parenting plan that is in the best interests of the children.

**Decree and Judgment:** The final decision of the court in a family law case. If your case includes an order for money to be paid by one side to the other as part of the property division, be sure that your final decree is also says judgment so that you can use collection procedures to get the money if the person does not comply with the order.

**Defendant (Criminal):** the person charged with a crime; also called the accused.

**Defendant (Civil):** Not the person who started the case, who is called the plaintiff. Rather, the person against whom the case has been brought.

**Defined Benefit Plan:** This type of retirement plan is generally considered a “traditional” pension plan. It provides specific benefits (usually a specific dollar amount per month) to a participant at the individual’s projected retirement date. The benefits are usually based upon a formula that considers the participant’s projected years of service and final wage compensation. Defined benefit plans are more often found in governments and large companies than small companies. Examples are PERS Tiers I-III and TRS.

**Defined Contribution Plan:** Retirement savings accounts based on employee and often matching employer contributions directly to individual accounts established and maintained for each plan participant. Examples are a profit sharing plan, thrift plan, 401(k) plan, retirement savings plan, SBS-AP for state government employees, and some stock bonus plans and employee stock ownership plans (ESOP). When the employee participant retires or leaves the company’s employment, the participant usually gets the account balance together with any accrued interest, as well as investment gains or losses.

**Delinquency:** a formal finding by a court that a juvenile has committed a crime and should be subject to state supervision.

**Deposition:** sworn testimony taken from a witness outside of court, usually transcribed or taped.

**Diligent Inquiry:** When you don’t know where the opposing party is to serve them, the court requires that you try hard to find him or her. The effort you make to find the opposing party is called diligent inquiry. If you can’t find the opposing party, you may file an affidavit of diligent inquiry and ask the court permission to serve by alternate service.

**Discovery:** pre-trial procedures where the parties exchange information about evidence.

**Dismissed with Prejudice:** when the judge dismisses the charges against the accused and does not let the government file the charges again.

**Dismissed without Prejudice:** when the judge dismisses one or more charges against the defendant, but lets the government refile the charges later.

**Disposition:** the outcome of a case, which may include dismissal, conviction, or other action. In juvenile cases, disposition is similar to sentencing.

**Disposition:** court hearing at which the judge decides who should have custody and control of a child in need of aid, under what conditions, and whether the state has made reasonable and/or active efforts to help the family.

**Dissolution:** A mutual agreement to end a marriage, which results in the parties being divorced. Both people must agree on all terms regarding the division of property and debt, as well as the custody and visitation or parenting plan if they have children together.

**Diversion:** the official suspension of criminal proceedings against an alleged offender. The person may go to a treatment or care program as a condition of the diversion.

**Divorce:** The ending of a marriage by a court order. In Alaska, the term “divorce” also refers to the contested proceeding used to divorce, as opposed to the un-contested proceeding used to divorce, called a dissolution.

**Domestic Partners:** Generally, the phrase refers to two people who live together in a committed relationship intending to be emotionally and financially responsible for each other, but are not legally married.

**Domestic Relations Procedural Order:** In family law cases, there is usually a local court order that sets out the rules of the case. Different courts have different names for it. It is usually called either a Domestic Relations Procedural Order or a standing order. Whatever it is called, you will receive this order when you file your case, at the same time as you receive your summons. It usually prohibits either parent from removing any minor child(ren) from Alaska or selling marital property without the opposing party’s agreement or the court’s approval. Violating this order is as serious as violating any court order. Be sure you understand what it says. To learn more, please read the Domestic Relations Procedural Order (Standing Order) section.

**Domestic Violence:** physical abuse, sexual abuse, threats, or stalking, done by a present or former spouse, sexual partner, household member, or relative. In Alaska you can get a Domestic Violence Protective Order if you have a “household” relationship with the opposing party and he/she committed a crime of domestic violence against you, such as assault, burglary, criminal trespass, criminal mischief, terroristic threatening, violating a domestic violence order, or harassment.

**Double Jeopardy:** a constitutional protection that keeps the government from prosecuting a person twice for the same charges.

**Due Process of Law:** the constitutional and common law principles that protect fairness and justice in the courts. The constitutional guarantee of due process requires that every person have the protection of a fair trial.

**Early Neutral Evaluation:** In civil cases. Early neutral evaluation provides parties in a dispute with an early and frank evaluation of the merits of their case by an objective, neutral evaluator. Like mediation, early neutral evaluation is confidential, voluntary, and does not eliminate other dispute resolution options. The evaluator is not a decision-maker.

**Equity:** The difference between the home value and the amount owed to the mortgage company. To figure out the home equity, start with the market value and subtract the total mortgage and loans owed.

**Emancipation:** a legal proceeding where a child of 16 or older receives the duties, privileges, and responsibilities of adulthood.

**Emergency Custody:** physical custody taken to protect a child from abandonment, immediate physical harm, or sexual abuse. Emergency custody lasts only until a court hearing can be held.

**Estate:** An estate refers to all of your property, including real estate, investments, bank accounts, business interests, life insurance, retirement accounts and personal property.

**Evidence:** information offered to the court or jury to prove something. Evidence often takes the form of physical objects, documents, witness testimony, and expert testimony.

**Exclusion of Witnesses:** an order requiring witnesses to stay out of the courtroom until the judge calls them to testify. The judge tells these witnesses not to discuss the case or their testimony with anyone except the attorneys in the case.

**Exhibits:** documents, charts, weapons, or other tangible evidence used in a court case.

**Ex Parte:** a judicial proceeding or action that involves only one of the parties in a case.

**Ex Parte Protective Order:** When certain acts of domestic violence have happened, the victim may ask the court for a 20-day order for protection. These requests are generally heard ex parte - without the other side present.

**Execution of Judgment:** The legal process to enforce a judgment, usually by seizing and selling the property of the debtor.

**Expert Testimony:** evidence given in relation to some scientific, technical, or professional matter by a qualified person. Experts are asked to testify on matters that are beyond the experience of ordinary citizens.

**Extradition:** the process of returning a fugitive from one state or country to another, usually so that the government can send the fugitive to trial.

**Family Law:** The area of law, also known as domestic relations law, which generally refers to divorce, dissolution, custody, visitation, support, and paternity.

**Felony:** in Alaska any criminal offense that carries a possible sentence of one year or more in jail.

**Final Decree, Final Order:** The final decision in a case, which is generally issued by the court after the trial. A final decree is the same thing as a decree. In certain circumstances you may wish to appeal this order, in other circumstances, you may wish to modify this order. Either way, the law has strict rules about how, whether and when an appeal or modification can happen.

**Findings of Fact and Conclusions of Law:** These, together with the decree and judgment, are issued by the judge at the end of your case. The findings of fact are the judge's determination from the evidence presented. The conclusions of law are the legal propositions arrived at by the judge based on the findings of facts.

**Fine:** a sum of money paid as a form of punishment. A "day-fine" uses the defendant's ability to pay and the seriousness of the offense as factors in deciding the amount of the fine.

**First-Hand Knowledge:** Information or knowledge heard and/or seen directly by the person speaking or writing. Generally, all information given to the court to prove a case must be first-hand knowledge.

**First Offender:** a person committing a first adult felony offense, for purposes of applying

presumptive sentencing laws. A first offender may have a history of juvenile offenses or adult misdemeanors.

**Foreign Order:** A court order issued by a state court in the United States other than Alaska, or a court of another country. For example, a child custody order from California is a foreign order in Alaska.

**Foster Care:** care provided by a person or household for children not living with their own families, licensed, paid for, and supervised by the state. Some tribes also handle foster care.

**Foundation:** a party seeking to have evidence admitted often must first “lay a foundation” by showing preliminary facts related to the evidence. For example, before an eyewitness can testify about what happened during an alleged crime, someone must show that the witness actually saw the crime.

**Forfeiture:** a court order requiring the defendant to give the government an item connected to the crime. Property commonly forfeited includes cars, planes, or weapons used in a crime, and money, animals, or goods gained by the crime.

**Forgery:** counterfeiting or altering a document like a deed, a will, or a check, or knowingly using a forged document. Forgery can be a felony or a misdemeanor.

**Furloughs:** release of a prisoner into the community for education, employment, training, or treatment. Furloughs are granted to low-risk offenders, and offenders making the transition from prison back to the community.

**Good Time:** days credited to the offender’s sentence for good behavior in prison. If the offender does not lose good time through misbehavior, he or she can be released after serving two-thirds of the sentence. Good time gives offenders an incentive to comply with prison rules.

**Grand Jury:** a body of citizens that hears evidence against a person suspected of a crime and decides if there is probable cause to charge the suspect formally. In Alaska, the grand jury also can conduct its own investigations and issue reports.

**Guardian:** a natural person who is legally appointed to have most of the rights and responsibilities of a parent for a child or a legally incapacitated person. A person appointed by a judge in a special court proceeding who is legally responsible for the care of another person because that person is unable to handle his or her affairs, whether that be because of disease, disability or being under 18. Children usually only have guardians when neither of their parents are willing or able to care for them. Compare with conservator.

**Guardian Ad Litem:** a person appointed by the court to represent the rights of a child in a legal matter. This means that he or she becomes a party to the case and may not always agree with the parents about what is in the child(ren)'s best interest. A GAL is different from a custody investigator, who simply does an investigation and makes a recommendation. Under some circumstances, the child also may have a lawyer to represent the child's wishes. The court also may appoint a guardian ad litem for a person who is legally incapable of managing his or her own affairs.

**Guilty:** a plea accepting guilt, or a verdict from a judge or jury that the prosecution has met its burden of proof.

**Guilty but Mentally Ill:** when the defendant committed the crime but, as a result of mental disease or defect, did not know it was wrong or could not control his or her conduct. The defendant is still subject to imprisonment combined with mental health treatment.

**Habeas Corpus:** an order to bring a person before the judge that issued the order. The court then decides whether the person has been held in custody without due process of law.

**Halfway House:** also called a community residential center (CRC). A residential facility for offenders on furlough, probation or parole. Offenders can leave the building by themselves to find or keep a job, go to school, or go to treatment programs. An offender must get permission to leave, and must be back by a set time.

**Hand delivery:** Handing a document to either (1) the attorney who is representing the opposing party or the attorneys staff (2) the opposing party if he/she is self-represented at their place of residence or with a person of suitable age and discretion residing at their home.

**Hearing:** A court proceeding presided over by a judge, master, or magistrate at which parties, and perhaps witnesses, come to the court to speak. A hearing is different from a trial in a number of ways, including that it is typically shorter and sometimes less formal than a trial.

**Hearsay:** evidence not based upon a witness's personal knowledge, but on information the witness got from someone else. Hearsay evidence is admissible in very limited circumstances. Hearsay is a statement that is not made in the courtroom and that is presented to the judge as a true statement. Most hearsay cannot be evidence, but there are many exceptions to this rule. These are all covered in sections 801-804 of the Rules of Evidence.

**Homicide:** the killing of one human being by another. Homicide may be murder, manslaughter, or criminal negligence. It may even be non-criminal, as in self-defense.

**Hung Jury:** a jury unable to agree unanimously on whether to convict or acquit a defendant.

**Hybrid Custody:** The parents have primary physical custody of some of their children and shared physical custody of other of their children. See also physical custody. See parenting plans for more information.

**Immunity:** protection from a duty or penalty. A witness may be granted immunity from prosecution to encourage the witness to answer questions. Otherwise, the witness might refuse to answer to avoid self-incrimination.

**Impaneling:** the process by which the court selects potential jurors and swears them in.

**Impeachment:** an attack on the credibility of a witness or the accuracy of the witness's testimony.

**Inadmissible Evidence:** evidence that cannot be used at a hearing or trial because it is irrelevant, misleading, improperly obtained, or for some other reason.

**Incompetent:** refers to persons whose testimony the court will not admit because of mental incapacity, immaturity, lack of proper qualifications, or similar reasons. This term also describes defendants, who, because of a physical or mental disorder, cannot help their lawyers prepare a defense or cannot understand the nature of proceedings against them.

**Indian Child Welfare Act (ICWA):** a federal law governing how states handle child protection cases, guardianships, and adoptions of Indian children.

**Indictment:** a document prepared by a grand jury formally charging a person with a crime. Also called a true bill.

**Indigent:** a person who cannot afford an attorney. The State of Alaska has set income and asset limitations to identify which litigants are entitled to a court-appointed lawyer at public expense.

**Information:** a sworn affidavit charging a person with a crime based on facts supplied to the prosecutor.

**Interim Order, Temporary Order:** An interim order, also sometimes called a temporary order, is any order made in a case before the final order or decree is made. In family cases, these are short-term decisions by the judge about issues such as child support, child custody, visitation, possession of the family home, attorney fees, spousal support or payment of debts. The final order may be entirely different.

**Intervention:** the process for allowing additional parties to participate in a case; for instance, an Indian child's tribe has a right to intervene in a CINA case. Intervention also can describe the decision to become involved with a family to protect a child.

**Jail:** a facility for confining those convicted of a crime or those charged with a crime and waiting trial. Jails are usually used for offenders awaiting trial or serving short sentences.

**Joint Custody:** see shared physical custody

**Joint Legal Custody:** Both parents share the responsibility for making the major life decisions affecting the child's welfare, such as where the child(ren) go(es) to the doctor, goes to school or how money matters are handled. The alternative to shared legal custody is sole legal custody. There is also physical custody.

**Judge:** a public official appointed to hear and decide cases in a court of law.

**Judgment:** the official decision of a court.

**Judicial Notice:** a court finding that parties do not need to prove certain facts because most people know them or can find them from reliable sources. Examples include geographic facts, historical events, and weather information.

**Jurisdiction:** the legal authority of a court over the parties or the subject matter of the dispute. Also, the legal authority of a government for the people of the area.

