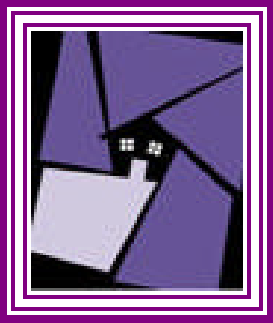
Domestic Violence



Survivor's Handbook

STATE OF MICHIGAN
Family Independence Agency

THE LEGAL SYSTEM AND YOUR RIGHTS UNDER THE LAW

HOW DOES IT WORK?

Written by Mary M. Lovik, J.D.*
Special Projects Manager to the
Michigan Domestic Violence Prevention and Treatment Board
235 South Grand, Suite 506
P.O. Box 30037
Lansing, MI 48909
(517) 373-8144
www.michigan.gov

* "Going to Court" section written by Susan G. S. McGee

National Domestic Violence Hotline: 1-800-799-7233

THE LEGAL SYSTEM AND YOUR RIGHTS UNDER THE LAW

HOW DOES IT WORK?

OVERVIEW

There are many different kinds of legal cases. This part describes four common types of cases of special interest to domestic violence survivors:

- Criminal cases,
- Personal protection orders,
- Suits for divorce (including child custody and support), and
- Suits for civil damages (also called "tort" suits). This section includes information about small claims.

You can get directly to the section where each kind of case is discussed by clicking on the highlighted words above. You can also use the outline that appears on the side of this page to navigate in this part. Simply click on a topic in the outline to read about it.

You can also learn about preparing yourself to go to court and about firearms restrictions that apply to certain domestic violence perpetrators in this part. Click on the highlighted words to go directly to these sections.

This part will use some legal terms. You can find definitions for terms that are highlighted by clicking on Section X, Definitions of Legal Terms. After you have read a definition for a term, you can return to the page where you first saw it by clicking on the "go to previous view" arrow on the Acrobat toolbar. It will be the arrow that points to the left in the middle of the toolbar.

When you reach the end of a section, you can return to this overview by clicking on "Return to Overview."

In this document we use the term "battered woman" because the majority of people who are battered are women. Local domestic violence programs offer services to **any person** who is victimized in an intimate relationship. All the laws discussed in this document also protect men battered by women, and most of them protect lesbians and gay men.

Most of the information in this part is about laws that apply just in the State of Michigan. However, this part also briefly mentions federal laws that protect survivors of domestic violence in all parts of the United States.

PLEASE NOTE! This handbook is only meant to give you a brief introduction to the subjects it covers. Although it can help you to better understand what to expect from the legal system, there is not enough space here to cover everything you need to know. Also, this handbook cannot answer questions about your particular situation. For these reasons, you should not expect this handbook to be a substitute for legal advice from a licensed attorney. Your local domestic violence program can help you find an attorney who can give you advice that is appropriate to your individual needs. This handbook will help you to know what questions to ask your attorney.

As you use this handbook, you should also keep in mind that it can only offer you a general description of the legal processes it covers. Don't be surprised if you discover some differences between the processes described here and local practices in your area. Again, your best guide to the legal system in your area is a licensed attorney who knows about domestic violence, and who is familiar with the courts and law enforcement agencies in your community.

Other legal resources on the web are as follows:

- If you want to read the full text of the Michigan laws cited in this handbook, go to the Michigan Legislature's web site, which is www.michiganlegislature.org.
- An excellent summary of select Michigan sexual assault and domestic violence statutes can be obtained from the Michigan Resource Center on Domestic and Sexual Violence, 517-347-7000. You can find the Resource Center on-line at http://www.mcadsv.org/mrcdsv/law/legal.html.
- The Michigan Judicial Institute has prepared a reference manual on domestic violence, written to give guidance to state judges. It can be found on-line at http://courts.michigan.gov/mji/resources/publications.htm#dv.

These resources are helpful, but like this handbook, they are no substitute for advice from an attorney who is familiar with your individual situation, and with local practice in your area.

(Return to Overview.)

I. WHAT IS A DOMESTIC VIOLENCE CRIME?

Sections I – IV of this handbook are about domestic violence crimes. In Section I, you will find out about criminal cases and domestic violence crimes generally. You will also learn about three common domestic violence crimes: assault and battery, stalking, and criminal sexual conduct. Sections II - IV will explain how criminal cases are processed in the criminal justice system. Section IV.I will explain how to get compensation for financial losses caused by a crime.

NOTE! The discussion of how crimes are processed in Sections II – IV assumes that the perpetrator of the crime is age 17 or older. Crimes committed by persons under age 17 are treated differently. If you have questions about how the courts treat crimes committed by persons under age 17, ask your local domestic violence service provider, the prosecuting attorney handling the case, or the clerk of the family court, juvenile division of circuit court where the case is being processed.

A. Overview of Criminal Cases in Michigan

To understand a criminal case, it is helpful to know that in the eyes of the law, criminal activity is an offense against the entire community, not just the individual victim of the crime. That is why in a criminal case, the prosecuting attorney brings charges against the person accused of the crime on behalf of the entire community. The "parties to the case" are the state or city whose law was broken (the "people") and the person accused of the crime (the "defendant"). The victim of the crime is a witness to the crime, rather than a party to the criminal case.

The community pays for the prosecution. The prosecuting attorney decides whether to bring charges against the accused person. If charges are brought, the prosecuting attorney prepares the case for trial and presents the evidence against the defendant. You will not need to hire an attorney to prosecute the criminal charges against the defendant. However, you should remember that the prosecuting attorney is not *your* attorney. The decision whether to prosecute a case is made by the prosecuting attorney, not by you. Moreover, the prosecuting attorney may not be obligated to keep his or her communications with you confidential. If you are concerned

about protecting your personal interests in a criminal case and you aren't comfortable talking with the prosecuting attorney, you should seek help from a private attorney or your local domestic violence program.

The defendant in a criminal case has a number of civil rights that are protected by the U.S. and Michigan Constitutions. For example, a person charged with a crime has a right to be represented by an attorney. If that person cannot afford to hire an attorney, the court must appoint one for him or her.

Crime victims also have rights under the Michigan Constitution. These rights include the right to privacy, the right to be safe from the person who committed the crime, the right to be notified about court proceedings in the case, and the right to attend these proceedings. The prosecuting attorney, a victim advocate, or your local domestic violence program can give you more complete information about your rights if you are the victim of a crime.

There are different kinds of crimes in Michigan.

- The most serious kind of crime is a "felony." A felony is a crime punishable by a year or more in prison that has not been designated a "misdemeanor" by the Legislature.
- A "misdemeanor" is a crime that is not a felony. Most misdemeanors are punishable by less than a year in prison, although there are serious misdemeanors for which an offender can receive up to two years in prison. These serious misdemeanors are sometimes called "high misdemeanors," "high court misdemeanors," "circuit court misdemeanors," or "two-year misdemeanors."
- A "local ordinance" violation (sometimes called a city, township, or village ordinance violation) is a violation of a law passed by a city, township, or village. Local ordinance violations are punished as misdemeanors.

After conviction of a crime, the defendant may be sentenced to prison, ordered to pay a fine, and/or ordered to make restitution to the victim of the crime. The court may also place the defendant on probation instead of (or in addition to) sending him to prison. More information about sentencing is found in Section IV.G.

B. When Is Abuse or Battering a Crime?

Abuse becomes a crime when it involves behavior that is criminal in the eyes of the law. Most abusers commit a number of different crimes, for example:

- Assault and battery.
- Cutting telephone lines.
- Malicious use of the telephone.
- Hurting or killing pets.
- Arson.
- Destroying or damaging another person's property.
- Stalking.
- Child abuse or neglect.
- Sexual assault (sometimes called "criminal sexual conduct").
- Home invasion.
- Kidnapping.

A person who has done one of these things has committed a crime no matter what relationship he has to the crime victim. In the past, too many people thought that a crime against an intimate partner was a private matter and not a crime. This attitude is slowly changing. A crime is a crime, even if the perpetrator has an intimate relationship with the victim of the crime.

Name-calling, isolation, controlling the finances, and intimidation are often not thought of as criminal behavior. However, you should talk to an attorney or advocate at your local domestic violence program about your specific experiences. It takes help to sort out what abusive behavior is criminal and what is not.

C. Assault and Battery

An "assault" is an intentional attempt or threat to injure another person, along with an apparent present ability to do so, and any intentional display of force that would give the victim reason to fear or to expect immediate bodily harm. For example, if your partner pulled out a knife, and threatened to kill you with it, that would be an assault.

"Battery" is the actual application of force against another person. It's when your partner hits, bites, spits at, pushes, grabs, kicks, or shoves you. Remember -- what your assailant calls "restraint" may legally be an assault and battery.

There are several different crimes in Michigan that involve assault and battery. The prosecuting attorney will decide which crime to charge depending on various circumstances described in the law. These circumstances can include how serious the assault and battery is, how severe the injuries are, or whether the assailant used a weapon. The different assault and battery crimes have different penalties, which are also described in the law.

One assault and battery crime is known as "domestic assault" or "domestic assault and battery" (MCL 750.81). It applies to cases where the assailant assaults or assaults and batters:

- His wife or former wife,
- Someone he is now dating, or has dated in the past (as of April 1, 2002),
- Someone with whom he now lives or has lived in the past, or
- Someone with whom he has a child in common.

In practice, most assailants do not go to jail for the first conviction of domestic assault; instead, they receive probation. However, someone convicted of domestic assault or domestic assault and battery for the first time could be sentenced to 93 days in jail and/or receive a $500 fine. A person convicted a second or third time will receive a longer jail sentence and a higher fine.

Other types of assault and battery crimes include:

- Aggravated domestic assault (MCL 750.81a). An *aggravated* assault is one made without a weapon, that results in physical injury requiring immediate medical treatment, or that causes disfigurement or impairment of health or a body part. An aggravated *domestic* assault is one made against a person in one of the four kinds of domestic relationships listed above.
- Felonious assault/assault with a dangerous weapon (MCL 750.82).
- Assault with intent to commit murder (MCL 750.83).
- Assault with intent to commit great bodily harm less than murder (MCL 750.84).
- Assault with intent to maim (MCL 750.86).

D. Stalking

Many assailants stalk their partners at one time or another. Stalking can be a felony or misdemeanor crime, depending on the circumstances of the case. Misdemeanor stalking is:

- Intentional repeated, unwanted contact (two or more separate, unconnected acts done without your permission),

- That would cause a reasonable person to feel frightened, terrorized, threatened, intimidated, harassed, or molested, and
- That actually causes the victim to feel that way.

Examples of stalking behavior include following another person, appearing at the person's workplace, school, or home, and placing objects on the person's property. The contact does not have to be in person. Someone who threatens or harasses you with two or more calls on the telephone, letters through the mail, or e-mail messages is committing the crime of stalking.