**Jury:** a panel of citizens who evaluate the evidence presented to them and decide the truth of the matter in dispute.

**Jury Instructions:** instructions that the judge gives to the jury. Jury instructions explain the principles of law that the jury should apply to the facts of the case to reach a verdict.

**Juvenile:** a person who, because he or she is under 18 years old, is within the sole jurisdiction of the juvenile court unless bound over for adult processing.

**Kidnapping:** restraining or hiding another person with the intent of holding the victim for ransom, using him or her as a shield or hostage, or injuring or sexually assaulting the victim. Kidnapping is among the most serious felonies.

**Leading Question:** a question asked in words that instruct or suggest to the witness what to answer. This type of question is prohibited on direct examination.

**Legal Custody:** The right and obligation to make major life decisions such as where the child goes to school, which doctors he or she sees and how money relating to the child is handled. There are two types of legal custody: joint legal custody and sole legal custody.

**Legal Separation:** When married people decide to separate but remain legally married because they no longer get along, but want to protect significant religious, social, legal or financial interests. A legal separation can determine the parties' rights and responsibilities for property, child custody, child support and spousal support. See AS 25.24.400 - 460.

**Magistrate:** a judicial officer with less authority than a judge. Magistrates issues search and arrest warrants, try and sentence violations, try and sentence misdemeanor cases with the consent of the defendant, and conduct felony bail hearings. Magistrates may hold emergency CINA and delinquency hearings, and may be appointed to act as masters in children's, domestic relations, and probate matters.

**Manslaughter:** causing the death of another person under circumstances not amounting to murder in the first or second degree.

**Marital Property:** Marital property is the property and debt that a husband and wife acquire during marriage for the benefit of the marriage and may include property acquired when the couple lived together before marriage. A married person may also have separate property, which is property and debt from before the marriage that is not considered marital property, or an inheritance or gift. Generally, property and debt acquired after the date of separation is not marital, unless a marital resource was used to acquire it. See AS 25.24.160.

**Master:** an attorney appointed to juvenile or other proceedings to hear the facts of a case and make recommendations to the judge.

**Mediation:** a process where a trained neutral person assists all of the parties to identify issues, discuss their interests, and reach an agreement about some or all of the issues. Parties in mediation create their own solutions and the mediator does not have any decision-making power over the outcome. A mediator may or may not be a lawyer.

**Mediation-Arbitration (Med-Arb):** Mediation-Arbitration is a combination of mediation and arbitration. Parties work to come up with their own agreements, but give a neutral third party the authority to make a decision if mediation is not successful.

**Merrill Factors:** The judge uses a set of factors to reach a fair and equitable property division in a divorce action.

**Mental Injury:** serious injury evidenced by an observable and substantial impairment in the child's ability to function in a developmentally appropriate manner.

**Misconduct Involving Controlled Substances:** criminal drug possession, manufacture and sale. Alaska law sets out six degrees of this offense, ranging from major drug trafficking (an unclassified felony), to possession of marijuana (a Class B misdemeanor).

**Misconduct Involving Weapons:** prohibited possession, use or sale of firearms. First-degree misconduct (a Class C felony) includes gun possession by a felon and illegal weapon sales. Second-degree misconduct includes recklessly discharging a gun and carrying a gun while intoxicated. Third-degree misconduct includes carrying a concealed weapon and bringing a gun into a bar. The lesser degrees of misconduct are misdemeanors.

**Misdemeanor:** an offense that authorizes a sentence of imprisonment up to one year in jail.

**Mistrial:** a trial that the judge has ended and declared void before the verdict because of some extraordinary circumstance or some fundamental error that cannot be cured by appropriate instructions to the jury.

**Mitigating Factor:** a fact about the crime or offender set out by law that lets the judge reduce a presumptive sentence.

**Modify:** To change an existing court order because of a change in circumstances.

**Motion:** The name of the paper you must file to ask a judge to make a ruling or take some other action. A motion is the first step in the three-step process called motion practice, which is controlled by Civil Rule 77.

**Murder:** first-degree murder includes killing another person with intent to kill, by forced suicide, or through torture. Second-degree murder includes killing another person with intent to cause serious physical injury, during another serious felony (felony-murder), or while acting in a way that shows extreme indifference to the value of human life.

**Neglect:** failure to provide necessary food, care, clothing, shelter, or medical attention for a child, by a person responsible for the child's welfare, although having or offered the means to do so.

**Nolo Contendere or No Contest:** a plea in a criminal offense indicating that the defendant neither admits nor denies the charges, but does not contest the facts of the case. The criminal case proceeds as if the defendant pled guilty. A plea of no contest cannot be used against the defendant to decide liability in a separate civil case.

**Noncustodial parent:** The parent who doesn't have custody of the child(ren) and who is usually ordered to pay child support to the other parent who has custody of the child(ren).

**Notice:** official notification of a court proceeding.

**Notice of Appeal:** The document filed with the supreme court that gives notice of your intention to appeal. This is the first step of the appellate process, and like all things filed in court, must be served on the opposing party.

**Nunc Pro Tunc:** for court orders, made effective as of an earlier date.

**Not Guilty:** a plea by a defendant denying guilt. Also, a verdict indicating that the prosecution failed to meet its burden of proof, also known as acquittal.

**Objection:** opposition to the form or content of a question asked by opposing counsel. The judge rules on the validity of the objection. Parties also can object to evidence or to the conduct of opposing counsel.

**Obligee:** The person who is owed money, generally in the context of receiving child support.

**Obligor:** The person who owes money, generally in the context of paying child support.

**OCS:** Office of Children's Services, part of the Alaska Department of Health and Social Services. OCS handles child protection cases and foster care licensing.

**Offender:** the person convicted of a crime.

**Offense:** the violation of any criminal law.

**Offer of Proof:** when a judge excludes evidence, the party asking to have the evidence admitted makes an "offer of proof" to the court about what the evidence would have shown. For example, a party might state on the record what the witness would say if permitted to answer the question, and what the answer would prove. The offer of proof gives the trial court a chance to reconsider, and preserves the question for appeal.

**On the Record:** The official record of what goes on in the courtroom. Whenever you are in the courtroom and the judge is present, you should assume that you are on the record and being recorded. If the judge makes a ruling "on the record," it means he or she made the decision orally in the courtroom, which is just as permanent, final and binding as if it were written.

**Opening Statement:** The introductory statement made each party (or their lawyer) at the start of a hearing or trial. Typically, this statement explains the version of the facts best supporting each side of the case, how these facts will be proven, and how the law applies to the case. This statement is not evidence.

**Opposition (Civil):** The name of the paper you file in response to the other party's motion. An opposition is the second step in the three-step process called motion practice, which is controlled by Civil Rule 77.

**Order:** A command or direction given by a judge. An order can be in writing or spoken. Violating a court order can result in being held in contempt or sanctioned in other ways.

**Overruled:** the term used when the judge denies a point raised by one of the parties, as in "objection overruled."

**Own Recognizance (OR):** the defendant's release from custody based on the defendant's promise to appear in court, without giving money or security for bail. Sometimes the court imposes special conditions such as remaining in the custody of another, following a curfew, or keeping a job.

**Pardon:** the power of the governor of a state to relieve a convicted person from the legal consequences of the conviction.

**Parent:** a biological or adoptive parent whose parental rights have not been terminated.

**Parenting Plan:** The plan describing how the parents will be involved in their child(ren)'s life, recognizing that children of different ages have different needs and that the plan will also change if one or both of the parents move. A parenting plan usually describes the child(ren)'s schedule and describes which parent will make decisions about various things in the child(ren)'s life. After reviewing the parenting plan, the court will be able to determine the legal custody and physical custody arrangements for the child(ren). Also known as Custody and Visitation Plan.

**Parole, Discretionary:** the release of an inmate from prison by the parole board, before the whole sentence is served, on conditions of supervision. A parole officer supervises the parolee until the term of the parole ends. Parole can reduce the costs of imprisonment and increase the chance of rehabilitation.

**Parole, Mandatory:** the release of an inmate from prison after serving at least a two-year prison term minus good time. The Department of Corrections must release an inmate who has earned good time, but the parole board can set conditions of supervision if the sentence was

over two years.

**Party:** a person legally entitled to participate in a case and have a right to ask the court to rule one way or another. In a CINA case, parties include the child, parents, guardian, guardian ad litem, OCS, intervening tribe, and intervening Indian custodian. In family law cases, the parties are usually the people whose names are on the case as either plaintiff or defendant, however other people, such as GALs, may later join the case as parties.

**Paternity:** identification of who a child's biological father is.

**Pension:** A series of periodic payments, usually for life, payable monthly or at other specified intervals. The term is frequently used to describe the part of a retirement allowance financed by employer contributions.

**Peremptory Challenge:** when choosing a jury, each side can reject a fixed number of potential jurors without giving any reason. In Alaska, each side also can peremptorily challenge the judge assigned at the beginning of the case, without giving a reason.

**Permanency Hearing:** a hearing at which the best plan for permanent placement of the child and the future direction of the case are decided.

**Perjury:** the offense of giving false testimony under oath. It can be a felony or a misdemeanor.

**Personal Representative:** This is the person named in a will to ensure that a will's provisions are carried out after your death. If there is no will or no personal representative named, the probate court will appoint someone to take on the job of winding up the estate. The personal representative may also be called the "executor."

**Petition (Juvenile Criminal):** a document filed in juvenile court setting forth the facts that bring the youth within the jurisdiction of the court, and stating that the youth needs treatment, supervision or rehabilitation.

**Petitioner (Civil):** The person who starts a case that uses petitions rather than complaints to start the case. In family cases, the terms petitioner and respondent are used in domestic violence cases and dissolutions. This person is the petitioner for as long as the case is open.

**Physical Custody:** The right of a parent to have the child(en) actually live in their home. There are two types of physical custody arrangements: primary physical custody and shared physical custody.

**Plaintiff:** The person who starts a case. The other person is called the defendant.

**Plea:** the defendant's response to the prosecution's charges. A defendant may plead guilty, not guilty, no contest, or not guilty by reason of insanity.

**Plea Bargaining:** negotiations between the defense and the prosecution to resolve a criminal case without a full trial. For example, the prosecution can agree to dismiss some charges if the defendant pleads guilty to other charges, or the defendant can agree to plead guilty to a lesser charge. The prosecutor also may agree to recommend a certain sentence to the court.

**Pleadings:** The formal documents that start a case. In a civil case, the complaint is filed by the plaintiff, and the answer is filed by the defendant.

**Post-Conviction Relief:** a request to the trial judge to modify a sentence or overturn a conviction.

**Post-Judgment:** After the judgment or final order in a case has been issued.

**Power-of-Attorney, POA:** A power-of-attorney is a trusted person someone authorizes in a special way to handle selected business or personal affairs for him or her.

**Preliminary Examination:** a district court hearing at which the judge decides whether probable cause exists to believe that a felony was committed and that the defendant committed it.

**Prejudice:** A legal term which means to injure or damage someone's rights by some legal action. (For example, the term can be used like this: The plaintiff is not prejudiced by the court's decision to allow the defendant to testify by telephone.) It can also mean a final and binding decision that stops further prosecution of the same cause of action. For example, a judge can dismiss a case with prejudice. This means you can't bring a new lawsuit based on the same subject again. When a judge dismisses a case without prejudice, it usually means that the court didn't issue a decision on the merits which leaves the parties free to litigate the matter in a later case. In that situation, none of the rights or privileges of the person involved are lost or waived. In other words, the person can bring the case again.

**Preponderance of Evidence:** proof that would lead the trier of fact (judge or jury) to find that the existence of the contested fact is more probable than not. Courts use this standard in criminal trials when the defendant asserts an affirmative defense. It is a lower burden of proof than proof beyond reasonable doubt.

**Presentence Report:** a thorough background investigation ordered by the court in felony

cases to help decide the appropriate sentence. A probation officer prepares the presentence report.

**Pretrial Detention:** custody awaiting trial or, on occasion, awaiting the filing of charges.

**Prima Facie Case:** evidence presented by the prosecution that, unless contradicted, would prove each element of the crime beyond a reasonable doubt. If the prosecution cannot make a prima facie case, the court will grant the defendant's motion for judgment of acquittal.

**Primary Physical Custody:** The technical term for when the child(ren) live with one parent more than 70% of the year, which comes out to 256 or more overnights and the other parent less than 30% of the year, which is fewer than 110 overnights. If the child(ren) live with each parent more than 110 overnights, the technical term is shared custody. See also physical custody.

**Pro Se or Pro Per:** a Latin expression for a defendant who acts as his or her own attorney, meaning you represent yourself.

**Probable Cause:** facts and circumstances that would make a reasonable person believe that someone has committed a crime, or that property that the government can seize is at a designated location. Depending on the circumstances, a police officer, grand jury or judge may decide that probable cause exists.

**Probate:** Probate is the legal process where the court gives someone authority to control, manage and distribute your estate after you die. The person who is given control is called the "personal representative" and this person is usually named in your will. After the court determines that your will is valid, the personal representative is responsible for taking control of your assets, managing the assets during probate, notifying and paying any creditors, filing income and estate tax returns, and distributing your property as directed by the will or a court order.

**Probation:** release of a convicted defendant, either without imprisonment or after some imprisonment, subject to condition imposed by the court. A probation officer may supervise the offender. If the offender violates the conditions of probation, the prosecutor or probation officer can ask the court to revoke probation. If the judge finds a violation, the judge can change the conditions or send the offender to jail.

**Process Server:** A specially licensed person who is authorized to serve certain types of legal documents. While costs vary, it generally includes a fee plus mileage and time. Process servers can serve legal documents just about anywhere, not just at someone's home. Your

local court or Trooper station can provide you with an up-to-date list of currently licensed process servers in Alaska.

**Proof of Service:** The document proving that the other party was formally served. Generally, you only need a proof of service at the beginning of the case to prove the defendant received the complaint and summons according to the rules. If you serve the other party by certified mail, restricted delivery, return receipt the “green card” you get back signed by the defendant will be your proof of service. If you use a process server, the affidavit he or she gives you telling you when the defendant was served will be your proof of service.

**Property:** Anything that is owned or can be owned, such as land, automobiles, money, stocks, etc. Sometimes you will be asked to describe real property, which means buildings or land. All other property is personal property. In divorce and dissolution cases, people often mean property AND debt when they refer to property.

**Prosecutor:** a government attorney who represents the citizens’ interests in criminal cases. The prosecutor charges crimes, takes cases to trial or negotiates pleas, makes recommendations at sentencing, and handles appeals.

**Pro Se or Pro Per:** A Latin term that mean representing yourself in court. If you are pro se (or pro per), you are your own lawyer.

**Protective Order:** A court order which is meant to protect a person from another person. There are three types of protective orders that can be requested depending on your relationship with the opposing party and the type of crime he/she committed against you: 1) domestic violence; 2) stalking; or 3) sexual assault.

**Public Advocate:** an attorney working for the Office of Public Advocacy who represents indigent adults and juveniles accused of crimes. In CINA cases, this office provides guardians ad litem and CASAs, contracts with private GALS, and contracts with private attorneys to represent indigent parents.

**Public Defender:** an attorney working for the Public Defender Agency who represents indigent parents or children.

**Qualified Expert Witness (CINA):** In ICWA cases, a person with expertise in a specialty, or a person with extensive knowledge about cultural standards and childrearing practices within the child’s tribe or ethnic group.

**Qualified Domestic Relations Order (QDRO):** Qualified Domestic Relations Order, which is an order that provides instructions to the retirement plan administrator about how to pay you your share of the benefits out of the plan.

**Question of Fact:** a fact about which the parties disagree. The judge or jury decides whether the parties have proven the fact.

**Question of Law:** a legal question about which the parties disagree. The judge decides the proper interpretation of the law.

**Reasonable Doubt:** a doubt about the defendant’s guilt, based upon reason and common sense, arising from a fair consideration of all the evidence in the case. If a jury has a reasonable doubt about the truth of the charge, then it must give a verdict of not guilty.

**Reasonable Efforts:** efforts by OCS to provide family support services designed to make the home safer and reunify the family. Reasonable efforts must be made consistently, but for a limited period of time.

**Rebuttal:** evidence that explains away or contradicts the evidence of the other side. Generally refers to evidence that the prosecutor presents after the defense has completed its case.

**Redirect Examination:** questions following cross-examination, asked by the party who first examined the witness.

**Refinance:** Refinancing is the process of getting a new mortgage which is often done in a divorce to change the name of the person responsible to pay the home loan. People also refinance to reduce monthly payments, lower the interest rate, take cash out of the home for large purchases if there is equity, or change mortgage companies.

**Relief:** The help given by a court to a person who brings a lawsuit. The “relief asked for” might be the return of property taken by another person, the enforcement of an order, etc.

**Relinquishment:** voluntarily giving up parental rights to a child.

**Reply (Civil):** The name of the paper you file in reply to the other side’s opposition. The reply is the third and final step in the three-step process called motion practice, which is controlled by Civil Rule 77.

**Respondent (Civil):** The person who responds to the petitioner. If you did not file the petition to start a court case, and you are named in the case, you are the respondent. In family

matters, the terms petitioner and respondent are used in domestic violence cases and dissolutions. This person is the respondent for as long as the case is open.

**Restitution:** to pay back, to make whole again. A judge can make the defendant pay the victim of the crime for any money spent or lost because of the crime, including medical and counseling costs, lost wages, and lost or damaged property.

**Restraining Order:** a court order forbidding the defendant to do certain acts, or to approach or harass certain persons. Violation of restraining order can lead to arrest.

**Revocation Hearing:** a court hearing requested by a probation officer or prosecutor to decide whether the offender violated the conditions of probation and what the consequences should be. The parole board holds similar hearings for parole violations.

**Robbery:** taking or attempting to take property by force from the presence of another person. It is first-degree robbery when the defendant uses or pretends to use a dangerous instrument (such as a gun or knife) or attempts to cause serious physical injury to the victim. It is second-degree robbery without these factors. Both are felonies.

**Sanctions:** A penalty by the court to encourage a party to follow the law. Sanctions are usually designed to fit the circumstances and can be in the form of a money fine or perhaps being forbidden from calling certain witnesses.

**Scheduling Order:** The order issued by your trial court judge telling you the date of the trial and the setting the deadlines. If you miss a deadline, you may be sanctioned.

**Search and Seizure:** the police practice of looking for and then taking evidence useful in the investigation and prosecution of a crime. The United States and Alaska Constitutions set limits on searches and seizures. Except in certain urgent circumstances, police must get a search warrant prior to the search and seizure.

**Search Warrant:** an order issued by a judge that lets police officers look through certain premises, vehicles or containers for certain things or persons, and bring them before the court.

**Self-defense:** protecting one's person or property against an immediate injury attempted by another. The state cannot punish a person criminally to the extent that he or she acted in justified self-defense.

**Self-incrimination:** making a statement against one's own criminal interests. The Alaska and U.S. Constitutions provide that an accused person has a right to remain silent, and the right to

the presence and advice of an attorney, before any police questioning while the accused is in custody. Statements and evidence obtained in violation of this rule cannot be used in the defendant's criminal trial. A defendant taken into custody must be notified of these rights (often referred to as *Miranda* warnings). The defendant can remain silent throughout the trial.

**Sentence:** the penalty imposed on a defendant after conviction for a crime. A sentence can include a combination of imprisonment, probation, restitution, community work service, treatment, fines, loss of license, or other restrictions and punishments.

**Separate Property:** Separate property is property and debt that is not considered marital property. It may be from before the marriage, or an inheritance or gift. Just because a party acquired property before marriage does not necessarily mean that it won't be considered marital property. A spouse's premarital separate property can become marital when a married couple demonstrates an intent, through their words or actions during marriage, to treat one spouse's separate property as marital property. See marital property.

**Service:** Delivering a copy of a legal document to the person on the other side of your case. There are strict rules about how to serve different kinds of documents. For instance, the summons and complaint must be served by process server or certified mail/restricted delivery/return receipt, and all other documents in your case must be served by first class mail or hand delivered. You must tell the judge in writing how and when you gave a copy to the other side. This is called a certificate of service (or a proof of service for the summons and complaint). If there is no certificate of service, the judge will not read your documents until you serve the other side. If the other side is represented by a lawyer, you must send or give the copies to the lawyer.

**Settlement:** An agreement of all terms reached through negotiation by parties involved in a legal dispute. If you think you have settled your case, you may file a motion to request a hearing to put your settlement on the record.

**Settlement Conference:** A settlement conference is a meeting with a judge before trial to explore ways to settle your issues. The meeting includes you, the other party, and your lawyers (if you have them). The judge may or may not be the same judge you will have if you go to trial. The judge's role is to try help you reach an agreement, not to be a decision-maker.

**Sexual Abuse of a Minor:** sexual conduct by an adult with a young person. First-degree sexual abuse of a minor includes sexual penetration with a person under 13 (with or without the victim's consent), or sexual penetration of a person under 18 living with the defendant or in the defendant's care. Second-degree sexual abuse of a minor includes sexual contact with a person under 13, sexual penetration with a person 13-15 years old, or sexual contact with a

young person living with the defendant or in the defendant's care. Both are felonies.

**Sexual Assault:** First-degree sexual assault includes sexual penetration (of the genitals, anus or mouth) without consent of the victim. Second-degree sexual assault includes sexual contact (knowingly touching the victim's genitals, anus, or female breast) without consent. Both are felonies. These are crimes that qualify for a Sexual Assault Protective Order. The list of crimes that qualify are found at AS 11.41.410 - .450.

**Shared Physical Custody:** The technical term for when the child(ren) live(s) with each parent at least 30% of the year. In other words, if the child(ren) live(s) with each parent for at least 110 overnights, the technical term is shared custody. The alternative to shared physical custody is primary physical custody. See parenting plans for more information.

**Sole Legal Custody:** One parent is given the legal authority to make the major life decisions affecting the child's welfare, such as where the child(ren) goes to the doctor, goes to school or how money matters are handled. If the parents do not agree on a decision about the child(ren), the parent with sole legal custody has the right to make the final decision. The alternative to sole legal custody is joint legal custody.

**Spousal Support:** Money paid by a divorced husband or wife to the ex-spouse for personal support. In Alaska, this is generally called spousal support, and is only awarded under certain circumstances. Other states may call it alimony.

**Stalking:** A crime in which a person knowingly and repeatedly contacts you or a family member without your consent, and that places you in fear of your own death or physical injury or the death or physical injury of a family member. You may be able to get either a Stalking Protective Order or a Domestic Violence Protective Order based on stalking, depending on the relationship you have with the opposing party.

**Standing Order:** In family law cases, there is usually a local court order that sets out the rules of the case. Different courts have different names for it. Usually it is called the standing order, although it may be called the Domestic Relations Procedural Order. Whatever it is called, you will receive this order when you file your case, at the same time as you receive your summons. It usually prohibits either parent from removing any minor child(ren) from Alaska or selling marital property without the opposing party's agreement or the court's approval. Violating this order is as serious as violating any court order.

**Statute:** a law passed by the state legislature or the U.S. Congress. The court's job is to interpret the law and decide how it applies to your case. You can read the statutes online, at your local court, law library or legislative information office.

**Statute of Limitations:** the time limits within which the state must prosecute a defendant or else be barred from prosecuting the person for that particular crime.

**Stay of Execution:** The stopping, by court order, of an execution of judgment. A stay is usually temporary.

**Stipulation:** an agreement by attorneys on opposite sides of a case about facts or procedures. It does not bind the parties unless both agree and the judge approves it.

**Subpoena:** a court order requiring a witness to appear and give testimony before the judge under oath in court. Subpoenas can also require a person to bring to court specific documents or other items that you think you need to prove your case.

**Summons:** a written order from a judge telling a person to appear at certain time and place to answer charges or questions. A legal notice that informs an individual that someone has brought a lawsuit against him or her. It includes the reasons for the suit, who the judge is and how long you have to answer the complaint. You can only get this from your local court.

**Survivor Benefit:** The payment made to a beneficiary (usually the ex-spouse or alternate payee) from a retirement plan after the plan participant dies.

**Suspended Imposition of Sentence (SIS):** in some cases, the judge does not impose a sentence until after the defendant has completed certain conditions similar to probation, including jail time. If the defendant meets all conditions, the judge can set aside the conviction. If not, the judge can impose sentence. SIS is most often used for young, first offenders.

**Suspended Sentence:** in some cases, the judge can suspend part or all of a sentence to imprisonment and give probation instead. If the defendant fails to meet the conditions, the judge can impose the suspended time.

**Sustain:** to support as in “the judge sustained the objection because she/he found the question irrelevant.”

**Termination of Parental Rights:** a legal proceeding that involuntarily ends a parent’s rights to a child and frees the child for adoption without the parent’s consent.

**Testimony:** evidence given by a witness who took an oath to tell the truth.

**Theft:** taking the property of another with intent to deprive the person of it. Thefts are felonies or misdemeanors, depending on the amount and conditions of the crime.

**Transcript:** the official, word-for-word record of a trial or hearing.

**Trial:** a formal judicial proceeding through which courts decide criminal or civil disputes.

**Trial Brief:** A written summary or statement explaining your position or a particular issue to the judge. The trial brief states the facts, evidence, and legal arguments that you plan to present at trial and typically includes citations to legal authority (such as statutes, case law or rules) to support your position. In family law cases, a trial brief is required to be filed before the trial, usually by the deadline set out in a scheduling order.

**Unbundled Legal Services:** Some attorneys are willing to provide limited legal services to clients. This is called “unbundled services” or discrete task representation. Basically instead of hiring an attorney for full representation, the client would hire the attorney to perform a specific service that they both agree upon.

**Uncontested:** When the parties agree about all issues in a case, they may file Uncontested Complaints for Divorce or Custody. This means they file the paperwork together, both signing the complaint and any agreements that go with it.

**Under Advisement:** When the judge does not make a decision right away after hearing the evidence. If the judge wants some time to think about the issues he or she takes them “under advisement.” He or she will issue a decision in the future, either in writing or orally during a hearing scheduled with the parties.

**Under Oath:** All people must swear or affirm to tell the truth if they want their statement or testimony to be considered as evidence. All written statements must be submitted as affidavits to be considered by the court as evidence.

**Venue:** the city or court where a court case can be brought, depending on where the events occurred. Venue can be changed if more convenient for the parties and witnesses. Jurisdiction is controlled by strict rules, but venue is often left to the discretion of the judge. See Civil Rule 12(H)(1), AS 22.15.080 for more information.

**Verdict:** the formal conclusion of a judge or jury, deciding whether the prosecution has proven that the defendant is guilty of the crime.

**Visitation:** The right of a parent and child to contact and visit one another when the child is residing or visiting with the other parent. The law presumes that it is in the best interests of the child(ren) to have frequent and continuing contact with both parents so that both parents can maintain a good relationship with the child(ren). The schedule for visitation will be set out in the parenting or custody and visitation plan. See parenting plans for more information.

**Violation:** an offense that carries no jail time but may be penalized by a fine not exceeding \$500. A violation is not considered a crime.

**Victim Impact Statement:** the victim’s account of the harm the victim suffered from the crime, to be considered by the judge at sentencing.

**Void or Voidable Marriage:** In Alaska there is no court action called an annulment, but a court may declare a marriage void for specific reasons.

**Voir Dire:** the questions asked of potential jurors by the attorneys or judge to decide whether the jurors will serve on the jury.

**Waiver:** the intentional and voluntary giving up of a known right. A person can waive a right by agreeing to give it up, or the judge can infer the waiver from circumstances. Examples: waive jury; waive presentence report.