Misdemeanor stalking is punishable by imprisonment for up to one year in jail and/or a fine of up to $1,000. If the stalking victim was less than 18 years of age at any time during the stalking, and the perpetrator is five or more years older than the victim, misdemeanor stalking becomes a felony. The perpetrator can be sentenced to imprisonment for not more than five years or a fine of not more than $10,000 or both. In addition to a jail term and fine, an individual found guilty of stalking may be put on probation for up to five years. The terms of probation may include a "no-contact" order, and/or mandatory counseling for the assailant, at his own expense (MCL 750.411h).

A person will be charged with the felony of aggravated stalking if his actions include one or more of the following behaviors in addition to the stalking behavior described above:

- Making a credible threat to kill or injure the victim or a member of the victim's family or household.
- Violating a personal protection order or other court order restraining the person's behavior (if the person knows about the order).
- Violating a condition of bond, probation, or parole.
- Having a previous conviction for stalking or aggravated stalking.

Aggravated stalking is punishable by imprisonment of up to five years, and/or a fine of up to $10,000. If the victim of aggravated stalking was less than 18 years of age during the stalking, and the perpetrator is five years or more older than the victim, the crime is punishable by imprisonment for not more than ten years or a fine of not more that $15,000 or both. In addition to incarceration and fines, probation may be ordered for any number of years, but not less than five years. The terms of probation may include a "no-contact" order, and/or mandatory counseling for the stalker at his own expense (MCL 750.411i).

It is also a felony to post a message using any means of communication with reason to know that it will cause a person to be subjected to stalking. Offenders are subject to imprisonment for up to two years or a fine of up to $5000, or both. The penalty for this crime increases to a maximum five years imprisonment and/or a $10,000 fine, or both, if the aggravating circumstances listed above are present, or if the victim was less than 18 when the crime occurred and the perpetrator was five or more years older than the victim (MCL 750.411s).

A victim of stalking can ask a court to issue a personal protection order ("PPO") prohibiting the stalking behavior. The court can issue a PPO whether or not the stalker has been charged with or convicted of this crime. See Section V below for more information about PPOs.

A victim of stalking may also have a claim for civil damages against the stalker. See Section VII.A for more information.

E. Criminal Sexual Conduct (MCL 750.520a – MCL 750.520l)

Lots of assailants do sexual things to hurt their partners. Forced or coerced sexual penetration or touching is a crime known as "criminal sexual conduct" in Michigan. Some people think that if the victim is married to the assailant, it's not a crime to be forced into sexual activity -- that's not true. It is a crime to force or coerce another person into sexual activity, regardless of the relationship between the two people.

Male on male and female on female criminal sexual conduct is also criminal. The law does not treat these kinds of assaults any differently than assaults by men against women.

There are four degrees of criminal sexual conduct described in Michigan law. The different degrees of criminal sexual conduct have different penalties, which are also described in the law. First, second, and third degrees are felonies. Fourth degree is a high court misdemeanor.

First and third degree criminal sexual conduct involve forced or coerced penetration. This is vaginal intercourse (penis into vagina), anal or oral intercourse (penis into anus or mouth), or putting a finger or object in another person's genital or anal opening.

Second and fourth degree criminal sexual conduct involve forced or coerced sexual contact. This includes touching the groin, genital area, inner thigh, buttocks, or breasts, or the clothing covering those parts against someone's will.

The prosecuting attorney will decide which degree of criminal sexual conduct to charge based on the presence of coercive factors, such as: more than one assailant; use of a weapon; a physical injury other than the penetration or contact; extortion; or the element of surprise. If the victim is under age 13, between the ages of 13 – 15, and/or the assailant is a member of the victim's family or in a position of authority over the victim, this also makes the crime more serious.

A perpetrator can be convicted of criminal sexual conduct even if there is no witness other than the victim. Moreover, the perpetrator can be convicted even if there is no evidence that the victim resisted him.

F. Federal Domestic Violence Crimes

In addition to the Michigan laws described above, there are a number of federal crimes that relate to domestic violence. These can be prosecuted in federal court by a United States Attorney, who is a prosecuting attorney employed by the federal government.

- **Crossing a border to commit domestic violence** (18 U.S.C. 2261): It is a federal crime for a person to travel interstate, to travel to or from a foreign country, or to leave or enter Indian country with the intent to kill, injure, harass, or intimidate an intimate partner when in the course of or as a result of the travel the abuser commits a violent crime that causes bodily injury. It is also a federal crime to cause an intimate partner to cross state or international lines, or to leave or enter Indian country by force, coercion, duress, or fraud if the abuser intentionally inflicts bodily injury on the partner during or as a result of the conduct.

- **Crossing a border to commit stalking** (18 U.S.C. 2261A): It is a federal crime to cross a state or international line, or to travel within the special maritime and territorial jurisdiction of the United States, or to leave or enter Indian country with the intent to kill, injure or harass any person if, during the course of or as a result of the travel, the defendant places the person or a member of the person's immediate family in reasonable fear of death or serious bodily injury. It is also a federal crime to use the mail to engage in a course of conduct that placed a person or a member of the person's immediate family in reasonable fear of death or serious bodily injury.

- **Crossing a border to violate a protection order** (18 U.S.C. 2262): It is a federal crime to travel in interstate or foreign commerce or to enter or leave Indian country to violate a protection order. It is also a federal crime to cause an intimate partner to cross state or international lines, or to leave or enter Indian country by force, coercion, duress, or fraud if that travel results in a protection order violation. For more information about protection orders in Michigan, see Section V.

(Return to Overview.) (Return to top of Section I.)

II. THE POLICE RESPONSE IN MICHIGAN CRIMINAL CASES

A. When Can the Police Arrest an Assailant Without a Warrant?

Usually, the police must get a warrant from a court before they can arrest a person suspected of committing a crime. However, in the following cases, the police can *immediately* arrest a person suspected of a crime, without first going to court to get a warrant:

- The person commits a felony or misdemeanor in the officer's presence.
- The officer has reasonable cause to believe the person has committed a felony.
- The officer has reasonable cause to believe the person has committed a misdemeanor punishable by more than 92 days in jail. Misdemeanors in this category include misdemeanor domestic assault, or aggravated domestic assault.

To make a warrantless arrest for domestic assault or aggravated domestic assault, the officer does not have to witness the assault. The police officer must have reasonable cause to believe that:

- An assault has taken place, AND
- The victim and suspect have one of the domestic relationships described in the domestic assault law: spouse, former spouse, dating, formerly dating, living together, formerly living together, child in common. (MCL 764.15a).

Visible signs of injury are NOT necessary to make a warrantless arrest for domestic assault.

The victim does NOT have to be "willing to prosecute" for an arrest to take place. If the police believe a domestic assault has occurred, they will probably arrest the suspected assailant even if the victim asks them not to do so.

A police officer can also make a warrantless arrest of someone who has violated a court order or a parole order that protects another person named in the order. To make a warrantless arrest in these cases, the officer needs reasonable cause to believe that the person violated the order. Court orders enforceable by warrantless arrest include:

- Conditional release orders issued before trial in a criminal case.
- Probation orders issued at sentencing in a criminal case.

A police officer in Michigan can arrest a person for violating one of these kinds of court orders even if it was issued in another state, or by an Indian tribal court (MCL 764.15(1)(g)). More information about these types of orders appears below in Section IV.C and Section IV.G.

Additionally, police may make a warrantless arrest when they have reasonable cause to believe a person has violated a Michigan personal protection order ("PPO"), or a protection order issued in another state or by an Indian tribal court (MCL 764.15b). PPO cases are different from criminal cases. More information about PPOs appears in Section V. The victim of a domestic assault does NOT need a personal protection order for an arrest to take place.

B. What Are Your Rights as a Crime Victim After the Police Come to the Scene of a Crime?

Whenever the police investigate a domestic violence crime they are required by law to write a report (MCL 764.15c). They must write this report even if they don't make an arrest. Among other things, the report must contain:

- A description of the incident investigated,
- Descriptions of injuries or property damage,
- Identifying information about the victim, suspect, and any witnesses, and
- Identifying information about the investigating officer.

The investigating officer must tell you how to get a copy of this report. The officer must also tell you who s/he is and who s/he works for. Additionally, the officer must give you information about domestic violence programs in your area, and about how you can get a personal protection order, if you want one. You should be sure to get all of this information from the police officer even if you don't think you need it at the moment. You might need it later.

C. What if the Police Don't Respond to a Call for Help?

Call 911 or the police emergency number again, and ask to talk to a supervisor. Say "I am the victim of a domestic assault. I need protection. Please help me." Be persistent, but courteous. Tell them about any weapons present or injuries to you or your children. All calls to 911 are recorded. You can also call your local domestic violence agency and ask for help.

D. What if the Police Don't Arrest?

Remember, if the police don't arrest right away, that doesn't mean your assailant can't be arrested or prosecuted later. Be sure to get the victim rights sheet described in Section II.B.

Even if the police don't make an arrest, you can ask them to help you get to a safe place.

You can also call your local domestic violence program to discuss the particular circumstances of your case. They can advise you on how to proceed.

E. How Can You Get the Best Police Response?

- Try to remain as calm as you can, but don't worry about it if you can't – it is ok to cry or be shaky after an assault.
- Don't shout at or make insulting remarks to the police--it won't help.
- Ask to talk to one of the officers privately, so your assailant won't interrupt you.
- Be as specific as you can in telling the officer what happened. Say "He grabbed me by the arm and threw me on the floor," rather than "He came at me and messed me up."
- Show them any injuries you may have. Show them any damaged property.
- Tell them about any witnesses.
- Tell them if there have been past assaults.
- Show them any "no-contact" or personal protection orders you have.
- Tell them if you have been sexually assaulted.

- Let them know about any injuries to the children.
- If your assailant has been using alcohol or other drugs, tell the police.
- If there is an arrest warrant out for your husband or partner, let them know.

III. IF HE IS ARRESTED FOR A CRIME, WHAT HAPPENS NEXT?

A. Interim Bond

After a suspect is arrested for a crime, he may be released from jail by "posting bond." When a suspect posts bond, he promises to pay the court money if he does not appear before the court when required to do so. Usually, the amount of bond a person must pay is set prior to trial at a hearing called an arraignment, which will be described in more detail in Section IV.B. However, if the arraignment cannot be held immediately after the arrest, a suspect facing misdemeanor charges (other than domestic assault) can be released from jail before the arraignment by paying an "interim bond" to the arresting officer at the jailhouse. This "interim bond" is money paid to guarantee that the suspect will obey the conditions of bond and appear in court later.

Sometimes a suspect is released without having to pay bond. In this case, he is said to be "on his own recognizance."

B. Restrictions on Interim Bond in Domestic Assault Cases

Beginning April 1, 2002, interim bond cannot be paid to the arresting officer at the jailhouse in cases where the suspect has been arrested for misdemeanor domestic assault or aggravated domestic assault. If a suspect is arrested for domestic assault, he will be taken to the police station, and booked. He must be held until a district court judge or magistrate sets interim bond, or until arraignment.