**Warrant:** a written order from a judge that authorizes a police officer to make an arrest or a search, or carry out a judgment.

**Will (also known as “Last Will and Testament”):** A will is a written document that directs the probate court who you want to be the personal representative who will take authority over your estate, how you want your property to be distributed after you die, and who will be the guardian for minor children.

**Witness:** person called upon to testify in court, under oath, to what the person has learned or observed that is relevant to the case.

**Witness List:** The list of people you intend to call during your trial or hearing. The judge will tell you when the witness list is due. If you do not file your witness list, the court may sanction you by not allowing you to call your witnesses. You must designate who will be called as an expert witness.

**Work Release:** a program that lets inmates leave a jail, prison, or halfway house during the day to work at a job.

**Writ of Assistance:** A writ of assistance is a written court order instructing a law enforcement official, such as a police officer, to perform a certain task that will help one of the parties get what was ordered in a separate court order. This can be helping to get personal property, possession of a home or return of children.

**Writ of Execution:** A formal, written command by the court to a sheriff or other official to enforce or execute a judgment in a specific way, such as sweeping a bank account or taking a portion of someone's PFD.

# RESOURCE DIRECTORY

*If you have questions or need help, you can call one of these agencies. The area code for all Alaska numbers is (907).*

## **ALASKA NATIVE ORGANIZATIONS**

Alaska Federation of Natives  
3000 A Street, Suite 210  
Anchorage, AK 99503  
274-3611  
[www.nativefederation.org](http://www.nativefederation.org)

## **Alaska Native Non-Profit Regional Associations**

### Ahtna

Copper River Native Association  
Robert Marshall Building  
Mile 111.5 Richardson Hwy; Drawer H  
Copper Center, AK 99573  
822-5241  
[www.crnative.org](http://www.crnative.org)

### Aleut

Aleutian Pribilof Islands Association  
Anchorage Headquarters:  
1131 E. International Airport Rd.  
Anchorage, AK 99518  
276-2700  
Fax 279-4351  
[www.apiai.org](http://www.apiai.org)

### Arctic Slope

Arctic Slope Native Association  
PO Box 1232  
7000 Uula St.  
Utqiagvik, AK 99723  
852-2762  
[www.arcticslope.org](http://www.arcticslope.org)

### Bering Straits

Kawerak, Inc.  
500 & 504 Seppala Drive  
Nome, AK 99762  
443-5231  
[www.kawerak.org](http://www.kawerak.org)

### Bristol Bay

Bristol Bay Native Association  
1500 Kakananak  
PO Box 310  
Dillingham, AK 99576  
842-5257  
[www.bbna.com](http://www.bbna.com)

### Chugach

Chugachmiut, Inc.  
1840 Bragaw St., Suite 110  
Anchorage, AK 99508  
562-4155, 800-478-4155  
[www.chugachmiut.org](http://www.chugachmiut.org)

### Cook Inlet

Cook Inlet Tribal Council  
Nat'uh Service Center  
3600 San Jeronimo Drive  
Anchorage, AK 99508  
793-3600, 877-985-5900  
[www.citci.org](http://www.citci.org)

### Interior

Tanana Chiefs Conference  
122 1<sup>st</sup> Avenue  
Fairbanks, AK 99701  
452-8251, 1-800-478-6822

[www.tananachiefs.org](http://www.tananachiefs.org)

*Kodiak*

Kodiak Area Native Association  
3449 E Rezanof Drive  
Kodiak, AK 99615  
486-9800, 800-478-5721  
[www.kanaweb.org](http://www.kanaweb.org)

*Northwest*

Maniilaq Association  
PO Box 256  
733 2<sup>nd</sup> Avenue  
Kotzebue, AK 99752  
442-3311, 800-431-3321  
[www.maniilaq.org](http://www.maniilaq.org)

*Southeast*

Central Council of Tlingit & Haida  
320 W. Willoughby Ave., Suite 300  
Juneau, AK 99801  
586-1432  
[www.ccthita.org](http://www.ccthita.org)

*Yukon Kuskokwim Delta*

Association of Village Council Presidents  
101 Main Street  
PO Box 219  
Bethel, AK 99559  
543-7300, 800-478-3521  
[www.avcp.org](http://www.avcp.org)

*First Alaskans Institute*

606 E Street, Suite 200  
Anchorage, AK 99501  
677-1700  
Fax 677-1780  
[www.firstalaskans.org](http://www.firstalaskans.org)

**CHILD HEALTH AND WELFARE**

**Office of Children's Services**

<http://dhss.alaska.gov/ocs/>  
Statewide Reports of Child Abuse or  
Neglect:  
Anchorage:  
1-800-478-4444

*Anchorage Regional and Field Office*

323 E. 4<sup>th</sup> Ave.  
Anchorage, AK 99501  
269-4000  
Anchorage Serves: Anchorage, Tyonek

*Southcentral Regional Office*

695 E. Parks Hwy. Unit 3  
Wasilla, AK 99654  
352-8914  
Southcentral Offices: Cordova,  
Dillingham, Gakona, Homer, Kenai, King  
Salmon, Kodiak, Seward, Unalaska,  
Valdez, Wasilla

*Southeast Regional Office*

9107 Mendenhall Mall Road, Suite 300  
Juneau, AK 99801  
465-3268  
Southeast Offices: Craig, Haines, Juneau,  
Ketchikan, Petersburg, Sitka

*Northern Regional Office*

323 4<sup>th</sup> Ave  
Anchorage, Alaska 99501  
269-4056  
Northern Offices: Anchorage, Utqiagvik,  
Delta Junction, Fairbanks, Fort Yukon,  
Galena, Kotzebue, McGrath, Nome

*Western Regional Office*

323 4<sup>th</sup> Ave  
Anchorage, Alaska 99501  
269-8018

Western Offices: Anchorage, Aniak,  
Bethel, St. Mary's

### **CHILD SUPPORT SERVICES**

**Child Support Services Division  
Alaska Department of Revenue**  
269-6900

<http://www.childsupport.alaska.gov/>  
Fax for all offices: 787-3220

*Anchorage Main Office:*  
655 F Street (physical address)  
550 W. 7th Avenue, Suite 310 (mailing)  
Anchorage, AK 99501  
269-6900  
1-800-478-3300

### **CIVIL AND RIGHTS**

**Alaska State Commission for Human  
Rights**

800 A Street, Suite 204  
Anchorage, AK 99501  
276-7474  
1-800-478-4692  
<http://humanrights.alaska.gov>

**Anchorage Equal Rights Commission**

632 W. 6th Ave., Ste. 110  
Anchorage, AK 99501  
343-4342  
343-4343 Complaint Hotline  
<http://www.muni.org/departments/aerc>

**U.S. Equal Employment Opportunity  
Commission: Seattle District Office**

909 First Ave., Suite 400  
Seattle, WA 98104  
206-220-6884  
1-800-669-4000

[https://www.eeoc.gov/field-office/seattle/  
location](https://www.eeoc.gov/field-office/seattle/location)

**U.S. Department of Justice**  
950 Pennsylvania Avenue, NW  
Washington DC  
20530-0001  
202-514-2000  
[justice.gov](http://justice.gov)

### **COURT SYSTEM**

**Alaska Court System Website:**  
[www.courts.alaska.gov](http://www.courts.alaska.gov)

**Alaska Courts**  
See Chart at End

**Family Law Self-Help Center Website:**  
[http://www.courts.alaska.gov/shc/family/  
selfhelp.htm](http://www.courts.alaska.gov/shc/family/selfhelp.htm)

**Statewide Telephone Helpline**  
264-0851  
(866) 279-0851 (In Alaska, but outside the  
Municipality of Anchorage)

### **CREDIT COUNSELING**

**Money Management International**  
866-889-9347  
[www.moneymanagement.org](http://www.moneymanagement.org)

*Main office:*  
417 Barrow Street  
Suite A  
Anchorage, AK 99501

### **DISABILITY RIGHTS**

**ACCESS Alaska**

[www.accessalaska.org](http://www.accessalaska.org)

*Main Office*

1217 East 10<sup>th</sup> Ave  
Anchorage, AK 99501  
248-4777  
1-800-770-4488  
268-5474 video phone

*Fairbanks Office*

400 Cushman Street  
Fairbanks, AK 99701  
479-7940  
1-800-770-7940  
268-5475 video phone

*Kenai Office*

36275 Kenai Spur Hwy, Suite 5  
Soldotna, AK 99669  
262-4955  
1-888-260-9336

*Mat-Su Office*

1075 Check St., Suite 109  
Wasilla, AK 99654  
357-2588  
1-800-770-0228

*Rural Office*

1217 East 10th Ave  
Anchorage, AK 99501  
Local: 545-0365  
1-800-770-4488

**Disability Law Center of Alaska**

[www.dlcak.org](http://www.dlcak.org)

*Main/Anchorage Office:*

3330 Arctic Boulevard, Suite 103  
Anchorage, AK 99503  
565-1002

1-800-478-1234

*Juneau Office*

230 S. Franklin, #206  
Juneau, AK 99801  
(800) 478-1234

**DIVISION OF BEHAVIORAL  
HEALTH**

<http://dhss.alaska.gov/dbh/>

*Juneau*

350 Main St #214  
Juneau, AK 99811  
465-3370  
1-800-465-4828  
465-2668 fax

*Anchorage*

3601 C St # 878,  
701 E Tudor Rd # 260  
Anchorage, AK 99503  
269-3600  
1-800-770-3930

*Fairbanks*

122 1st Ave #400  
& 751 Old Richardson Hwy.  
459-3800  
451-3116

**DOMESTIC VIOLENCE  
& SEXUAL ASSAULT**

**National Direct Crisis Services**

*National Domestic Violence Hotline*

1-800-799-SAFE (7233)  
1-800-787-3224 TTY  
512-453-8117 Administrative  
<http://www.thehotline.org/>

*Rape, Abuse, and Incest National Network*  
1-800-656-HOPE (4673)  
202-544-304 Administrative  
[www.rainn.org](http://www.rainn.org)

## **National Resources**

*Battered Women's Justice Project*  
1801 Nicollet Ave. S.  
Suite 102  
Minneapolis, MN 55403  
1-800-903-0111  
612-824-8768  
[www.bwjp.org](http://www.bwjp.org)

*Futures without Violence*  
100 Montgomery Street, The Presidio  
San Francisco, CA 94129  
415-678-5500  
1-866- 678-8901 TTY  
<http://www.futureswithoutviolence.org>

*National Network to End Domestic Violence*  
1325 Massachusetts Ave NW  
7th Floor  
Washington, DC 20005-4188  
202-543-5566  
<http://nnedv.org>

*National Resource Center on Domestic Violence*  
1-800-537-2238  
1-800-553-2508 TTY  
<http://www.nrcdv.org>

*National Sexual Violence Resource Center*  
2101 N. Front Street Governor's Plaza  
North, Bldg #2  
Harrisburg, PA  
(877) 739-3895

717-909-0715 TTY  
[www.nsvrc.org](http://www.nsvrc.org)

*Stronghearts Native Helpline*  
1-844-762-8483  
<https://strongheartshelpline.org/>

## **Statewide Agencies and Programs**

*Alaska Family Violence Prevention Project*  
Alaska Dept. of Health & Social Services,  
Division of Public Health  
269-2020  
<http://dhss.alaska.gov/dph/Chronic/Pages/InjuryPrevention/akfvpp/partners.aspx>

*Council on Domestic Violence and Sexual Assault*  
<http://dps.alaska.gov/cdvsa/>  
Alaska Department of Public Safety  
PO Box 111200  
Juneau, AK 99811-1200  
465-4356

## **State Coalitions**

*Alaska Native Women's Resource*  
P.O. Box 80382  
Fairbanks, AK 99708  
Main: 328-3990  
Fax: (866) 287-8330  
<https://www.aknwrc.org>

*Alaska Network on Domestic Violence and Sexual Assault*  
130 Seward, Suite 214  
Juneau, AK 99801  
586-3650  
463-4493 fax  
[www.andvsa.org](http://www.andvsa.org)  
See chart at end

*Yup'ik Women's Coalition*  
Emmonak, AK 99581  
949-6252 or 949-6388  
<http://www.yupikwomen.org>

**Alaska Domestic Violence/Sexual  
Assault Resource Centers**

*Anchorage*  
Abused Women's Aid in Crisis (AWAIC)  
100 W. 13th Avenue; 99501  
279-9581  
272-0100 crisis  
Fax 279-7244  
[www.awaic.org](http://www.awaic.org)

Standing Together Against Rape (STAR)  
1057 W. Fireweed, Suite 230; 99503  
276-7279  
276-7273 crisis  
1-800-478-8999 crisis  
Fax 278-9983  
[www.staralaska.com](http://www.staralaska.com)

*Chugachmiut Women's Violence  
Intervention*  
1840 Bragaw Street, Suite 110  
444-6485  
1-800-907-8738 crisis  
<http://www.chugachmiut.org/health-social-services/social-services/womens-violence-intervention>

*Covenant House*  
755 A Street  
Anchorage, AK 99501  
272-1255  
<https://covenanthouseak.org/>

*Bethel*  
Tundra Women's Coalition (TWC)

PO Box 2029; 99559  
543-3444  
543-3456 crisis  
1-800-478-7799 crisis  
Fax 543-3456  
[www.tundrapeace.org](http://www.tundrapeace.org)

*Cordova*  
Cordova Family Resource Center (CFRC)  
PO Box 863; 99574  
424-5674  
424-4357 crisis  
1-866-790-4357  
Fax 424-5673  
[www.cordovaalaska.org](http://www.cordovaalaska.org)

Native Village of Eyak Arnat Women's  
Project  
PO Box 1388; 99574  
424-7738  
Fax 424-7739

*Craig/Price of Wales*  
Helping Ourselves Prevent Emergencies  
(HOPE)  
PO Box 145; Craig, AK 99921  
826-2581  
401-1611 crisis  
Fax 826-2584  
[www.hope4pow.org](http://www.hope4pow.org)

*Dillingham*  
Safe and Fear-Free Environment (SAFE)  
PO Box 94; 99576  
842-2320  
842-2316 crisis  
1-800-478-2316 crisis  
Fax 842-2198  
[www.safebristolbay.org](http://www.safebristolbay.org)

*Emmonak*

Emmonak Women's Shelter  
PO Box 207; 99581  
949-7345  
Fax 949-1718

*Fairbanks*

Interior Alaska Center for Non-Violent  
Living (IAC)  
726 26<sup>th</sup> Ave, Suite 1; 99701  
452-2293  
452-7273 crisis  
1-800-478-7273  
Fax 452-2613  
[www.iacnvl.org](http://www.iacnvl.org)

*Haines*

Becky's Place  
PO Box 1506; 99827  
303-0076  
[www.beckysplacehavenofhope.org](http://www.beckysplacehavenofhope.org)

*Homer*

South Peninsula Haven House (SPHH)  
3776 Lake Street, Suite 100; 99603  
235-7712  
235-8943 crisis  
1-800-478-7712 crisis  
Fax 235-2733  
[www.havehousealaska.org](http://www.havehousealaska.org)

*Juneau*

Aiding Women in Abuse & Rape  
Emergencies (AWARE)  
PO Box 20809; 99802  
586-6623  
586-1090 crisis  
1-800-478-1090 crisis  
Fax 586-2476  
[www.awareak.org](http://www.awareak.org)

*Kenai*

The LeeShore Center  
325 S. Spruce St; 99611  
283-8543  
283-7257 crisis  
Fax 283-5844  
[www.leeshoreak.org](http://www.leeshoreak.org)

*Ketchikan*

Women in Safe Homes (WISH)  
PO Box 6552; 99901  
225-9474 225-9474 crisis  
1-800-478-9474 crisis  
Fax 225-2472  
[www.wishak.org](http://www.wishak.org)

*Kodiak*

Kodiak Women's Resource and Crisis  
Center (KWRCC)  
PO Box 2122; 99615  
486-6171  
486-3625 crisis  
Fax 486-4264  
[www.kwrcc.org](http://www.kwrcc.org)

*Kotzebue*

Maniilaq Family Crisis Center (MFCC)  
PO Box 38; 99752  
442-3724  
442-3969 crisis  
1-888-478-3969  
Fax 442-3985  
[www.maniilaq.org/familyResources.html](http://www.maniilaq.org/familyResources.html)

*Mat-Su/Palmer*

Alaska Family Services (AFS)  
1825 S. Chugach St.; 99645  
746-8146  
office/crisis  
1-866-746-4080  
Fax 746-8111

[www.akafs.org](http://www.akafs.org)

*Nome*

Bering Sea Women's Group (BSWG)  
PO Box 1596; 99762  
443-5491  
443-5444 crisis  
1-800-570-5444 crisis  
Fax 443-3748

*Petersburg*

Working Against Violence for Everyone  
(WAVE)  
PO Box 415; 22 Sing Lee Alley, Suite 1;  
99833  
772-9283  
518-0555 crisis  
[www.petersburgwave.org](http://www.petersburgwave.org)

*Seward*

SeaView Community Services (SCS)  
302 Railway Ave PO Box 1045; 99664  
224-5257  
224-3027 crisis  
1-888-224-5257 crisis  
Fax 224-7081  
[www.seaviewseward.org/home.shtml](http://www.seaviewseward.org/home.shtml)

*Sitka*

Sitkans Against Family Violence (SAFV)  
PO Box 6136; 99835  
747-3370  
747-6511 crisis  
1-800-478-6511  
Fax 747-3450  
[www.safv.org](http://www.safv.org)

*Unalaska*

Unalaskans Against Sexual Assault &  
Family Violence (USAFV)  
PO Box 36; 99685

581-1500 office/crisis  
1-800-478-7238 crisis  
Fax 581-4568

*Utqiagvik*

Arctic Women in Crisis (AWIC)  
PO Box 69; 99723  
852-0261  
852-0267 crisis  
1-800-478-0267 crisis  
Fax 852-2474

*Valdez*

Advocates for Victims of Violence (AVV)  
PO Box 524; 99686  
835-2980  
835-2999 crisis  
1-800-835-4044 crisis  
Fax 835-2981  
[www.avvalaska.org](http://www.avvalaska.org)

*Seward*

SeaView Community Services  
302 Railway Ave, Seward, AK 99664  
224-5257  
<http://www.seaviewseward.org/home.shtml>

*Hooper Bay*

Bay Haven Shelter  
731 East 8th Avenue  
Anchorage, Alaska 99501  
279-2511  
<https://ruralcap.org/client-services/housing/bay-haven-womens-domestic-violence-shelter/>

**FEDERAL AGENCIES**

**Alcohol, Tobacco, Firearms (ATF)**

222 W. 7th St #547, Anchorage, AK 99513  
271- 5701

<https://www.atf.gov/seattle-field-division/alaska-field-offices>

**FBI Office in Alaska**

101 East Sixth Avenue Anchorage, AK  
99501

276-4441

<https://www.fbi.gov/contact-us/field-offices/anchorage>

**United States Attorney's Office**

Federal Building  
222 W. 7th Ave. #9 Room 253  
Anchorage, AK 99513  
271-5071

<https://www.justice.gov/usao-ak>

**Social Security Administration**

[www.ssa.gov](http://www.ssa.gov)

*Juneau Office*

Federal Building  
709 West 9th Room 231  
Juneau, AK 99801  
1-800-478-7124

<https://www.ssa.gov>

*Anchorage Office*

222 West 8th Avenue, Room A-11  
Anchorage, AK 99513  
1-866-772-3081

*Fairbanks Office*

101 12th Avenue, Room 138  
Fairbanks, AK 99701  
1-800-478-0391

**EMPLOYMENT**

**Alaska State Commission for Human Rights**

800 A Street, Suite 204  
Anchorage, AK 99501-3669  
274-4692

1-800-478-4692

276-3177 (TTY)

1-800-478-3177 (TTY)

<https://humanrights.alaska.gov/>

**U.S. Equal Employment Opportunity Commission**

909 First Ave, Suite 400  
Seattle, WA 98104-1061  
1-800-669-4000  
Fax 206-220-6911  
[www.eeoc.gov](http://www.eeoc.gov)

**Anchorage Equal Rights Commission**

632 W. 6<sup>th</sup> Ave, Suite 110  
Anchorage, AK 99501  
343-4342  
Fax 249-7328  
[www.muni.org/departments/aerc](http://www.muni.org/departments/aerc)

**Office of Federal Contract Compliance Programs**

1-800-397-6251  
206-398-8005  
Fax 206-224-3100  
[www.dol.gov/ofccp/](http://www.dol.gov/ofccp/)

*See Labor section for more resources*

**GOVERNOR'S OFFICE**

[www.gov.alaska.gov](http://www.gov.alaska.gov)

*Office of the Governor*  
3rd Floor, State Capitol  
PO Box 110001  
Juneau, AK 99811  
465-3500  
465-3532 fax

State Info: 465-2111

*Anchorage Office*  
550 West 7th Avenue  
Suite 170  
Anchorage, AK 99501  
269-7450  
269-7463 fax  
State Info: 269-5111

*Fairbanks Office*  
675 7th Avenue  
Suite H5  
Fairbanks, AK 99701  
451-2920  
451-2858 fax

*Washington DC Office*  
202-624-5858  
202-624-5857 fax

## **HEALTH**

### **Public Health Centers**

<http://www.dhss.alaska.gov/dph/Nursing/>  
See chart at end

### **Alaska Native Tribal Health Consortium**

Early Intervention Services  
Dept. of Community Health Services  
4000 Ambassador Drive,  
Anchorage, AK 99508  
563-2662  
Toll Free: 1-888-855-8006 Press 2  
Statewide: 729-2907  
Juneau: 463-3471  
Sitka: 966-2411  
Fairbanks: 1-800-478-6682 (ext. 3670)  
Anchorage: 729-4209  
Bethel: 1-800-478-3321

### **Reproductive Health and STD Clinic Department of Health & Human Services**

Municipality of Anchorage  
3601 C Street, Suite 540 Anchorage, AK  
99503  
561-8000  
<http://dhss.alaska.gov/dph/wcfh/Pages/womens/reproductive.aspx>  
*See Reproductive Rights section for more resources*

## **HIV/AIDS RESOURCES**

### **Statewide AIDS Helpline**

Outside of Anchorage: 1-800-478-AIDS (2437)  
Anchorage: 276-4880 (Four A's)  
Hours: 9am - 5pm, Monday – Friday

### **Partner Notification Assistance**

(State HIV/STD Program)  
Statewide: 269-8000  
HIV/AIDS Contact: 269-8057  
STDs Contact: 269-8056

### **Four A's Alaskans AIDS Assistance Association**

[www.alaskan aids.org](http://www.alaskan aids.org)  
*Statewide AIDS Helpline:*  
1-800-478-AIDS (2437)

*Anchorage Office*  
1057 W. Fireweed, Suite 102  
Anchorage, AK 99503  
263-2050

*Juneau Office*  
174 S. Franklin St., Suite 207  
Juneau, AK 99801  
586-6089

**Veterans Administration  
Outpatient Clinic**  
1201 North Muldoon Road  
Anchorage, AK 99504  
257-4700 or 1-888-353-7574

**S.T.O.P. AIDS Project  
Center for Drug Problems**  
520 East Fourth Avenue, #102  
Anchorage, AK 99501-2624  
278-5019

**Interior AIDS Association**  
710 Third Ave  
Fairbanks, AK 99701  
452-4222  
[www.interioraids.org](http://www.interioraids.org)

## **HOUSING**

**Alaska Housing Finance Corporation  
Division of Public Housing**  
[www.ahfc.us](http://www.ahfc.us)

*Headquarters*  
4300 Boniface Parkway 99504  
PO Box 101020  
Anchorage, AK 995  
338-6100  
1-800-478-AHFC (2432)

*Rural Housing*  
330-8166 (Anchorage)  
800-478-4585 (outside Anchorage)  
Home Buyers  
330-8250 (Anchorage)  
800-478-2432 (outside Anchorage)  
Loan Servicing  
338-6100 (Anchorage)  
800-478-2432 (outside Anchorage)

*Senior Housing*  
330-8460 (Anchorage)  
800-478-2432 (outside Anchorage)

**AHFC Housing Assistance Locations**  
See chart at end

**Fair Housing Project Alaska**  
1-855-679-FAIR (3247)  
1016 West Sixth Avenue, Suite 200  
Anchorage, AK 99501  
<https://www.fairhousingalaska.org/>

## **IMMIGRATION AND LANGUAGE INTERPRETER SERVICES**

**Alaska Institute for Justice (formerly  
Alaska Immigration Justice Project)**  
[www.akijp.org](http://www.akijp.org)

*Anchorage Office*  
431 W. 7th Avenue, Suite 208  
Anchorage, AK 99501  
279-AIJP (2457)  
279-2450 fax

*Juneau Office*  
9085 Glacier Highway, Suite 204  
Juneau, AK 99801  
789-1324  
Fax 789-1324

## **LABOR**

**Alaska Department of Labor**  
3301 Eagle St,  
Anchorage, AK 99503  
269-4800

Employment Security (Unemployment  
Insurance Benefits)

[www.labor.state.ak.us](http://www.labor.state.ak.us)

*Anchorage UI Claim Center*  
PO Box 107224  
Anchorage, AK 99510  
269-4700  
269-4853 fax

*Fairbanks UI Claim Center*  
675 Seventh Ave, Station M  
Fairbanks, AK 99701  
451-2871  
451-2870 fax

*Juneau UI Claim Center*  
PO Box 115509  
Juneau, AK 99811  
465-5552  
465-5573 fax

*All other areas:*  
1-888-252-2557  
1-888-353-2937 fax

**Alaska Job Centers**  
[www.jobs.state.ak.us](http://www.jobs.state.ak.us)  
877-724-2539  
See chart at end

**Labor Standards & Safety**  
465-4855  
465-6012 fax  
[www.labor.state.ak.us/lss/home.htm](http://www.labor.state.ak.us/lss/home.htm)

**Workers' Compensation**  
<https://labor.alaska.gov/wc/>

*Main Office*  
PO Box 111512  
Juneau, AK 99811  
465-2790

465-2797 fax

*Anchorage Office*  
3301 Eagle Street, Suite 304  
Anchorage, AK 99503  
269-4980  
269-4975 fax

*Fairbanks Office*  
675 Seventh Ave. Station K  
Fairbanks, AK 99701  
451-2889  
451-2928 fax

**State Department of Labor Wage & Hour Administration**  
Anchorage: 269-4900  
Fairbanks: 451-2886  
Juneau: 465-3584  
[www.labor.state.ak.us/lss/whhome.htm](http://www.labor.state.ak.us/lss/whhome.htm)

**Fishermen's Fund**  
PO Box 111149  
Juneau, AK 99811  
465-2766  
1-888-520-2766  
465-2797 fax  
[www.labor.state.ak.us/wc/ffund.htm](http://www.labor.state.ak.us/wc/ffund.htm)

**State Employee Claims Harbor Adjustment Services**  
1900 W. Benson Blvd, Ste. 101  
Anchorage, AK 99517  
277-1377  
Federal Department of Labor  
1-866-487-2365

**Alaska Department of Labor & Workforce Development, Commissioner's Office**

465-2700

**LEGAL**

**Alaska Bar Association**

840 K Street, Suite 100  
PO Box 100279  
Anchorage, AK 99510  
272-7469  
272-2932 fax  
[www.alaskabar.org](http://www.alaskabar.org)