If the judge or magistrate sets interim bond, he or she may also order that the suspect have no contact of any kind with the victim of the crime. The suspect can be arrested without a warrant for a violation of this order, and can be punished by the court (MCL 780.582a). More information about this type of "no-contact" order is found at Section IV.C.

C. Pressing Charges

The arresting police officer should sign a complaint against the suspect that describes the crime with which he is charged. You do not have to sign the complaint. The police will send the complaint and an incident report to the prosecuting attorney. The prosecuting attorney will decide whether to "press charges" in court against the suspect.

Your assailant may ask or tell you to "drop the charges." Strictly speaking, you have no control over this decision. Only the prosecuting attorney can decide to "drop the charges." However, in some jurisdictions the prosecuting attorney will "drop the charges" if the victim of the crime requests it. In other jurisdictions, prosecuting attorneys will take the charges into court even if the crime victim doesn't want this to happen. This is because crimes are seen as offenses against society as a whole, not just against the individual crime victim. If you aren't sure which practice the prosecuting attorney in your case follows, you should ask the prosecuting attorney, a victim advocate, a local private attorney, or your local domestic violence program about it.

(Return to Overview.) (Return to top of Section III.)

IV. WHAT HAPPENS IN COURT IN CRIMINAL CASES?

Most domestic violence programs are available to help and accompany you throughout the court process if you need it. Many prosecutors' offices also have victim advocates. For more information about appearing in court, see Section VIII.

A. What Court Will Hear the Case?

The answer to this question depends upon how serious the crime is. If the crime charged is a misdemeanor for which the maximum punishment is one year or less in prison, all court proceedings will take place in district court. These proceedings include:

- Arraignment.
- Setting bond and/or conditions of pretrial release.
- Taking a plea.
- The trial if the defendant pleads not guilty.
- Sentencing, if the defendant is convicted.

If the crime charged is a felony or a high misdemeanor punishable by more than one year in prison, only the pretrial stages of the case will take place in district court. The district court will do the following:

- Hold the arraignment.
- Set bond and/or conditions of pretrial release for the defendant.
- Take a plea.
- Hold a preliminary examination if the defendant pleads not guilty. If enough evidence is presented at the preliminary examination, the district court will send the case to the circuit court for trial. (This is called "binding the defendant over to circuit court.")

After the defendant is "bound over," the circuit court will try the case. The circuit court will also sentence the defendant if he is convicted of the crime.

Note! Some Michigan jurisdictions have unified "trial courts," in which district and circuit courts have been consolidated. If you live in a jurisdiction where this is the case, you should talk to the prosecuting attorney, a victim advocate, the court clerk, or your local domestic violence program about where each of the above proceedings will take place.

The rest of this section will describe the above court proceedings in more detail.

B. Arraignment and Plea

At arraignment, the court reads the charges to the person accused of a crime (the "defendant"), sets "bond," and appoints a lawyer for the defendant if he cannot afford to pay for one. If the defendant has been arrested for domestic assault and battery, it is likely that arraignment will take place before he is released. See Section III.B. You do not need to be present at arraignment (although you can be there if you want). You can call the jail to find out when and where the defendant will be arraigned.

At arraignment, the defendant can enter a plea, which is his answer to the charges against him. When the defendant "enters a plea," he has several options:

- One option is to admit the charges, or "plead guilty." If the defendant pleads guilty, there will be no trial. The court will find the defendant guilty of the crime, and the case will proceed to sentencing.

- The defendant can also plead "nolo contendere," which means "I will not contend." After a nolo contendere plea, the court will convict the defendant and sentence him for the crime. However, unlike a guilty plea, the nolo contendere plea cannot be used against the defendant later in a civil case, such as a suit for damages as described in Section VII.

- The defendant can plead "not guilty." If the defendant pleads not guilty to a misdemeanor that would be tried in district court, the case will proceed to trial. A date will be set for the pre-trial, which is described in Section IV.D. If the defendant pleads not guilty to a felony or a high misdemeanor that would be tried in circuit court, the case will proceed to preliminary examination. A date will be set for the preliminary examination. (Preliminary examinations are described in Section IV.E.)

- The defendant can refuse to plead (to "stand mute"). In this case, the court will proceed as if the defendant had pleaded "not guilty."

If the defendant is to be released from custody before trial, the investigating law enforcement agency must give you notice of this, along with a telephone number you can call to find out if the defendant has been released. In felony cases, you must get this notice within 24 hours after arraignment (MCL 780.755). In serious misdemeanor cases (such as stalking or domestic assault), you must get the notice within 72 hours after arrest (MCL 780.815).

If your assailant is charged with a felony or a serious misdemeanor (such as stalking or domestic assault), the prosecuting attorney must give you information about the court's process, and about your rights as a crime victim. The information must include:

- A statement of the procedural steps in the criminal case,
- A list of crime victims' rights,
- An explanation of how to exercise your rights as a crime victim,
- Information about crime victims' compensation,
- Suggested procedures if you are subjected to threats, and
- The name of a person to contact for further information.

In felony cases, the prosecuting attorney must give you this information not later than seven days after arraignment, and at least 24 hours before the preliminary examination (MCL 780.756). In serious misdemeanor cases, this information must be provided within 48 hours after the prosecuting attorney receives notice of the arraignment from the court (MCL 780.816).

Upon your request, the prosecuting attorney must also give you notice about scheduled court proceedings and schedule changes.

Sometimes the prosecuting attorney will negotiate with the defendant about what plea the defendant will make. For example, a defendant charged with a felony assault crime might agree to plead guilty to a misdemeanor assault charge in exchange for the prosecuting attorney's agreement to recommend a lesser sentence. This process is sometimes called "plea bargaining." In felony or serious misdemeanor cases, (such as stalking or domestic assault), the prosecuting attorney must offer you the opportunity to consult with him or her before finalizing any plea negotiations.

If you are afraid that your assailant may use further violence against you, tell the prosecuting attorney. The prosecuting attorney may ask the court to protect you from revealing your address, place of employment or other personal identification. The prosecuting attorney may also ask the court to order pretrial release conditions to protect you.

C. Bond and Pretrial Release Conditions

Unless a criminal defendant is charged with murder or certain violent felonies, he has a constitutional right to be released from jail "on bond" before trial. The amount of bond (also called "bail") is set at arraignment. When the defendant "posts bond," he deposits money to guarantee that he will obey the conditions of bond and appear at later court proceedings. If he fails to appear, he forfeits the amount of money posted. Courts do not always require defendants to post bond to be released from jail before trial. In many misdemeanor cases, the court might release the defendant on "personal recognizance" (also called "on his own recognizance" or "on a P.R. bond"). This means that the defendant is let out of jail without posting bond.

In addition to deciding the amount of bond, the court that arraigns a defendant may impose conditions on his release. These "pretrial release conditions" are imposed to make sure the defendant appears at later court proceedings, and to keep others safe from the defendant. For example, courts typically forbid criminal defendants from leaving Michigan without court permission, and forbid them from committing any other crimes while released.

If a defendant has committed a domestic violence crime, the court might forbid him from having any contact with the victim of the crime during the period between arraignment and trial, or from going near the victim's residence, workplace, or school. This type of pretrial release condition is sometimes called a "no-contact order." No-contact orders can prohibit your assailant from contacting you in person, by phone, by mail, or through a third party. A no-contact order can be issued in misdemeanor OR felony cases. If you want a no-contact order, tell the prosecuting attorney or your advocate that you do and explain why this is important to your safety.

Violation of a release condition could result in the defendant being sent back to jail, or in the imposition of additional release conditions, including a higher amount of bond. To assist with enforcement, pretrial release orders with no-contact provisions can be entered into the "L.E.I.N. network," which is a police computer system. If the defendant violates the court's order and you call the police, the police can look up the order in the L.E.I.N. network to verify that it exists. If the defendant is violating the order, the police are authorized to arrest him without first going to court to get a warrant. Not all conditional release orders are entered into the L.E.I.N. network. To help with your safety planning, ask the prosecuting attorney or the court whether the order in your case has been entered into the L.E.I.N. network. If it has not (or even if it has!), you might want to ask the court or prosecuting attorney for a copy of the order to show to police in case of a violation.

If the defendant is not arrested for violation of a pretrial release condition, you should inform the prosecuting attorney of the violation. The prosecuting attorney can ask the judge to take steps to enforce the court's order.

Violation of a court's "no-contact" order will result in penalties for the defendant even if you agree to the defendant's contact with you. The court's order is between the court and the defendant – you cannot give the defendant permission to violate it. The order was issued for your safety; however, if a need arises for you to have contact with the defendant after the order is in place, you should tell your advocate or the prosecuting attorney. The prosecuting attorney can ask the court to modify the order to meet your needs. The court will consider your safety in responding to this request.

At the bond-setting stage of a criminal case, it is important to your safety to consider whether you and the defendant have ever been involved in any earlier cases in court. For example, is there an existing personal protection order that restricts the defendant's contact with you? Is there a court order in effect that gives the defendant rights to custody or parenting time with your children? If so, it is very important to let the

prosecuting attorney and the judge know about it. If the judge doesn't know about a previous court's order, his/her pretrial release order might contain conditions that are contrary to conditions in the previous court order. If this happens, it will be very difficult for police to enforce the pretrial release conditions. There have been cases in which a crime victim has called police to the scene of a "no-contact" order violation, only to have the defendant produce a conflicting custody order that gives him access to the victim's residence! You can help prevent this kind of thing from happening by telling the prosecuting attorney and the judge about any court orders you know of that affect the defendant's access to you or your children.

Pretrial release conditions (including "no-contact" orders) last until their expiration date or until the criminal case ends. A criminal case ends when the case is dismissed, the defendant is found "not guilty," or the defendant is convicted and sentenced. If the defendant is convicted and sentenced, the judge may continue a no-contact order as a condition of probation. (See below at Section IV.G.) If the criminal charges are dismissed, if the defendant is found not guilty, or if the judge does not include the "no-contact" order as a condition of probation, then you will need to get a personal protection order if you want to keep him from contacting you or continue other conditions of the no-contact order.

D. The Pre-Trial Hearing (Misdemeanor Cases Tried in District Court)

At the pre-trial hearing, the court may set a date for trial. It may also hear motions to decide what types of evidence will be admitted at trial. The prosecuting attorney and defense attorney may discuss whether the defendant might plead guilty to the crime charged or to some other lesser offense. You may want to be present.

If it did not do so at the arraignment, the Court may appoint an attorney to represent the defendant at the pretrial hearing (unless the defendant has hired his own attorney).

E. Preliminary Examination – "Bind Over" to Circuit Court (Felony/High Misdemeanor Cases Tried in Circuit Court)

A "preliminary examination" is a hearing in district court to decide whether there should be a trial of a felony or high misdemeanor case in circuit court. The prosecuting attorney presents witnesses to convince the district court judge that there is probable cause to believe that a crime was committed and the defendant committed it. The defendant is represented by a defense attorney who can cross-examine the witnesses and present evidence. If probable cause is established, the defendant is sent ("bound over") to circuit court for trial. A defendant can decide not to have a preliminary examination (also known as "waiving" the preliminary examination). If the district judge finds that there is probable cause, or if the defendant waives the preliminary examination, then the case goes to the circuit court for trial.

You will likely be subpoenaed and may have to testify at the preliminary examination.

After the case is sent to circuit court, the defendant is again arraigned. The court may hear motions to decide what evidence will be admitted at trial or whether there is some legal reason why the defendant should not be tried. The prosecuting attorney and defense attorney may decide whether the defendant will plead guilty to the crime charged or some other lesser offense. You do not need to be present at the arraignment in circuit court, although you may attend if you wish.

If you request, you have the right to consult with the prosecuting attorney prior to the trial.

F. The Trial

The defendant may choose between a trial by jury or a trial by the judge. A trial by the judge is known as a "bench trial." In a bench trial, there is no jury and the judge decides whether the defendant is guilty of the charged crime.

The prosecuting attorney will try to prove at trial that the defendant committed the crime--that he is guilty beyond a reasonable doubt. The prosecuting attorney must call all the witnesses needed to prove guilt. The defendant is not required to call witnesses. You usually will be required by subpoena to be present, and you may need to testify. If the defendant is found guilty, the judge will set a date for sentencing.

You have the right to be present throughout the trial, unless you are going to be a witness. If you are a witness, you may be kept out of the courtroom until you testify. After you testify, you again have the right to be present at trial.

G. Sentencing

After the defendant is convicted, the judge will sentence him. Crime victims have the right to make statements to the court at sentencing. Before sentencing, the probation department may make a pre-sentence investigation report to help the judge decide the appropriate sentence. As part of the pre-sentence investigation, a probation officer may contact you and ask for your opinion or for information about the case. It is your choice whether you want to give your opinion or information to the probation officer. If you decide to communicate with the probation officer, you can talk to him or her by telephone or in person, or you can submit a letter with your feelings about the incident and an appropriate sentence. Your statement can describe the nature and extent of any physical, psychological, or emotional harm you've suffered, the extent of any financial loss or property damage you have suffered, your opinion of the need for restitution (see below), and your recommendation for an appropriate sentence. Your statement will be available to your assailant unless the court orders otherwise. If you submit a letter, it might be disclosed to the defendant before sentencing if the judge is going to rely on it in imposing sentence.

At sentencing, the judge will have considered the pre-sentence investigation report, if one was made. If no pre-sentence investigation report is prepared, the court must notify the prosecuting attorney of the date and time of sentencing at least 10 days before sentencing. The prosecuting attorney must in turn notify you. You may submit a written impact statement to the prosecuting attorney or court, and/or you may appear to make an oral statement at sentencing. If you are physically or emotionally unable to make an oral statement, you may choose another person age 18 or older (such as an advocate) to make an oral statement on your behalf.

The sentence the judge imposes must meet the law's requirements for the crime. Typically, a sentence might include the following:

- A jail term. The length of the term will be provided under the law.
- A fine. The amount of the fine will be stated in the law.
- Probation. More information about probation appears below.
- Community service.
- Payment of court costs.
- Restitution to the victim. Restitution is payment of money to the crime victim to compensate for losses suffered as a result of the crime. Such losses might include lost wages, medical costs, or property damage. Michigan law requires restitution to victims of a felony or misdemeanor. You should give the prosecutor or the probation department information about the amount of your losses so that the court can make this award. This information should include copies of any documents that show the amount of loss, such as doctor bills, pay stubs, or estimates for repairs.

Probation is a common sentence, especially for misdemeanor crimes. A person put on "probation" might still go to jail for a time, but this is usually not the case. In most cases, the person on probation is allowed to go free, with restrictions imposed on his behavior by the court's "probation order." This order will have different conditions to protect other people and to make sure that the person does not commit another crime. If the person violates a condition of probation, the court can "revoke probation" and put the person in jail. (If the violation is minor, the court might penalize the person only by imposing further conditions.) Common conditions of probation are that the person:

- Have "no contact" with the victim of the crime. This is a type of order that is entered into the L.E.I.N. network. If the person violates a probation order with a provision to protect a named person, the person can be arrested immediately without a warrant.
- Not have a firearm.
- Stop using alcohol or illegal drugs.
- Report regularly to a probation officer for supervision and/or drug or alcohol screening.
- Attend counseling sessions or a batterer intervention program.

The maximum term of probation is two years for a misdemeanor, except for misdemeanor stalking, which is five years.

If you request it, the prosecuting attorney must let you know the following things about sentencing in cases involving felonies or serious misdemeanors (which include assault and battery and stalking):

- The crimes of which the defendant was convicted.
- Your right to make a written or oral statement for use in the pre-sentence investigation report.
- The address and telephone number of the probation office preparing the pre-sentence investigation report.
- The time and place of the sentencing.
- Your right to make a statement at the defendant's sentencing.

H. Appeal

After he is convicted, the defendant may have the right to appeal. On appeal, a higher court reviews the conviction to see if the lower court made any mistakes in applying the law. Serious mistakes by the lower court can result in the defendant getting a new trial, or in his conviction being set aside. Appeals from misdemeanor convictions entered in district court are taken to the circuit court. Appeals from felony convictions in the circuit court are taken to the Michigan Court of Appeals.

If the defendant appeals from a conviction of a felony or serious misdemeanor (which includes assault and battery and stalking), upon your request, the prosecuting attorney will provide you with the following:

- Notice that the assailant has filed an appeal.
- A brief explanation in plain English of the appeal process.
- Notice whether the assailant is out on bail.
- The time and place of any appeal hearings.
- The result of the appeal.

I. Crime Victims' Compensation

Crime victims may be eligible for financial assistance from the Crime Victim Services Commission. (See phone number below.) The Commission can provide compensation for certain kinds of out-of-pocket losses, loss of earnings, and/or loss of support.

To be eligible for an award, you must have lost at least two continuous weeks of earnings or support, or have a minimum out-of-pocket loss of $200. These eligibility requirements may not apply if you are retired because of age or disability, or if you were a victim of criminal sexual conduct in the first, second, or third degree. "Out-of-pocket" losses include expenses for services you needed because of the crime, such as medical treatment, counseling, child care, or transportation. You cannot recover losses for personal property or pain and suffering.

You must file your claim with the Commission within a year of the crime to qualify for an award. Also, the crime must have been reported to the police within 48 hours of the time it occurred, unless the Commission finds that there was good cause for the delay. These time limits may be extended if the crime was criminal sexual conduct committed against someone who was under age 18 at the time of the crime, and the crime was reported before the victim reached age 19.

A person requesting compensation cannot be criminally responsible for the crime and cannot be an accomplice to the crime. You must be willing to cooperate with law enforcement agencies in the investigation of the crime and with the courts in the prosecution.

If you live with your assailant or have a family relationship with him, the amount of compensation you can receive might be limited, to prevent your assailant from profiting from the award. To avoid this situation, the Commission might directly reimburse organizations or persons that helped you by providing such services as medical care or shelter.

Some of the losses covered by the Crime Victim Services Commission may also be covered by a criminal court order for restitution (see Section IV.G). You may not get double payment for the same loss from both the Crime Victim Services Commission and the defendant. If the defendant has reimbursed you for a loss under a court order for restitution, you will have to report the amount to the Crime Victim Services Commission. Likewise, if you get compensation for a loss from the Crime Victim Services Commission, you should report the amount to the prosecutor or court probation department.

Applications for crime victims' compensation are available at the Commission's office in Lansing, at all county prosecutors' offices, at the local state police post, at your local domestic violence program, and at many other locations, including hospitals, crisis centers, and funeral homes. If you need help getting a claim application, call the Crime Victim Services Commission at 1-517-373-7373. For further information, see this web site: http://www.mivictims.org/services/cvsc/comp.html.

(Return to Overview) (Return to top of Section IV.)

V. PERSONAL PROTECTION ORDERS ("PPOs")

A. What Is a PPO?

In a personal protection order (also called a "PPO"), a court orders another person to stop threats or violence against you. If the person disobeys the court's order, the police can arrest him immediately when called to the scene of the violation, without having to first get an arrest warrant from the court. If the police do not arrest the person, you can start the enforcement process with the court yourself. The punishment for violating a PPO is a maximum 93 day jail sentence, if the person is age 17 or older. The person may also be fined up to $500. If the person is under age 17, he will be treated as if he were a juvenile delinquent. In this case the court might put him on probation, make him do community service, make him pay a fine, or place him in a detention home.

There are two kinds of PPOs:

1. **Domestic violence PPO (or domestic relationship PPO):** You can get this kind of PPO if the person you need protection from is:

   - Your spouse or former spouse,
   - A person with whom you have a child in common,
   - A person you are dating now or have dated in the past, or
   - A person who lives with you now, or who has ever lived in the same household with you.

   The court will give you this kind of PPO if you can show that one of the above persons is interfering with your personal freedom or has threatened or committed violence against you. (MCL 600.2950.)

   People in "dating relationships" include high school students, lesbian, and gay male couples who have not lived together. A "dating relationship" is defined legally as "frequent, intimate associations primarily characterized by the expectation of affectional involvement." The term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.

2. **Anti-stalking PPO (or non-domestic stalking PPO):** You can get this kind of PPO to protect you from *anyone* who has done a pattern of two or more separate acts without your consent that make you feel threatened, intimidated, harassed, frightened, or molested. (MCL 600.2950a.)

To decide which kind of PPO you need, consider your relationship with the person you need protection from. If you have a domestic relationship with the person as described above, you need a domestic violence PPO. If there is no domestic relationship AND the person is stalking you, you need an anti-stalking PPO.

You do not have to be an adult to ask the court for a PPO. You can get a PPO to protect you from a person who is under age 18, but effective April 1, 2002, the court will not issue a PPO to protect you from a child under age ten. Also, you *cannot* get either type of PPO against your minor child, and a minor child *cannot* get either type of PPO against a parent. In cases where a PPO is not available, you should contact the juvenile division of the family division of circuit court to discuss other remedies that might help you.