*Lawyer Referral Service: 272-0352*  
Outside Anchorage:  
1-800-770-9999

**Alaska Legal Services**

[www.alsc-law.org](http://www.alsc-law.org)  
See chart at end

**Fair Housing Project – A Project of  
Alaska Legal Services**

1016 West Sixth Avenue, Suite 200  
Anchorage, AK 99501  
1-855-679-FAIR (3247)  
[fairhousing@alsc-law.org](mailto:fairhousing@alsc-law.org)

**Alaska Native Justice Center**

3600 San Jeronimo Drive, Suite 264  
Anchorage, AK 99508  
793-3550  
Fax 793-3570  
[www.anjc.org](http://www.anjc.org)

**Alaska Network on Domestic Violence  
and Sexual Assault: Pro Bono Program**

408 Oja Way, Suite A

Sitka, AK 99835  
747-2990 Fax 747-7547  
[www.andvsa.org](http://www.andvsa.org)

**Alaska Office of Victims' Rights**

1007 W. 3<sup>rd</sup> Ave, Suite 205  
Anchorage, AK 99501  
754-3460  
1-844-754-3460  
754-3469 fax  
[www.ovr.akleg.gov](http://www.ovr.akleg.gov)

**Disability Law Center of Alaska**

*See Disability Rights section for more  
information*

**Department of Law**

Attorney General  
123 4th St,  
Juneau, AK 99801  
Fax 465-2075  
Civil Division: 465-3600  
Criminal Division: 465-3620  
[www.law.state.ak.us](http://www.law.state.ak.us)

*Civil Division: Anchorage*  
1031 W. 4<sup>th</sup> Ave, Suite 200  
Anchorage, AK 99501  
269-5100

*Civil Division: Fairbanks*  
100 Cushman St., Suite 400  
Fairbanks, AK 99701  
451-2811

*Criminal Division: Anchorage*  
310 K St., Suite 520  
Anchorage, AK 99501  
269-6321

**District Attorney's Offices**

See chart at end

**Family Law Self-Help Center, Alaska  
Court System**

[courts.alaska.gov/selfhelp.htm](http://courts.alaska.gov/selfhelp.htm)

264-0851

1-866-279-0851

**Municipal Prosecutors**

*Anchorage*

632 W 6<sup>th</sup> Ave, Suite 210

Anchorage, AK 99501

343-4250

Fax 343-6689

[www.muni.org](http://www.muni.org)

*Juneau*

155 S. Seward St.

Juneau, AK 99801

586-5242

Fax 586-1147

[www.juneau.org/law](http://www.juneau.org/law)

**Northern Justice Project**

406 G Street, Suite 207

Anchorage, AK 99501

308-3395

[njp@njp-law.com](mailto:njp@njp-law.com)

**Office of Public Advocacy**

*(Includes Public Guardian)*

<http://doa.alaska.gov/opa/>

See chart at end

**Public Defender Agency**

<http://doa.alaska.gov/pda/Offices.html>

See chart at end

**MENTAL HEALTH**

**National Alliance for the Mentally Ill  
(NAMI)**

*Anchorage*

1057 W Fireweed Ln Suite 103,

Anchorage, AK 99503

272-0227

277-1400 fax

[www.namianchorage.org](http://www.namianchorage.org)

*Fairbanks*

946 Cowles St UNIT 102

Fairbanks, AK 99707

456-4704

456-3593 fax

*North Slope Borough*

NAMI Barrow PO Box 2305

Utqiagvik, AK 99723-2305

*Juneau*

Mendenhall Mall Annex,

9109 Mendenhall Mall Rd Suite 5

463-4251

500-9914 fax

[www.namijuneau.org](http://www.namijuneau.org)

**Juneau Alliance for Mental Health  
(JAMHI)**

3406 Glacier Hwy.

Juneau, AK 99801

463-3303

855-463-3303

Fax 463-6858

[www.jamhi.org](http://www.jamhi.org)

**Alaska 2-1-1**

A Statewide Referral for Health & Human  
Services in Alaska

2-1-1

1-800-478-2221  
[www.alaska211.org](http://www.alaska211.org)  
*See the Disability section for additional resources.*

### **OMBUDSMAN**

#### **Office of the Ombudsman**

State of Alaska  
333 W. Fourth Ave., Suite 305  
Anchorage, AK 99501  
269-5290  
269-5291 fax  
<https://ombud.alaska.gov>

#### *Juneau Office*

130 Seward St Suite 501  
Juneau, AK 99811  
1-800-478-2624  
465-3330 fax

### **PUBLIC ASSISTANCE**

#### **Alaska Division of Public Assistance**

<http://dhss.alaska.gov/dpa/>  
See chart at end

### **REPRODUCTIVE RIGHTS**

#### **Emergency Contraception Website**

[www.not-2-late.com](http://www.not-2-late.com)

#### **CAIR (Community Abortion Information & Resource) Project**

893 West Street Hampshire College  
Amherst, MA 01002-3359  
(413) 559-6976  
<https://clpp.hampshire.edu/leadership-programs/rasc/host-sites/community-abortion-information-and-resource-project-cair>

NARAL Pro-Choice America  
1725 Eye Street NW Suite 900  
Washington DC  
[20006prochoiceamerica.org](http://20006prochoiceamerica.org)

#### **Planned Parenthood of the Great Northwest**

For the clinic nearest you and free information/ counseling  
800-769-0045  
[www.plannedparenthood.org](http://www.plannedparenthood.org)

#### *Anchorage Center*

4001 Lake Otis Parkway, #101  
Anchorage, AK 99508  
800-769-0045

#### *Fairbanks Clinic*

1867 Airport Way, Suite 160B  
Fairbanks, AK 99701  
800-769-0045

#### *Juneau Center*

3231 Glacier Hwy.  
Juneau, AK 99801  
800-769-0045

#### *Soldotna Center*

130 East Redoubt Avenue  
Soldotna, AK 99669  
800-769-0045

#### **Northwest Abortion Access Fund**

Provides financial help for abortion care and connects people to clinics, travel options, and safe places to stay.  
Toll-free hotline: 1-866-692-2310  
*See Health section for more resources*

## **SOCIAL SERVICES**

### **Alaska Department of Health & Social Services**

[www.dhss.alaska.gov/](http://www.dhss.alaska.gov/)

#### *Office of the Commissioner*

3601 C St., Suite 902  
PO Box 240249  
Anchorage, AK 99503  
269-7800  
Fax 269-0060

#### **Senior and Disability Services**

<http://dhss.alaska.gov/dsds/>

#### *Anchorage Office*

1835 Bragaw Street, Suite 350  
Anchorage, AK 99508  
269-3666, 800-478-9996  
Fax 269-3688

#### *Juneau Office*

240 Main St., Suite 601  
Juneau, AK 99811  
465-3372  
1-866-465-3165  
465-1170 fax

#### *Fairbanks Office*

751 Old Richardson Hwy., Suite 100a  
Fairbanks, AK 99701  
451-5045, (866) 465-3165  
Fax 451-5046

#### **Vital Statistics**

##### *Anchorage Office*

3901 C St., Suite 101  
Anchorage, AK 99503  
269-0991  
Fax 269-0994

#### *Fairbanks Office*

3825 S. Cushman,  
Fairbanks, AK 99701  
451-7014  
Fax 451-5093

#### *Juneau Office*

5441 Commercial Blvd.  
PO Box 110675  
Juneau, AK 99801  
465-3391  
Fax 465-3618

#### **Identity, Inc.**

##### **Identity Community Center**

801 W. Fireweed Lane Suite 103  
Anchorage, AK 99503  
929-4528  
Fax 334-1992  
<https://identityalaska.org/>

#### **Statewide Independent Living Council of Alaska**

1057 W Fireweed Lane, Suite 206  
Anchorage, AK 99503  
263-2092  
Fax 263-2012  
<https://www.alaskasilc.org/>

#### **U.S. Department of the Interior**

##### *Bureau of Indian Affairs-Alaska Region*

1011 E. Tudor Road Anchorage, AK  
99503  
786-3834  
Fax 786-3343  
<https://www.doi.gov/>

*See the Domestic Violence/Sexual Assault section for resources.*

## **VICTIMS' SERVICES**

### **Alaska Office of Victims' Rights**

1007 W. 3<sup>rd</sup> Ave, Suite 205  
Anchorage, AK 99501  
754-3460  
844-754-3460  
Fax 754-3469  
[ovr.akleg.gov/](http://ovr.akleg.gov/)

### **Violent Crimes Compensation Board**

Atwood Building, 550 W 7th Ave, Ste 290  
Anchorage, AK 99501  
465-3040  
1-800-764-3040  
465-2379 fax  
<http://doa.alaska.gov/vccb/>

### **Victims for Justice**

1057 W. Fireweed Lane, Suite 101  
Anchorage, AK 99503  
278-0977, 888-835-1213  
258-0740 fax  
[www.victimsforjustice.org](http://www.victimsforjustice.org)

### **VINE Link**

Victim Information and Notification  
Everyday  
[www.vinelink.com](http://www.vinelink.com)  
VINE Service Number: 1-866-277-7477

### **Alaska Department of Corrections**

#### **Victim Service Unit**

550 West 7th Avenue,  
Suite 1800 Anchorage, Alaska 99501-3570  
269-7384, 877-741-0741  
Fax 269-7382

*See the Domestic Violence/Sexual Assault section for additional resources.*

## **ADDITIONAL RESOURCE MATERIALS: BOOKS AND PUBLICATIONS**

### **National Council of Juvenile and Family Court Judges ([ncjfcj.org](http://ncjfcj.org))**

-Managing Your Divorce: A Guide for Battered Women  
-Domestic Violence Section of website

### **National Women's Law Center**

11 Dupont Circle, NW, #800  
Washington DC 20036  
202-588-5180  
[nwlc.org](http://nwlc.org)

### **Tribal Court Directory**

Available from Alaska Legal Services  
<http://alaskatribes.org/wp-content/uploads/2018/12/Draft-TC-Directory-v.10-4.pdf>

<i>Alaska Courts</i> <a href="http://www.courts.alaska.gov">www.courts.alaska.gov</a>		
<b>Town</b>	<b>Address, zip code</b>	<b>Phone #</b>
Anchorage (Superior Court)	825 W 4 <sup>th</sup> Ave, 99501	Customer Service: 264-0514
Anchorage (District Court and Domestic Violence Office)	303 K Street, 99501	Domestic Violence: 264-0616
Angoon	700 Aandaina.aat St.; Box 250; 99820	788-3229
Aniak	2 Birch Street; Box 147; 99557	675-4325
Bethel	204 Chief Eddie Hoffman Hwy.; Box 130; 99559	543-2298
Cordova	500 Water Street; Box 898; 99574	424-7312
Craig	1330 Craig-Klawock Hwy.; Box 646; 99921	826-3316
Delta Junction	Mile 266 Richardson Hwy; Box 401; 99737	895-4211
Dillingham	476 Emperor Way South; Box 909; 99576	842-5215
Emmonak	1 Housing Road; Box 176; 99581	949-1748
Fairbanks	101 Lacey Street; 99701	Clerk's Office: 452-9277; Domestic Violence: 452-9254
Fort Yukon	E 3rd Avenue; Box 211; 99740	662-2336
Galena	167 Burbot Street ; Box 167; 99741	656-1322
Glennallen	Ahtna Bldg; Mile 115 Richardson Hwy; Box 86; 99588	822-3405
Haines	219 Main Street; Box 169; 99827	766-2801

*Alaska Courts* [www.courts.alaska.gov](http://www.courts.alaska.gov)

Homer	3670 Lake St., Bldg A; 99603	235-8171
Hoonah	300 Front St., Box 430; 99829	945-3668
Hooper Bay	1 Uniak Ave; Box 89; 99604	758-4860
Juneau	Dimond Court Bldg; 123 4th St.; Box 114100; 99811	463-4700
Kake	264 Silver Spike Rd.; Box 100; 99830	785-3651
Kenai	125 Trading Bay Dr., Suite 100; 99611	283-3110
Ketchikan	415 Main St., Room 400; 99901	235-3195
Kodiak	204 Mission Rd., Room 124; 99615	486-1600
Kotzebue	605 3rd Ave.; Box 317; 99752	442-3208
Naknek	Bristol Bay Borough Building; 1 Main Street; Box 229; 99633	246-4240
Nenana	102 W. 8th Street; Box 449; 99760	832-5430
Nome	306 W 5th Ave ; Box 1110; 99762	443-5216
Palmer	435 S. Denali St.; 99645	746-8181
Petersburg	17 N. Nordic Drive; Box 1009; 99833	772-3824
Prince of Wales	6738-B Klawock-Hollis Highway	755-8801
St. Paul Island	N.A	264-0514
Sand Point	N.A	264-0514
Seward	410 Adams St., Room 208; Box 1929; 99664	224-3075
Sitka	304 Lake St., Room 203; 99835	747-3291
Skagway	McCabe Bldg; 7th Ave & Spring St.; Box 495; 99840	983-2368
Tok	1313.5 Alcan Hwy; Box 187; 99780	883-5171
Unalakleet	250 UVEC Way; Box 250; 99684	624-3015

*Alaska Courts* [www.courts.alaska.gov](http://www.courts.alaska.gov)

Unalaska	204 W. Broadway; Box 245; 99685	581-1379
Utqiagvik	1250 Agvik Street, Box 270; 99723	852-4800
Valdez	213 Meals Avenue; Box 127; 99686	835-2266
Wrangell	Wrangell Public Safety Bldg 2; 431 Zimovia Hwy; Box 869; 99929	874-2311
Yakutat	508 Max Italio Drive; Box 426; 99689	784-3274