B. What Will the Court Order in a PPO?

In a **domestic violence personal protection order**, the court can forbid your assailant from doing one or more of the following things that interfere with your personal freedom or threaten you:

- Entering your home or premises.
- Assaulting, attacking, beating, molesting or wounding you or another person. (NOTE: assaulting, attacking, beating, and wounding another person are crimes. See Section I.C. The police can arrest an assailant for these crimes even if you don't have a PPO!)
- Threatening to kill or physically hurt you or another person. (NOTE: this behavior may also be criminal.)
- Removing your minor children if you have custody, except as allowed by a custody or parenting time order.
- Purchasing or possessing firearms.
- Interfering with your efforts to remove your children or personal property from premises that your assailant solely owns or leases.
- Interfering with you at work or school, or doing things that hurt your employment or educational relationships or environment.
- Having access to information in children's records. The law allows a non-custodial parent to have access to a child's records, including school and medical records. However, if you are hiding from your child's

non-custodial parent, a personal protection order could prohibit the record-keeper from releasing information to him in children's records that would reveal your address, phone number and employment location. If you get a PPO with a provision like this, you should give a copy of the PPO to each record-keeper.

- Stalking you. See Section I.D for a description of stalking.
- Doing any other specific act or conduct that imposes upon or interferes with your personal liberty or that causes a reasonable apprehension of violence. Under this general restriction, the court can prohibit a wide variety of actions not specifically described in the law -- for example, destroying property, harming pets, or sending other people to threaten or harass you.

A DOMESTIC VIOLENCE PPO CAN PROHIBIT MANY OF THE DIFFERENT TACTICS YOUR ASSAILANT HAS USED. You can ask the court to keep him away from all the places where he might contact you – your family members' houses, your church or other place of worship, your best friend's apartment, etc. Some judges will allow you to include an order to your assailant not to contact family members or a new partner; others will require these folks to get their own PPO.

Anti-stalking personal protection orders can order the assailant to stop:

- Following you or appearing within your sight.
- Approaching or confronting you in a public place or on private property.
- Appearing at your home, work or school or a shelter (if you are staying in one).
- Entering onto or remaining on property you own, lease, or occupy.
- Contacting you by telephone, mail or electronic mail.
- Placing an object on or delivering an object to property you own, lease, or occupy.

C. How Do I Get a PPO?

The first step to get a PPO is to fill out a request with the family division of the circuit court. Most courts have special pre-printed forms for requesting a PPO. You can get these forms from the court clerk. The court will call your request for a PPO a "petition." You do not have to pay a filing fee to the court to get a personal protection order.

If the person you need protection from is age 18 or older, you can make your request for a PPO to any circuit court, regardless of where you live. If the person you need protection from is under age 18, you should make your request to the circuit court in either the county where he lives, or where you live.

You do not need an attorney to go to court to get a PPO. However, the court forms may be hard to understand. Most people need some help to fill them out. Your local domestic violence program may operate a PPO clinic. Advocates working for the program can help you fill out the forms, or they can refer you to where you can get help. You can also ask the court clerk for help.

The judge may make a decision about the PPO *based only on your written petition form*, so it is very important that you fill it out completely, and write clearly so that the judge can read it. Here are some tips for filling out the petition forms:

- The court forms will call you the "petitioner." The person you need protection from will be called the "respondent."
- To explain to the judge why you need a PPO, write down the history of what has happened with the respondent. As best as you can, tell what the respondent did, the date he did it, and what happened to you as a result. Give specific incidents of assaults and/or threats. Describe injuries. List witnesses, if you have any.
- You may attach a separate sheet of paper to the court form if you need to.

- You don't need a police report or other documents to get a PPO, but if you have them, they can help the judge understand your situation.
- *Don't assume that the judge knows about other court cases between you and the respondent.* If there are other cases, it's important to tell the judge about them. The judge will need to know about cases from anywhere in Michigan or in another state. It's especially important to tell the judge whether there is a previous court order about child custody, or a criminal case against the respondent. Telling the judge about these other cases will help him or her to issue a PPO that will not conflict with other court orders. A conflicting order from another court will make it confusing for police in the event that you need to call them to enforce the PPO.
- You must provide a mailing address so the court can get in contact with you. This address does not have to be the same as your residence address, however.
- If you can, give the court the correct spelling of the respondent's name, and his date of birth. This information is needed to enter the PPO into the police computer network (see Section V.D). If the PPO is entered into that network, it will be easier to enforce the PPO later.

You should check the box on the petition form that says "ex parte" (pronounced *"ex PART--ee"*) if you need the court to act quickly, or without prior notice to the respondent. "Ex parte" means that you are asking the court to act immediately based on your statements alone, without first holding a hearing to take statements from the respondent. If you have asked the court to issue the PPO immediately (by checking the "ex parte" box), the court must make a decision on your petition within 24 hours of the time you filed it, without notifying the respondent beforehand. If the court issues the PPO, it will be effective as soon as the judge signs it, without prior notice to the respondent.

Because it can be obtained quickly, an "ex parte" PPO can enhance your safety in an emergency. If you ask for an "ex parte" PPO, you must be prepared to show the court one of two things:

- Specific facts showing that delay in issuing the PPO will cause you immediate, irreparable harm; or
- Specific facts showing that notice to the respondent will cause him to take action against you before the PPO can be issued.

You can expect the process of getting an ex parte PPO to last several hours, and to involve a certain amount of waiting time at the courthouse. If you asked for an "ex parte" PPO, the court is likely to decide whether to issue the PPO based on your petition alone, without asking you for any further information. In some cases, however, the judge might first ask you some questions in person, and you should be prepared for this. It is also possible that the judge will require a hearing with both you and the respondent present before making a decision on your petition, even if you checked the "ex parte" box.

If you did not check the "ex parte" box, the court will probably schedule a hearing on your petition. The hearing will not be scheduled for the same day that you turn in your petition, so you will have to return to court for it on another day. At a hearing on the PPO petition, the judge will listen to your side of the story as well as the respondent's before making a decision on your petition. You and the respondent will have the right to speak and to bring witnesses or other evidence before the court. It will be helpful for you to bring any supporting documents you have to the hearing, even though these are not required to get a PPO. Supporting documents might include such things as letters, photos, or police reports. Be aware that the court has rules about the kind of evidence it is allowed to consider at a hearing. For example, the court is generally not allowed to consider your testimony about something another person has told you. If another person has information that is important in your case, that person must either testify as a witness at the hearing, or give you a signed, sworn statement (known as an "affidavit") to present to the court. A private attorney or your local domestic violence program can help you with your questions about the court's evidence rules.

Both you and the respondent must attend the hearing. If you do not attend the hearing after it is scheduled, the judge can choose to reschedule the hearing or to dismiss your case and deny you the PPO. If there is a

pressing reason why you can't attend a scheduled hearing, it is a good idea to contact the court to discuss this, if possible.

If the court schedules a hearing, you must arrange to give the respondent notification about it at least one day before it takes place. There are special court forms for this notification, which is called "service of notice of hearing on the respondent." More information about service is found in the next section below. The court clerk or an advocate from your local domestic violence program can also help you learn about service.

D. What Will Happen if the Judge Grants My PPO Petition?

If the judge grants your petition for a PPO, the PPO will go into effect as soon as the judge signs it. The court clerk will immediately send the PPO to a law enforcement agency to be entered into the police L.E.I.N. computer network. If the respondent violates the PPO later and you call the police, they will be able to look the PPO up on the L.E.I.N. network to verify that it exists. Even though the PPO is immediately entered into the L.E.I.N. network, you should additionally arrange to notify the respondent about the PPO. This notification is called "service" of the PPO. Service of a PPO is delivery of the PPO to the respondent in a way that meets the court's requirements. Service of the PPO is important to your safety. If you have the PPO served on the respondent, it will help the police in Michigan *and in other states* to enforce the PPO if the respondent violates it later. (More information about PPO enforcement is in Section V.H.) The court has special forms for service of a PPO, and the court clerk or advocate from your local domestic violence program can help you to use them. Generally, you can serve a PPO as follows:

- Some police departments will deliver PPOs free of charge. Call your local domestic violence program to ask about whether this type of service is available in your area.
- "Process servers" are people who serve court papers for a fee, which you will have to pay. The court clerk can give you the telephone number of process servers in your area.
- An adult (a person age 18 or older) other than you can deliver the PPO to the respondent.
- You may send the PPO to the respondent by certified mail, return receipt requested, delivery restricted to the addressee.

One of the court's forms for service is a document called a "proof of service." This document is to be filled out when service is made, and returned to the court clerk. This document verifies that the respondent was served. It is a very important document for enforcing the PPO later. After the PPO is served, you should file the proof of service with the court clerk. The court clerk will send the proof of service to a law enforcement agency for entry into the L.E.I.N. network, so that officers can later verify that the respondent knows about the PPO. This will make it easier for the police to enforce the PPO later, as will be explained in Section V.H.

The court clerk will give you at least two copies of the PPO. If you need extra copies to give to others (for example, schools, doctors, employers, or day care providers), ask the clerk for as many as you need. You should carry a copy of the PPO and proof of service with you at all times, including when you travel. You should keep a second copy of these documents in a safe place.

The PPO is good until the expiration date the judge writes on the order form. If you need to renew it, you can ask the court to do so by filing a "motion" for an extension at least 3 days before the expiration date. (If you miss the deadline for extending the PPO, you can still file a petition asking the court for a new PPO.)

PLEASE NOTE! Even though you have a PPO, you should still work with a domestic violence advocate to develop a safety plan. The PPO is only part of your strategy for staying safe.

E. What Will Happen if the Judge Denies My PPO Petition?

If the judge denies your petition for a PPO and you checked the "ex parte" box, you can ask the court to schedule a hearing. The court will schedule a hearing unless it interviews you first and determines from the interview that your situation does not meet the requirements for a PPO.

If the court denies your petition after a hearing or after interviewing you and deciding that your situation does not meet the requirements for a PPO, it will have to explain to you in writing why it made this decision. If you still feel you qualify for a PPO, contact an attorney or an advocate at your local domestic violence program to help you review your petition and the court's explanation for denying it. The court's denial of your petition will not prevent you from trying again; it may be that additional information or a more complete explanation will help the judge to understand your situation.

It is also possible to take an appeal to the Court of Appeals if you are dissatisfied with the court's denial of your PPO petition, but this is a complicated, time-consuming process. You should get an attorney's help and advice if you want to do this.

F. Can the Respondent Object to the PPO?

Yes. The respondent has the right to object to the personal protection order by filing a "motion to modify or terminate the PPO" with the court. The respondent must file this motion at least 14 days after service of the PPO, unless he can show good cause for filing it later. The court will schedule a hearing on the respondent's motion, and you will be notified of it. In this situation, it will be very helpful for you to get help from an attorney or a domestic violence advocate.

G. What if I Change My Mind About the PPO?

A PPO is a court's order to the respondent, and *only the court can change it*. For that reason, you cannot "invalidate" or "nullify" a personal protection order by agreeing to let the respondent do something that the PPO forbids. The respondent can still be punished for disobeying the PPO even if you don't object to his actions. For that reason, you should not invite the respondent to come into contact with you in violation of the PPO. If you need to contact the respondent, you might consider indirect ways to communicate with him that do not cause a PPO violation; for example, you might consider sending a message by way of a mutual acquaintance or family member if the PPO does not prohibit such contact. You might also consider requesting the court to change the PPO by filing a "motion to modify or terminate" it. If you do this, you can expect the judge to ask you if you are being pressured or intimidated into making the request.