*Public Health Centers* <http://www.dhss.alaska.gov/dph/Nursing/>

<b>Town</b>	<b>Address; Zip Code</b>	<b>Phone</b>	<b>Fax</b>
Anchorage (through the Municipality)	825 L Street; PO Box 196650; 99519	343-6513	343-7992
Bethel Center and Itinerant Nursing Services	1490 State Hwy; PO Box 1048; 99559	543-2110	543-0435
Cordova	602 Chase Ave, Cordova, AK 99574	424-8000	424-4548
Craig	1800 Craig Klawock Hwy.; PO Box 130; 99921	826-3433	826-3435
Delta Junction	2857 Alaska Hwy, Room 210; 99737	895-4292	895-4264
Dillingham	125 Main Street; 99576	842-5981	842-4396
Fairbanks Regional Center	1025 West Barnette; 99701	452-1776	451-1611
Homer	195 E. Bunnell Ave., Suite C; 99603	235-8857	235-7090
Juneau	3412 Glacier Highway; 99801	465-3353	465-3389
Kenai	630 Barnacle Way, Suite A; 99611	335-3400	335-3405
Ketchikan	605 Gateway Court ; 99901	225-4350	247-0978
Kodiak	316 Mission Road, Room 207; 99615	486-3319	486-8149

**Public Health Centers** <http://www.dhss.alaska.gov/dph/Nursing/>

Mat-Su*	3223 E. Palmer-Wasilla Hwy., Ste 3; 99654	352-6600	376-3096
Nome	607 Division St.; 99762	443-3221	443-4869
Petersburg	103 Fram Street; 99833	772-4611	772-4617
Sitka	210 Moller Street; 99835	747-3255	747-4899
Tok	1314 Alaska Highway; 99780	883-4101	883-4102
Valdez	1001 Meals Ave.; 99686	835-4612	835-2419
Utqiagvik (through North Slope Borough Health & Social Services)	579 Kingosak Street; PO Box 69; 99723	852-0270	852-2855
*Mat-Su Valley satellite clinics in Glennallen, Palmer, Big Lake, Willow, Talkeetna, Trapper Creek, and Sutton			

**AHFC Housing Assistance Locations** [www.ahfc.us](http://www.ahfc.us)

<b>Town</b>	<b>Address; Zip Code</b>	<b>Phone #</b>	<b>Fax</b>
Anchorage	440 E. Benson Blvd., Suite 200; PO Box 241385; 99524	330-6100; 800-478-2432 800-478-5558	274-7176
Bethel	1029 Ridgcrest Dr.; PO Box 587; 99559	543-2228	543-2191
Cordova	401 Second St.; PO Box 1728; 99574	424-7697	424-7699
Fairbanks	1441 22nd Ave.; 99701	456-3738	456-2142
Homer	3670 Lake St., Suite 400; 99603	235-2447	235-7535
Juneau	3410 Foster Ave.; 99801	586-3750; 800-478-3750	463-4967
Ketchikan	130 Bryant St., Suite 112; PO Box 5124; 99901	225-6030	225-1729
Kodiak	521 Maple; PO Box 317; 99615	486-5513	486-4065

*AHFC Housing Assistance Locations* [www.ahfc.us](http://www.ahfc.us)

Nome	406 E. I Street; PO Box 930; 99762	443-2888	443-2541
Petersburg	102 N. First St.; PO Box 729; 99833	772-3550	772-3734
Seward	200 Lowell Canyon Rd.; PO Box 1475; 99664	224-3737	224-5527
Sitka	422 Andrews St.; 99835	747-5700	747-3767
Soldotna	44539 Sterling Hwy., Suite 201-A; 99669	260-7633	260-7635
Valdez	104-B Bremner St.; PO Box 926; 99686	835-2119	835-2067
Wasilla	1201 N. Lucille St., Suite 104; PO Box 873347; 99687	376-5744	376-1229
Wrangell	720 Zimovia Hwy., Suite 107; PO Box 950; 99929	874-3018	874-3449

*Alaska Job Centers* [www.jobs.state.ak.us](http://www.jobs.state.ak.us)

<b>Town</b>	<b>Address</b>	<b>Phone</b>	<b>Fax</b>
Anchorage Muldoon	1251 Muldoon Rd, Suite 114; 99504	269-0000	269-2032
Anchorage Youth Job Center	2650 E. Northern Lights Blvd., Relocatable #3; 99508	334-2587	334-2688
Bethel	460 Ridgecrest Dr., Suite 112; PO Box 1607; 99559	543-2210 800-478-2210	543-2099
Dillingham	503 Wood River Rd.; PO Box 1149; 99576	842-5579 800-478-5579	842-5679
Eagle River	11723 Old Glenn Hwy, Sp B-4; 99577	694-6904	694-1490
Fairbanks	675 Seventh Ave, Station D; 99701	451-5967	451-2919
Glenallen	Mile 186.5 Glenn Hwy; PO Box 109; 99588	822-3350 800-478-3304	822-5526
Homer	3670 Lake St., Suite 300; 99603	226-3040	235-6143
Juneau	10002 Glacier Hwy, Suite 100; 99801	465-4562	465-2984

<i>Alaska Job Centers</i> <a href="http://www.jobs.state.ak.us">www.jobs.state.ak.us</a>			
<b>Town</b>	<b>Address</b>	<b>Phone</b>	<b>Fax</b>
Kenai	11312 Kenai Spur Hwy, Suite 2; 99611	335-3000	335-3050
Ketchikan	2030 Sea Level Dr., Suite 220; 99901	225-3181	247-0557
Kodiak	211 Mission Road, Suite 103; 99615	486-3105 800-478-3105	486-4716
Kotzebue	333 Shore Ave.; PO Box 1209; 99752	442-3280 800-478-3280	442-3920
Nome	214 Front St., Suite 320; PO Box 280; 99762	443-2626 800-478-2626	443-2810
Seward	809 2nd Ave; PO Box 1009; 99664	224-5276	224-5277
Sitka	304 Lake Street, Room 101; 99835	747-3423	747-7579
Utqiagvik	1078 Kiogak Street; PO Box 949; 99723	852-4111 888-429-4111	852-4122
Valdez	213 Meals Ave., Room 22; PO Box 590; 99686	835-4910	835-3879
Wasilla	877 Commercial Drive; 99654	352-2500	352-2522

<i>Alaska Legal Services</i> <a href="http://www.alsc-law.org">www.alsc-law.org</a>			
<b>Town</b>	<b>Address</b>	<b>Phone</b>	<b>Fax</b>
Anchorage	1016 W. 6th Ave., Suite 200; 99501	272-9431 888-478-2572	279-7417
Bethel	PO Box 248; 99559	543-2237 800-478-2230	543-5537
Fairbanks	100 Cushman Street, Suite 500; 99701	452-5181 800-478-5401	456-6359

*Alaska Legal Services* [www.alsc-law.org](http://www.alsc-law.org)

Juneau	8800 Glacier Highway, Suite 228, Suite 322; 99801	586-6425 800-789-6426	586-2449
Kenai	PO Box 2463; 110 N. Willow St., Suite 132 ; 99611	395-0352 855-395-0352	395-0938
Ketchikan	2417 Tongass Ave., Unit 202B ; 99901	225-6420 877-525-6420	225-6896
Kotzebue	PO Box 526; 2nd Floor, Ferguson Building; 99752	442-7737 877-622-9797	442-7823
Nome	PO Box 1429; 110 Front St., Suite 204A; 99762	443-2230 888-495-6663	443-2239
Palmer	634 South Bailey St., Suite 102; 99645	746-4636 855-996-4636	707-4636
Utqiagvik	PO Box 1651; 99723	855-8998 855-755-8998	888-840-0 522
Wassilla Connect Mat-Su	777 North Crusey Street, Suite A101 Wasilla, AK 99654	373-3632	833-939-2 064

*District Attorney's Offices* <http://www.law.alaska.gov/index.html>

<b>Town</b>	<b>Address</b>	<b>Phone</b>	<b>Fax</b>
Anchorage	310 K St., Suite 520; 99501	269-6300	269-6321
Bethel	204 Chief Eddie Hoffman Hwy., Court Building; 99559	543-2055	543-2149
Dillingham	104 Main St.; PO Box 470; 99576	842-2482	842-5969
Fairbanks	510 2 <sup>nd</sup> Ave, Suite 200; 99701	451-5970	451-5996
Juneau	123 4 <sup>th</sup> St., Dimond Courthouse, Suite 364; 99811	465-3620	465-3919
Kenai	Trading Bay Professional Center; 120 Trading Bay Road, Suite 200; 99611	283-3131	283-9553

**District Attorney's Offices** <http://www.law.alaska.gov/index.html>

Ketchikan	415 Main St., Room 304; 99901	225-6128	225-3917
Kodiak	202 Center Ave., Suite 201; 99615	486-5744	486-5195
Kotzebue	373A 2 <sup>nd</sup> Ave; 99752	442-3396	442-3564
Nome	103 Front St. Suite 250, State Office Building; 99762	443-2296	443-5923
Palmer	Palmer State Office Building; 515 E. Dahlia St., Suite 150; 99645	761-5648	761-5687
Sitka	304 Lake St., Room 202, Court Building; 99835	747-5851	747-5854
Utqiagvik	1250 Agvik, Court Building, Suite 249; 99723	852-8130	852-5429

**Office of Public Advocacy** <https://doa.alaska.gov/opa/>

<b>Town</b>	<b>Address</b>	<b>Phone</b>	<b>Fax</b>
Anchorage	900 W. 5th Ave., Ste. 525; 99501	269-3500 877-957-3500	269-3535
Bethel	460 Ridgecrest Dr., Suite 219; P.O Box 2129; 99559	543-1234	543-1316
Fairbanks	100 Cushman, Suite 502; 99701	451-5933	451-5934
Juneau Criminal	333 Willoughby Avenue Suite 802 ; 99801	465-4173	465-3645
Juneau Civil	150 3rd St. Suite 120	465-4173	465-3645

**Office of Public Advocacy** <https://doa.alaska.gov/opa/>

Kenai	11312 Kenai Spur Highway, Suite 60: 99611	395-0481	395-0482
Palmer Criminal Office	1517 Industrial Way Unit 1; 99645	745-0435	745-0451
Palmer Civil Office	515 E. Dahlia Ave, Suite 130; 99645	707-1740	707-1754
Homer Civil	PO Box 1176; 99603	435-0480	435-041
Rural Defense	900 W. 5th Avenue, Suite 525 Anchorage, AK 99501	269-3500	334-2454

**Public Defender Agency** <https://doa.alaska.gov/pda/home.html>

<b>Town</b>	<b>Address</b>	<b>Phone</b>	<b>Fax</b>
Anchorage	900 W 5 <sup>th</sup> Ave, Suite 200; 99501	334-4400 800-478-4404	269-5476
Bethel	460 Ridgecrest, Suite 217; 99559	543-2488 800-478-2489	543-2153
Dillingham	104 Main Street; 99576	842-4582 800-478-4582	842-4782
Fairbanks	529 5 <sup>th</sup> Ave, Suite 1; 99701	458-6800 800-478-1621	482-6802
Juneau	150 3rd Street, Suite 114; 99801	465-4911 800-478-4910	465-3247
Kenai	130 Trading Bay Road, Suite 390; 99611	283-3129 800-478-3129	283-4127
Ketchikan	415 Main St., Suite 204; 99901	228-8950 800-478-6189	225-1382

**Public Defender Agency** <https://doa.alaska.gov/pda/home.html>

Kodiak	518 W. Marine Way, Suite 201; 99615	486-8114 800-478-8113	486-2201
Kotzebue	333 Shore Avenue, Suite 241; 99752	442-3736 800-478-3738	442-2036
Palmer	515 E Dahlia Ave., Suite 100; 99645	707-1710 800-478-5661	707-1731
Nome	214 Front Street; 99762	443-2281 800-478-2279	443-5584

**Public Assistance** [dhss.alaska.gov/dpa/](https://dhss.alaska.gov/dpa/)

<b>Town</b>	<b>Address</b>	<b>Phone</b>	<b>Fax</b>
Anchorage District Office (Opening March 8, 2021)	3901 Old Seward Highway Suite 131	269-6599 888-876-2477	269-6520
Bethel District Office	460 Ridgecrest Drive, Suite 121; 99559	543-2686 800-478-2686	543-5912
Denali KidCare Office (Anchorage)	3601 C St., Suite 120; 99503	269-6529 888-318-8890	269-0986
Eagle River Job Center	11723 Old Glenn Hwy Space B-4; 99577	727-5200	694-1490
Fairbanks District	675 7th Ave., Station E; 99701	451-2850 800-478-2850	451-2923
Heating Assistance Office (Juneau)	10002 Glacier Hwy., Suite 200; 99801	465-3010 800-475-3058	465-3319
Homer District Office	3670 Lake Street, Suite 200; 99603	226-3040 877-235-2421	235-6176
Juneau District Office	350 Main St #304, Juneau, AK 99801; 99801	465-3347 800-478-3537	465-4657
Ketchikan District Office	2030 Sea Level Dr., Suite 301; 99901	225-2135 800-478-2135	247-2135

**Public Assistance** [dhss.alaska.gov/dpa/](http://dhss.alaska.gov/dpa/)

Kodiak District Office	211 Mission Road, Suite 101; 99615	486-3783 888-480-3783	486-3116
Long Term Care Office (Anchorage)	3745 Community Park Loop # 200,; 99508	334-4480	269-5608
Mat-Su District Office (Wasilla)	855 W. Commercial Dr.; 99654	376-3903; 800-478-7778	373-1136
Nome District Office	214 E. Front Street; PO Box 2110; 99762	443-2237 800-478-2236	443-2307
Senior Benefits Office (Wasilla)	855 W. Commercial Drive; 99654	376-3903	357-2561
Sitka District Office	304 Lake Street, Suite 101 ; 99835	747-8234 800-478-8234	747-8224

## Personalized Safety Plan

*Although victims and survivors do not have control over their partner's violence, they can take control over thinking through how to best stay safe to avoid further violence. This Personalized Safety Plan can be individualized to the specifics of your situation to increase well-being and safety. If you are concerned about domestic/sexual violence or stalking, it is advised to craft your safety plan with an advocate at your local domestic violence/sexual assault program using this guideline.*

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Victims and survivors generally know best what may work for them to stay safe. The plan below includes some ideas that often work for victims and survivors, but they may not work for everyone. Please adapt the plan to fit your situation and feel free to call an advocate to help you create your own personal safety plan.