Although a personal protection order restricts the respondent, and not you, you may experience problems with some police officers and judges if you encourage the respondent to do something that violates the PPO (like inviting the respondent to your residence), and then later need protection from him. Some women have reported that the police would not arrest the respondent in this situation; many police officers have the false impression that they do not have to arrest a respondent who violates a PPO if the petitioner first invited him into her house. Likewise, some judges believe that it is unfair to punish a respondent who threatens or assaults a petitioner after she first invited him to contact her in violation of a PPO. A few judges have even found the petitioner in contempt of court for encouraging the violation! While these actions by police and judges are not strictly in accordance with the requirements of Michigan's PPO laws, it is better to avoid such difficulties by making sure that you don't invite or encourage behavior that the court has forbidden.

H. What Happens if He Violates the PPO?

If the respondent violates the PPO, call 911 or the local police right away. What the police will do when they arrive at the scene depends on whether you had the PPO served on the respondent. (For more information about **service**, see Section V.D.)

If the PPO was served…

It is easier for the police to enforce a PPO if it was served on the respondent before they are called to the scene of a violation. If you have the PPO and the proof of service, show these to the officers. If you don't have these documents, tell the officers that you have a PPO and that you had it served on the respondent. The police will then verify this information in the L.E.I.N. computer network.

Once the police have verified that there is a PPO against the respondent, that the respondent has been served with it, and that he is violating the PPO, they can arrest him. They do not need to go to court first to get an arrest warrant. This ability to immediately remove the respondent from the scene saves time that is very important to your safety.

If the PPO was not served…

The police will not be able to arrest the respondent until he has been notified about the PPO and given a chance to obey it. If you have the PPO, show it to the officers. They will serve the respondent with it on the spot. If you do not have the PPO, tell the officers you have one. They will then verify its existence on the L.E.I.N computer network, and notify the respondent about it.

Once the police have notified the respondent, they will give him a chance to obey it. If he does not immediately obey, however, the police will be able to arrest him without getting an arrest warrant.

After a person age 18 or older is arrested for a PPO violation, he will be immediately taken before the family division of circuit court for arraignment on charges of contempt of court (sometimes called "criminal contempt"). If a circuit judge is not available, the person will be taken before a district court judge. The arraignment will be similar to the arraignment on criminal charges described at Section IV.B. The court will set bond, advise the respondent of the charges against him, and appoint an attorney for the respondent if the respondent wants one and cannot afford one. The respondent will have the chance to plead "guilty" or "not guilty" to the contempt charges. If the respondent pleads "guilty," the court can proceed to sentencing. If the respondent pleads "not guilty," the court will schedule a hearing on the contempt charges.

If the court schedules a hearing, it will notify the prosecuting attorney. The prosecuting attorney will prosecute the contempt charges unless:

- You get your own attorney to do this,
- The prosecuting attorney decides the PPO was not violated, or,
- The prosecuting attorney decides that it would not be in the interests of justice to prosecute.

If the respondent was not arrested for the PPO violation, and you still feel you need help from the police, you can do the following:

- Call the police station and ask to speak to the supervisor or command officer. Explain the situation politely but firmly. If you do not get a helpful response, ask to talk to the next person up.
- Call the prosecutor's office and talk with someone about what happened.
- Call your local domestic violence program and talk to them about what has happened. They may be able to help you explain the situation to the police.
- Call your attorney (as soon as you can).

Even if the police do not arrest the respondent, you can start the enforcement process against him yourself. If the respondent is age 18 or older, you can go back to the court that issued the PPO and start contempt charges by filing a "motion to show cause." There is no fee for filing this motion. The court will set a date for a hearing on your motion. You will have to have notice of the hearing and your motion served on the respondent at least 7 days before the hearing. Service must be done by having an adult other than you deliver the notice and motion to the respondent personally. You can ask the court clerk for more information about service.

After you have filed your motion to show cause, the case will proceed in a manner similar to cases begun by warrantless arrest of the respondent. The prosecuting attorney will prosecute the charges, unless one of the exceptions described above applies. The respondent will appear in court to be advised of the contempt charges. At this "first appearance," the court will set bond, if necessary, and appoint an attorney for the respondent if he wants one and cannot afford it. The respondent will have the opportunity to plead guilty or not guilty to the contempt charges. If he pleads not guilty, a hearing will be scheduled.

At a hearing on contempt charges, you and the respondent will have the opportunity to present witnesses, and to examine and cross-examine each other's witnesses. The hearing will take place before a judge – there will be no jury.

You should be aware that the enforcement process just described above is somewhat different **if the respondent is under age 18**.

- You should still call 911 or the local police if a person under age 18 violates a PPO.
- You should still have the PPO served, on both the respondent and on his parents or guardian (if you know where they are). The police have similar authority to take the respondent into custody without a court order, depending on whether the respondent was served with the PPO.
- If the respondent was not taken into custody by police, you can start the enforcement process yourself by filing a paper with the court. This paper is called a "supplemental petition."

Once the respondent comes to court, the process becomes quite different from the adult enforcement process. There will first be a "preliminary hearing," at which the respondent will be advised of the charges. The court might make decisions about detaining the respondent before the hearing on the violation, and appoint a lawyer for the respondent if the respondent wants one and cannot afford it. The court will also schedule a "violation hearing" to decide whether the respondent violated the PPO. If the respondent is found to have violated the PPO at the violation hearing, the case will proceed to the "dispositional phase," which is similar to the sentencing phase of an adult contempt hearing.

If you need more information about the enforcement process for respondents under age 18, you can ask the arresting officers, the court to which the respondent was taken, or your local domestic violence program.

NOTE! Whenever the police investigate a violation of domestic violence PPO, they are required by law to write a report (MCL 764.15c). They must write this report even if they don't make an arrest. This report is the same as the report that is required whenever the police investigate a crime committed by a person against his domestic partner. For more information about this report, see Section II.B.

I. Is the PPO Still Good if I Move or Travel to Another County in Michigan?

Yes. The law states that a PPO issued in one county in Michigan is enforceable anywhere in Michigan by any law enforcement agency. MCL 600.2950(11)(e), MCL 600.2950a(8)(e). The law also states that the family division of circuit court in every county in Michigan has the authority to hold a contempt hearing for a violation of a PPO issued by any other Michigan court. MCL 764.15(b)(5).

If you move or travel out of the county where your PPO was issued, you might encounter police officers or court employees who are not familiar with the law's requirements. If you move or travel, you can maximize the effectiveness of your PPO by doing the following:

- Have the PPO served on the respondent before a violation occurs. Carry a copy of the order with you (along with a proof of service) whenever possible. This is not required for enforcement, but is a good idea because *it helps get the order enforced.*
- Even if the respondent has not been served, carry a copy of the PPO with you. That way, if the assailant violates the order and you call the police, the police can serve him.
- Verify (or have your attorney verify) that the PPO and proof of service are entered into the L.E.I.N. computer network. If these documents have not been entered into L.E.I.N., you can take them to a law enforcement agency for L.E.I.N. entry yourself.
- Let your employer, school, and friends know about the PPO and ask them to call the police if the respondent violates the PPO.
- Provide a copy of the PPO to the local law enforcement agency in any area where you live, work, or visit regularly.
- Police officers are less likely to enforce a PPO if they think you have initiated contact with the respondent. Remember that you cannot change a PPO by agreeing to the change with the respondent. Any change to the PPO must be made by the court. (See Section V.G.)
- Develop a safety plan with the help of your local domestic violence program. A PPO is only part of your strategy for safety.

J. Is the PPO Still Good if I Move or Travel to Another State or to Indian Country?

Yes, but **only IF you have had the PPO** served on the respondent. A federal law called the Violence Against Women Act requires each U.S. state and Indian tribe to enforce protection orders issued in other states or tribes. This law is called the "full faith and credit" law. It applies in all 50 states, Indian tribal lands, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, American Samoa, the Northern Mariana Islands and Guam. HOWEVER, the federal full faith and credit law does NOT protect you if the PPO has not been served on the respondent. Thus, if you plan to move or travel outside of Michigan, it is important to have the PPO served on the respondent before he violates it.

The federal full faith and credit law is a fairly new law. You may encounter judges or law enforcement officers who are not familiar with it. For that reason, the suggestions provided above for maximizing effectiveness of your PPO (Section V.I) are useful if you are going to move or travel to another state. Additionally, you may want to register your protection order with a national registry that exists for protection orders. Although the national registry is not foolproof (it is not used by everyone in the same way), it is one more step you can take to enhance your safety. Contact your local domestic violence program or police agency for more information about the national registry.

You should also be aware that each jurisdiction has different laws and practices for enforcing protection orders issued by other states or tribes. If you are moving or traveling to another place, it is a good idea to consult with a lawyer or advocate in Michigan and in the other jurisdiction about your PPO.

You and your advocate can get help with full faith and credit issues by calling the Full Faith and Credit Project at 1-800-256-5883 and/or the Battered Women's Justice Project at 1-800-903-0111 extension 2.

K. What if I Have a Protection Order From a Court in Another State or an Indian Tribal Court?

Under the federal full faith and credit law described in Section V.J, Michigan police agencies and courts must enforce your protection order the same way that they enforce Michigan personal protection orders. As of April 1, 2002, Michigan will have some new state laws to give full effect to the federal full faith and credit law. This means that:

- Police have authority to arrest a person without a warrant for a violation of an out-of-state or tribal protection order. This process is described in Section V.H.
- If the person was not arrested for the violation, you can start enforcement proceedings yourself by filing a motion to show cause as described in Section V.H.
- The family division of circuit court has authority to try the offender for contempt of court, and to impose the same punishment as it would impose on someone who violated a Michigan personal protection order. (For offenders age 17 and older, the court can impose up to 93 days in jail and a maximum $500 fine).

Because Michigan's state full faith and credit laws are so new, you may encounter police officers and judges who are unfamiliar with them. Here are some things you can do to maximize the effectiveness of your out-of-state or tribal protection orders:

- Carry a copy of it with you at all times.
- Have it served on the person whose behavior is restrained, and carry the proof of service with you.
- Let your friends, family members, employers, day care providers, school officials, and other important people know about the order so they can call the police if the restrained person violates it.
- Provide a copy of the order to the local law enforcement agency in any area where you live, work, or visit regularly.
- Consider having the protection order entered into the L.E.I.N. computer network, or the national registry that exists for protection orders. Call your local domestic violence program or police agency for more information about this option.

If you are going to be in Michigan for an extended period of time, you might wish to talk to an attorney or a domestic violence advocate about whether you should ask a Michigan court for a Michigan personal protection order.

VI. SUITS FOR DIVORCE

A. What Happens in a Suit for Divorce?

In a divorce, one spouse sues the other to end the marriage. The spouse who files suit tells the court that the marriage has broken down and there is no reasonable likelihood it can be preserved. The spouses do not have to agree about getting a divorce before the court will grant one – one spouse can get a divorce even if the other doesn't want one. It is also not necessary to prove that one spouse was at fault for the breakdown of the marriage – you don't have to prove such things as adultery or cruelty to get a divorce in Michigan.

In addition to ending the marriage, the court in a divorce case will do the following:

- Divide the property of the marriage between the spouses.
- Decide whether one spouse should pay support to the other. This is called "spousal support." (It used to be called "alimony" in Michigan.)

- Decide where the spouses' children will live and who will have authority to make decisions about such things as their schooling, medical care, etc. This decision is called a "custody determination."
- If the children will not be living with one parent, the court will decide when and how that parent (called the "non-custodial parent") will spend time with them. This decision is called a "parenting time determination." ("Parenting time" used to be called "visitation" in Michigan.)
- Decide about payment of child support.
- Decide about health insurance for the children.

Factors such as adultery, abuse, and cruelty are taken into consideration (along with many other factors) in making decisions about property, support, and child custody or parenting time.

The same court where a suit for divorce is filed can also issue a personal protection order. This will be treated as a separate case before the same judge. The court will follow the process described in Section V.

A divorce becomes final when the court enters a judgment of divorce. The court may enter a divorce judgment after a trial, or after the spouses reach agreement about the issues in the case. The divorce judgment contains the court's orders about the marital property, spousal support, child support, custody, and parenting time. A divorce may be granted in 60 days if there are no minor children. When there are minor children, the waiting period is extended to 180 days.

After a divorce judgment is issued, the parties can ask the court to modify the support, custody, or parenting time orders it contains if their circumstances change.

In making decisions about custody, parenting time, and support, courts are assisted by an office called the "friend of the court." Friend of the court employees gather information about the parties through questionnaires or interviews, and make recommendations to the court about custody, parenting time, and support. Information you provide to a friend of the court employee may or may not be kept confidential. If you are concerned about confidentiality, be sure to ask the friend of the court employee to explain to you what information is and is not kept confidential.

The office of the friend of the court also helps the court enforce its custody, parenting time, and support orders after they are issued. If your former spouse is disobeying a court order (by failing to pay child support, for instance), you can ask the friend of the court office to take enforcement measures.

If the court schedules a hearing on a custody, parenting time, or support question in your case, the hearing may be held before a judicial officer known as a "referee." The referee is usually an attorney. The referee will report to the judge after the hearing, and make a recommendation to the judge about how he or she should decide the question. This recommendation will be served on the spouses and their attorneys for their review. If the court approves the recommendation, and if the spouses do not object to it within 21 days, the recommendation will take effect as the court's order. Either spouse can object to the referee's recommendation. Both spouses also have a right to request a hearing in front of a judge.

Recently, the law has been changed to encourage divorcing spouses to reach agreement on their own about the issues in their case. Part of the reason for these changes is the idea that the spouses might be more willing to obey a court order when they have decided themselves what the terms of the order will be. Traditionally, divorcing spouses reach agreement by negotiating a settlement with one another, usually with the help of their attorneys. The recent changes to the divorce laws encourage the spouses to get help in reaching agreement from a neutral outside person, using processes called "mediation" or "arbitration." Because negotiation, mediation, and arbitration work best when there is face-to-face contact, good-faith cooperation, and participants with equal bargaining power, these methods of reaching agreement are usually not safe or workable when one of the spouses has perpetrated domestic violence against the other. You should approach these processes with caution! More information about mediation and arbitration will appear below.

Domestic violence makes divorce a complicated process. Too often, batterers abuse and manipulate the divorce process to harass their former partners. Some batterers drag out the process to wear their former partners down or to make them run out of money. Some use child custody arrangements to track and harass their former partners. A typical batterer may tell his former partner that she will never see their children again if she pursues divorce.

To protect yourself from this kind of manipulation, you need to be well-informed about divorce. This section will briefly introduce you to the divorce process, but it cannot tell you everything you will need to know. If you are contemplating divorce from a batterer, it is essential for you to find a good attorney who knows about domestic violence. Call your local domestic violence program for a referral to attorneys. If you think you will have trouble paying for an attorney, consider that Michigan law gives the court the ability to order your spouse to pay for all or part of your attorney fees in appropriate cases, *if* your spouse is able to pay (MCL 552.13, MCR 3.206(C)). The attorney you consult can advise you whether the court is likely to make such an order in your case.

Beware of "divorce kits" that promise you an inexpensive, "do it yourself divorce! These kits can only be used in simple cases, when the parties can come to total agreement about everything. They will not provide you with adequate protection from a manipulative batterer, and they should not be used in cases involving domestic violence.

B. Filing for Divorce

A divorce is started when one spouse (the "plaintiff" or "complainant") files a "complaint for divorce" against the other spouse (the "defendant"). Together, the plaintiff and defendant in a divorce case are called the "parties to the case." Each party must hire and pay for his or her own attorney.

Suits for divorce are filed in the family division of the circuit court. You must have lived in Michigan for at least six months before you can file a complaint for divorce. Additionally, you must have lived in the county where you are filing for at least ten days. You don't have to be living apart from your spouse to file for divorce. The court will charge a fee for filing for divorce. If you cannot pay this fee, you can ask the court to waive it, or to order the other party to the divorce (your spouse) to pay it.

A complaint for divorce must include the following basic information:

- The complete names of both the parties, and their names before the marriage.
- Whether either party has any minor children, or whether there are minor children who were born during the marriage. The complaint must give the complete names and dates of birth of any persons under 18 (such as children) involved in the suit.
- Residence information about the parties, for example, their county and state of residence.
- Whether a party is pregnant.
- Whether there is property to be divided.
- A statement that the marriage has broken down and there is no reasonable likelihood that it can be preserved.
- Any facts showing a need for spousal support and the other party's ability to pay it.

When you file for divorce, you are also required to tell the divorce court about other court cases or court orders involving you and your spouse or your children.

NOTE! It is important to your safety that the divorce court be informed from the beginning of the case about other court orders affecting your children and your relationship with your spouse. These orders might be personal protection orders, criminal court orders, custody orders, or orders issued in juvenile delinquency or child protection cases. They might come from anywhere in Michigan or from another state, nation, or Indian

tribe. Telling the divorce court about other court orders will prevent it from requiring your or your spouse to do something that violates another order. For example, if the divorce court is not aware of a personal protection order ("PPO") that prohibits your spouse from contacting you, it might require you to come to a meeting at the court with your spouse to try to resolve some of the issues in your divorce case. A meeting like this will violate the PPO, and it might put you in danger. It will also give your assailant the chance to manipulate the court system to his advantage. You can avoid situations like this by letting the divorce court know about other courts' orders.

If you and your spouse have minor children, or if child support or spousal support is requested, a document called a "verified statement" must also be filed with the complaint for divorce. This statement must include more extensive information about both parties to the divorce, including: residence and business addresses; social security numbers; estimated incomes; driver's license numbers; residence addresses and social security numbers of minor children, including information about the residence of minor children for the past five years; applications for or receipt of public assistance; and, health insurance coverage for minor children.

The information in the verified statement is confidential, but it can be released to your spouse or to his attorney. If you are in hiding from your spouse, you can ask the court to omit identifying information from documents that he has access to. You must show "good cause" to do this. Beginning April 1, 2002, you can request the court to restrict your spouse's access to your identifying information by filing a sworn statement that your or your child's health, safety, or liberty would be put at risk if this information were disclosed. An attorney can assist you with this process.

C. What About Child Custody and Support Before the Divorce Is Final?

Between the time the complaint is filed and the divorce becomes final, the court can issue temporary orders for custody, parenting time, child support, and spousal support. This section describes two ways that courts issue temporary orders.

In some courts, the friend of the court office calls the parties together soon after the complaint is filed to try to reach agreement about the temporary orders the court should issue. This process is sometimes called "conciliation." If you do not feel safe attending a face-to-face meeting with your spouse, here are two suggestions:

- If you have a personal protection order or other court order that prohibits your spouse from having contact with you, it is important to let the friend of the court know about it immediately. A face-to-face meeting with your spouse will violate the previous court's "no-contact" provision, and the friend of the court should take steps to prevent this from happening.

- If there is no court order restricting your spouse from having contact with you, consider contacting the friend of the court office before the meeting to explain why you do not feel safe. Your attorney or a domestic violence advocate can discuss with you what you might safely say. If the friend of the court knows about the domestic violence, it might be possible to schedule separate meetings with you and your spouse, or to take other safety precautions.

If necessary, almost all courts will issue temporary orders on the request of one of the parties to the divorce. Either party can ask the court for a temporary order at any time before the divorce becomes final. This is done by filing a "motion" with the court. Normally, courts respond to motions by setting a date for a hearing on the issues raised. The party who filed the motion (the "moving party") is required to serve the other party with the motion papers and to notify him or her of the hearing date. This gives the other party the chance to come to court and explain his or her side of the question. However, if the moving party is afraid that the delay needed for the normal motion process will result in immediate, irreparable injury, loss, or damage, or if the moving party fears immediate, irreparable harm if the other party gets notice about the motion before the court can act

on it, the moving party can ask the court to rule on the motion "ex parte." "Ex parte" means that a party is asking the court to act immediately based on his or her statements alone, without first holding a hearing to take statements from the other party.

If the court issues an "ex parte" order for custody, parenting time, or support, the other party will have 14 days to file an objection to it. If there is no objection, the "ex parte" order will automatically become a temporary order. If there is an objection, the "ex parte" order is still effective and must be obeyed until it is changed by a later court order. The court must hold a hearing on the objection within 21 days after the objection is filed.

Temporary orders stay in effect until the final divorce judgment is entered, or until they are modified. A party can ask the court to modify a temporary order at any time before the final judgment is entered. The court will modify a temporary order on a showing of "good cause."

D. What Is Mediation?

In mediation, a neutral outside person (called a "mediator") helps parties who disagree about something to work together to settle their differences. The mediator helps the parties clarify the things they agree and disagree about, and helps them to identify ways they can resolve their differences. Unless both parties ask the mediator to recommend a resolution (a process called "evaluative" mediation), the mediator does not tell the parties what to do. If the parties cannot reach an agreement on their own, the mediation will end without one. If the parties do come up with an agreement, however, the mediator helps them write it down. This agreement then becomes a binding contract between the parties that a court will enforce.

A mediator may be chosen by agreement of the parties. If the parties do not agree about who the mediator will be, the court might recommend one to them, or the court's clerk might assign one to their case. Court-assigned mediators may have a background in law, psychology, counseling, social work, or family therapy.

Mediation is typically done by bringing the parties together for a face-to-face meeting with the mediator. Mediation sessions usually last several hours. If a party wants to bring his or her attorney to the mediation session, this is usually allowed. If a party wants to bring someone else to the mediation session (such as a domestic violence advocate), he or she usually needs to get the mediator's permission.