It may not always be safe for victims and survivors to keep a written safety plan with them. Victims and survivors have several options around creating a safety plan, including writing one and keeping it in a safe place (at home, with a friend, at a domestic violence program, etc.), writing one and destroying it, and discussing one with someone they trust and not writing it down at all. We recommend working with an advocate to create your own, individualized safety plan.

*Note: It is always recommended to have a "Go" phone with charger or a second cell phone available, and have it with you in your purse, car and/or at a friend's house, along with a paper list of emergency phone numbers just in case your primary phone gets lost or taken away. A "Go" phone is a pay-as-you-go phone that you can add time to, and you do not have to worry about someone shutting service off or reporting the phone as stolen. If you cannot afford one, your local community based domestic violence or sexual assault program might be able to provide you with one.*

### Safety Tips from an Advocate:

1. Always keep your phone charged, and have chargers in your car, home and work.
2. Get gas during the day and at busy stations.
3. Keep your head up and look around. Do not text or talk on the phone when you are getting into your car or walking places.
4. Once you get into your car, lock the doors and drive. Do not sit and talk, text or waste time.
5. Let people know where you are going and what type of schedule you have.
6. Avoid wearing headphones out in public.

## MY IMPORTANT TELEPHONE NUMBERS

Law Enforcement: 911 or \_\_\_\_\_ (Emergency number in my community) and \_\_\_\_\_ (non-Emergency).

Domestic Violence/Sexual Assault Program/Safe Home:

\_\_\_\_\_  
District Attorney's/Prosecutor's Office \_\_\_\_\_.

## SAFETY DURING AN ASSAULT

People cannot always avoid violent incidents from others, but they can do a few things to increase their safety during violent incidents.

I can do some or all the following:

1. If I decide to leave, I can get out of the house by \_\_\_\_\_.  
(Practice how to get out safely. What doors or windows will you use?)
2. I can go to \_\_\_\_\_.  
(Decide this even if you don't think there will be a next time.)
3. In order to be able to leave quickly, I can keep my purse/bag and vehicle key ready by putting them \_\_\_\_\_.
4. I can tell \_\_\_\_\_ (neighbors) about the violence and ask them to call the police if they hear suspicious noises coming from the house.
5. I can teach my children how to use the phone or radio to contact the police and to get help in an emergency.
6. I can use \_\_\_\_\_ as my code word with my children and/or friends when I am in danger, so they will call for help.
7. When I expect an argument, I can try to move to \_\_\_\_\_, a space near an outside door that has no guns, knives, or other weapons (usually bathrooms, garages and kitchen areas are dangerous places).

8. I can use my judgment and intuition. If the situation is very serious, I can give my partner what he/she wants to calm him down. I can do what I can to protect myself until I am out of danger.
9. I can call the police when it is safe, and I can apply for a protective order from the court.

### **SAFETY WHEN PREPARING TO LEAVE**

Leaving must be done with a careful plan to increase safety. Abusers often strike back when they believe their partner is leaving the relationship.

I can do some or all of the following:

1. So I can leave quickly, I can leave money, an extra set of keys, extra clothing and important documents with \_\_\_\_\_.
2. I can open a savings account to increase my independence.
3. I can check with \_\_\_\_\_ and \_\_\_\_\_ to see who would be able to let me stay with them or lend me some money.
4. The National Domestic Violence hotline number is **1-800-478-2316**. By calling this free hotline, I can get the number of a shelter near me. The domestic violence shelter that is closest to me is: \_\_\_\_\_ and their number is \_\_\_\_\_.
5. I can rehearse my escape plan and, as appropriate, practice it with my children.
6. Other things I can do to increase my independence: \_\_\_\_\_  
\_\_\_\_\_

Checklist – What you may want to take with you, if it is safe to do so:

- Form(s) of Identification (State ID, Driver’s License, Passport, etc.)
- Driver’s license/vehicle registration
- Social Security Cards (for self and children)
- Birth and marriage certificates (for self and children)
- Keys (house/car/work)
- Address book or list of contact information
- Money
- Credit cards

- Checkbook, ATM card, and other bank books
- Medications (for self and children)
- Welfare identification
- Work permit
- School and vaccination records
- Divorce papers
- Copy of protective order
- Pets (if you can)
- Jewelry
- Photo Album
- Children's special blanket, doll, or stuffed animal

### **SAFETY IN MY HOME**

There are many things that a person can do to increase safety in their home. It may be impossible to do everything at once, but safety measures can be added step by step.

1. I can inform \_\_\_\_\_ that my partner no longer resides with me and they should call the police if he/she is seen at my residence.
2. I can change the locks on my doors and windows as soon as possible.
3. I can replace wooden doors with steel/metal doors.
4. I can install security systems including additional locks, window bars, poles to wedge against doors, an electronic system, etc.
5. I can purchase rope ladders to be used for escape from second floor windows.
6. I can install smoke detectors and purchase fire extinguishers for my home.
7. I can install an outside lighting system that lights up when a person is coming close to my house.
8. I can teach my children how to use the telephone, in case my partner takes them, to call me and: \_\_\_\_\_ . (friend/advocate/minister/other)
9. I can tell people who take care of my children which people have permission to pick up my children and that my partner does not have permission. The people I will inform about this are:

\_\_\_\_\_ (school)  
\_\_\_\_\_ (day care)  
\_\_\_\_\_ (babysitter)  
\_\_\_\_\_ (teacher)  
\_\_\_\_\_ (others)

## **SAFETY WITH A PROTECTIVE ORDER**

Protective orders are available from the court. An advocate is available at the nearest domestic violence/sexual assault program to help you apply for one. Some abusive partners obey protective orders, some do not. Sometimes protective orders escalate the violence the abusive partner uses when they learn that an order has been granted. You know your situation best and can make decisions about protective orders in a way that will be meaningful for you and your children. You can always talk to an advocate about your concerns with applying for a protective order.

If I obtain a protective order, I understand that I may need to ask the police and the courts to enforce my protective order. I can do some or all the following to increase my safety:

1. I can always keep a copy of my protective order with me.
2. I can check with my local police department to make sure my protective order is on record with them. If not, I will give a copy of my protective order to them. I will also give a copy of my protective order to police departments in the community where I work and in those communities where I usually visit family or friends.
3. I can tell my employer, my domestic violence program advocate, my minister, my closest friend, and \_\_\_\_\_ that I have a protective order in effect.
4. If my partner destroys my protective order, I can get another copy from the courthouse by calling \_\_\_\_\_ (local courthouse).
5. If my partner violates the protective order, I can call the police and report a violation. I can also call an attorney, call an advocate at a domestic violence program, and/or advise the court of the violation.

## **SAFETY ON THE JOB AND IN PUBLIC**

Each victim and survivor must decide for themselves when to tell others about the violence. Friends, family and co-workers can help to protect them.

I can do any or all the following:

1. I can tell my boss, the security supervisor, and \_\_\_\_\_ at work of my situation.
2. I can ask \_\_\_\_\_ to help screen my telephone calls at work.
3. When I leave work, I can walk with \_\_\_\_\_ to my car or the bus stop. I can park my car where I will feel safest getting in and out of the car.
4. When traveling home if problems occur, I can \_\_\_\_\_.
5. I can use different grocery stores, shopping malls, and banks to shop and do business at hours that are different from those I used when residing with my partner.
6. I can also  
\_\_\_\_\_  
\_\_\_\_\_.

### **SAFETY AND DRUG OR ALCOHOL USE**

Many people use alcohol and drugs. Using illegal drugs and abusing alcohol can be very hard on a victim or survivor physically and emotionally. It may hurt their relationship with their children and put them at a disadvantage in court. Beyond this, the use of alcohol or other drugs can reduce a person's awareness and ability to act quickly to protect themselves from their abusive partner. Therefore, in the context of drug or alcohol use, a person needs to make specific plans.

If drug or alcohol use has occurred in my relationship with my partner, I can enhance my safety by doing some or all the following:

1. If I am going to use alcohol and/or drugs, I can do so in a safe place and with people who understand the risk of violence and are committed to my safety.
2. If my partner is using, I can \_\_\_\_\_.
3. To safeguard my children, I can \_\_\_\_\_.
4. I can call a substance abuse professional about my concerns at: \_\_\_\_\_

5. I can also \_\_\_\_\_.

### **SAFETY AND MY EMOTIONAL HEALTH**

The experience of being abused and verbally degraded by partners is exhausting and emotionally draining. The process of building a new life takes great courage and energy.

To conserve my emotional energy and to avoid hard emotional times, I can do some of the following:

1. If I feel down and ready to return to a potentially abusive situation, I can \_\_\_\_\_.
2. When I must communicate with my partner in person or by telephone, I can \_\_\_\_\_.
3. I can use, “I can” statements with myself and be assertive with others.
4. I can tell myself \_\_\_\_\_ whenever I feel others are trying to control or abuse me.
5. I can read \_\_\_\_\_ to help me feel stronger.
6. I can call \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ as other resources to be of support to me.
7. I can attend workshops and support groups at the domestic violence program or \_\_\_\_\_ to gain support and strengthen my relationships with other people.
8. Other things I can do to help me feel stronger are: \_\_\_\_\_.

### **SAFETY AND TECHNOLOGY**

Technology can assist me in achieving help and safety. However, it is also important to consider how technology might be misused. I trust my instincts. If I suspect that my phone, computer, email or other activities are being monitored, I can do some or all of the following:

1. If I suspect my partner is monitoring me, I can contact an advocate or law enforcement at \_\_\_\_\_.

2. Computers keep records of users' actions. If I need to use a computer or the internet to look for help or make plans to leave, I can use a safer computer that my partner does not have access to. It may be at a friend's house, library, or café. A safer computer I can use is: \_\_\_\_\_.
  3. If I suspect my email is being monitored, I can open an account through a free web-based company such as yahoo or gmail that I do not read on a computer my partner has access to. I can create a safer account name that is anonymous and does not include my real name.
  4. I can change my passwords and pin numbers frequently.
  5. Cordless phones use radio waves to transmit sounds, and therefore conversations can be intercepted by other cordless devices, radios, and radio scanners. Phones with wires are generally safer, but they may also be tapped. A safe phone for me to use when discussing my escape plans, safety plans, or speaking with an advocate is \_\_\_\_\_.
  6. Digital cell phone calls may be intercepted by law enforcement. If my abuser has access to these tools, or if he/she has access to my cell phone records, a safe phone I can use is \_\_\_\_\_.
  7. Cell phones may be programmed to track someone's location through Global Positioning System (GPS) Chips. If I think I am being tracked, I can call law enforcement. I can also turn off my cell phone or leave it behind when this is safe.
  8. Often domestic violence programs have donated cell phones for emergency calls. A place where I can get a used or donated cell phone is \_\_\_\_\_.
- This section was adapted from safety planning materials prepared by Jody Lown, former Victim-Witness Program Coordinator with the State of Alaska, Department of Law and Barbara Hart, Esq., former Legal Director, Pennsylvania Coalition Against Domestic Violence. Notes and tips were provided by Alaska community-based advocates.

**OTHER IMPORTANT NUMBERS**

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**ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT  
MEMBER PROGRAMS**

<b>Program</b>	<b>Location</b>	<b>Local Phone</b>	<b>Toll Free / Crisis</b>
AFS – Alaska Family Services	Palmer	907-746-8146	866-746-4080
AVV - Advocates for Victims of Violence	Valdez	907-835-2980	800-835-4044 / 907-835-2999
AWAIC - Abused Women’s Aid in Crisis, Inc.	Anchorage	907-279-9581	907-272-0100
AWARE - Aiding Women in Abuse & Rape	Juneau	907-586-6623	800-478-1090 / 907-586-1090
AWIC - Arctic Women In Crisis	Utqiagvik	907-852-0261	800-478-0267 / 907-852-0267
Bay Haven	Hooper Bay	907-758-4711	
Becky’s Place Haven of Hope	Haines	907-303-0076	
BSWG - Bering Sea Women's Group	Nome	907-443-5491	800-570-5444 / 907-443-5444
CFRC - Cordova Family Resource Center	Cordova	907-424-5674	866-790-4357 / 907-424-4357
EWS – Emmonak Women’s Shelter	Emmonak	907-949-1443	907-949-1434
HOPE – Helping Ourselves Prevent Emergencies	Craig	907-826-2581	907-826-4673
IAC - Interior Alaska Center for Non-Violent Living	Fairbanks	907-452-2293	800-478-7273 / 907-452-7273

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT  
MEMBER PROGRAMS

KWRCC - Kodiak Women's Resource and Crisis Center	Kodiak	907-486-6171	907-486-3625
LSC – The LeeShore Center	Kenai	907-283-8543	907-283-7257
SAFE – Safe and Fear-Free Environment	Dillingham	907-842-2320	800-478-2316 / 907-842-2316
SeaView Community Services	Seward	907-224-5257	907-224-3027
SAFV – Sitkans Against Family Violence	Sitka	907-747-3370	800-478-6511 / 907-747-3370
SPHH – South Peninsula Haven House	Homer	907-235-7712 x226	907-235-8101
STAR – Standing Together Against Rape	Anchorage	907-276-7279	907-276-7273
TWC – Tundra Women's Coalition	Bethel	907-543-3444	800-478-7799 / 907-543-3456
USAFV – Unalaskans Against Sexual Assault & Family Violence	Unalaska	907-581-1500	800-478-7238
WAVE – Working Against Violence for Everyone	Petersburg	907-772-9283	907-518-0550
WISH – Women in Safe Homes	Ketchikan	907-225-9474	800-478-9474