Mediation is said to have these advantages over traditional litigation before a judge:

- Although the parties must pay a mediator for his or her services, the cost of mediation may be less than the cost of traditional litigation.
- Mediation does not usually take as long as traditional litigation, so that the parties can resolve their dispute more quickly.
- Because they have participated in deciding the terms of their agreement, the parties to mediation may be more likely to abide by it.
- The parties' agreement reached in mediation is private. It is not part of the public court record.

Despite these advantages, professionals who work with survivors of domestic violence agree that mediation is usually not safe or workable when one of the parties has abused the other:

- Mediation works best when the parties can discuss their dispute face-to-face. Such meetings may be dangerous in situations with domestic violence.
- Mediation will not produce a fair agreement unless each party has equal bargaining power. There is no equal bargaining power in a relationship with a domestic violence perpetrator, because the perpetrator uses violence as a means of control.

- Mediation requires the parties to cooperate. Batterers do not cooperate. They manipulate.
- Domestic violence often involves behavior that is a crime. However, when violent behavior becomes the subject of negotiation, it sends a message to perpetrators that this behavior is something less than criminal. It sends them a message that violent behavior can be a useful bargaining chip to get what they want.

Courts' approaches to mediation in divorce cases vary throughout Michigan. Because mediation is so problematic in cases involving domestic violence, it is important for you to find out as soon as you can about the mediation practices in your local court. An attorney, a domestic violence advocate, or your local friend of the court office can help you get this information. Mediation is a voluntary process in some courts. In other courts, a judge may order the parties to attempt mediation. If a judge orders mediation, there are typically exceptions for certain situations, such as:

- Cases involving domestic violence.
- Cases involving child abuse or neglect.
- One party is subject to a personal protection order (or other "no-contact" order) that protects the other party.
- One party is not able to negotiate for him/herself at the mediation session.
- There is reason to believe a party's health or safety would be endangered by mediation.

If you have been ordered to attempt mediation with your assailant and you believe it would be unsafe or unfair for you to participate, ask your attorney, your local domestic violence program, or your local friend of the court office about how and when you can raise objections. Typically, you have to file a motion raising your objections within 14 days of receiving the order for mediation. The court will schedule a hearing on your motion within 14 days after you file it.

E. What Is Arbitration?

In arbitration, the parties choose a neutral outside person (an "arbitrator") to make a decision for them. The arbitrator acts like a judge, with the difference that the parties to the dispute have chosen who the arbitrator will be and pay this person for his or her services. The parties agree in advance that they will be bound by whatever decision the arbitrator makes in their case. They typically give up their right to appeal the arbitrator's decision to a court if they are not satisfied with it, except on very limited grounds.

Arbitration is problematic for survivors of domestic violence for some of the same reasons that mediation is. For arbitration to work fairly, the parties must have equal bargaining power to reach agreement about the choice of arbitrator, and about the other conditions of the arbitration.

Under Michigan law, the parties to a divorce can agree to arbitrate their disputes over debts, property division, custody, parenting time, child support, spousal support, attorney fees, and any other related questions. However, the law permitting arbitration also says that "*arbitration is not recommended for cases involving domestic violence*." MCL 600.5072(1)(c). The law further prohibits Michigan courts from referring the parties to arbitration if either party is restrained by a personal protection order, or if there is domestic violence or child abuse. Despite this prohibition, the parties can choose arbitration. To do so, however, they must be informed of the nature and risks of the process, be represented by an attorney before and during the arbitration process, and voluntarily sign a waiver acknowledging that they want to proceed despite the prohibition against arbitration in the law.

As is the case with mediation, court practices vary with respect to arbitration. You should gather information early in your case about arbitration practices in your local court. Your attorney, the local friend of the court office, or a domestic violence program can help you.

F. What Orders Can the Court Make About Custody or Parenting Time With Children?

When it issues a "custody order," a court decides:

- Where the parties' children will live. This is known as "physical custody."
- Which parent will have authority to make important decisions about the child's welfare. This is called "legal custody."

There are different types of custody orders:

- In an order for "sole custody," the court decides that just one parent will have physical or legal custody of a child, or that one parent will have both physical and legal custody.
- In an order for "joint custody," the parents share responsibility for the child. In an order for "joint physical custody," the child lives for specified periods of time with each parent. In an order for "joint legal custody," the child lives with one parent, but both parents share the decision-making authority for important decisions about the child's welfare. In an order for "joint legal and physical custody," the child lives with each parent, and both parents share decision-making authority.

If a child will not be living with a parent, the court will typically order that this parent can visit with the child on a set schedule. This type of order is called an order for "parenting time." The parent in this situation is sometimes called the "non-custodial parent." The non-custodial parent may be required to pay child support.

For joint custody to work smoothly, the parents need to cooperate. This fact makes joint custody problematic when one parent is a batterer, because batterers do not cooperate. A batterer is likely to use joint custody as a way to continue to control his former partner. In fact, joint custody may give a batterer the opportunity to continue his abusive behavior. It is not unusual for batterers to harass, threaten, or assault their former partners when the children are exchanged or during the process of making a shared decision about a child. In making a decision about joint custody, a judge will consider whether the parents are able to cooperate. The court will also consider whether domestic violence is present in your case, along with many other factors. The factors the judge considers will be explained in more detail in Section VI.G.

For the same reasons that apply to joint custody, parenting time arrangements can also pose a safety risk to survivors of domestic violence and their children. However, courts will only deny parenting time to a non-custodial parent if he has been convicted of criminal sexual conduct involving the child, or if there is clear and convincing evidence that parenting time would endanger the child's physical, mental, or emotional health. If the parties' situation does not meet these requirements, yet parenting time still presents a threat to the parent who has custody of the child (the "custodial parent") or to the child, the judge has some flexibility to fashion parenting time orders with provisions for safety. Examples of such provisions might be:

- *Specific* times and dates for drop-off and pick-up. Non-specific provisions like "reasonable parenting time" are dangerous because they allow batterers to manipulate the parenting time order.
- Supervision of parenting time by a person or an agency that can help keep the child safe. The supervisor should not be someone in the batterer's family.
- Drop-off and pick-up arrangements that do not require the parents to meet. This can be done by having someone other than a parent take the children to the parenting time location, or by having one parent drop the children off in a safe location at a different time than the other parent is scheduled to pick them up.
- Prohibiting the visiting parent from using drugs or alcohol before or during parenting time.

G. How Does the Court Decide Who Will Get Custody or Parenting Time With the Children?

Courts have great discretion in making decisions about child custody and parenting time. This sometimes makes it hard to predict what the court will do in an individual case. To understand the court's thinking as it decides custody and parenting time questions, it helps to understand that the court is required by law to make custody and parenting time decisions that are in the "best interests" of the *child.* It is the *child's* best interests that control the court's custody and parenting time decisions – not the parents'. The law lists 12 specific "best interest" factors that the court is required to consider. Domestic violence is one of these factors. The law describes the factors as follows (MCL 722.23):

> "(a) The love, affection, and other emotional ties existing between the parties involved and the child.
>
> "(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
>
> "(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
>
> "(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
>
> "(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
>
> "(f) The moral fitness of the parties involved.
>
> "(g) The mental and physical health of the parties involved.
>
> "(h) The home, school, and community record of the child.
>
> "(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
>
> "(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.
>
> "(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
>
> "(l) Any other factor considered by the court to be relevant to a particular child custody dispute."

As it makes a decision about child custody or parenting time, the court has to make a finding about each of the above factors. The court does not have to give equal weight to each of the above factors, however. The law only requires the court to base its decision on the "sum total" of the factors.

In addition to the above "best interest" factors, the law directs the court to assume that a strong relationship with *both* parents is in the child's best interests. The law provides that absent clear and convincing evidence of danger to the child's physical, mental, or emotional health, a child has a right to parenting time with a parent (MCL 722.27a(1), (3)).

A parent who has been convicted of criminal sexual conduct generally cannot be awarded custody or parenting time with a child conceived as a result of the criminal conduct.

Likewise, if a parent is convicted of criminal sexual conduct against his own child, that parent cannot be awarded custody or parenting time with the child or a sibling of the child, without first obtaining the consent of the other parent, and the child or sibling, if the child or sibling is old enough to consent.

Judges typically make final decisions about custody or parenting time after reading recommendations from the friend of the court office or a referee. Friend of the court staff make custody and parenting time recommendations after gathering information from the parties through interviews or questionnaires. Referees make recommendations after hearings at which each party has the opportunity to present evidence. As they make their recommendations, friend of the court staff and referees also consider the "best interest" factors explained above.

Friend of the court staff, referees, and judges cannot take your safety into consideration in custody and parenting time matters unless they know that domestic violence is present in your case. However, the decision to tell someone at the court about domestic violence may be a difficult one for you; you may have good reasons not to disclose it. If you are struggling to decide whether or how to tell the court about domestic violence, talk with your attorney or a domestic violence advocate.

If your spouse or ex-spouse has been ordered to stay away from you or your children in a personal protection order, or another court order (such as a probation order or pretrial release order in a criminal case), it is important to tell the divorce court about this order. *Do not assume that the divorce court will automatically know about orders issued in other courts, even within the same county.* If the divorce court knows about previous court orders, it can avoid issuing a custody or parenting time order that contradicts the previous court order. Contradictory court orders are easily manipulated by batterers, and are very difficult to enforce.

H. How Does Domestic Violence Affect Decisions About Property Division and Spousal Support?

In dividing the property of the marriage, the court will try to reach a fair division. It will not try to punish a party who caused the marriage to break down, but it will consider a party's conduct during the marriage in deciding what is fair.

In awarding spousal support, the court will try to balance the incomes and needs of the parties in a way that will not impoverish either one. A party's fault in causing the marriage to break down (which could include domestic violence) is also a factor in this determination.

Other factors a court considers in making a property division and awarding spousal support are:

- How long the marriage lasted.
- How much the parties contributed to the marital property.
- The parties' ages.
- The parties' health.
- The parties' status in life.
- The parties' needs and circumstances.
- The parties' ability to earn a living.
- The parties' past relations and conduct (which could include domestic violence).
- The ability to pay spousal support.
- Any additional factors the court thinks are relevant, for example, whether one party interrupted a career or education.

As is the case with the "best interest" factors in the child custody area, the court has great flexibility in applying these factors. It does not have to apply them in a strict mathematical formula.

I. How Does the Court Decide the Amount of Child Support?

In determining the amount of child support, the court considers the child's needs and the resources of each parent, using a formula developed by the Friend of the Court Bureau at the State Court Administrative Office in Lansing. This formula does not mention domestic violence as a factor in determining the amount of child support. The court may only deviate from the formula if it decides that applying the formula would be unjust or inappropriate. (This doesn't happen very often.)

J. What Is Separate Maintenance?

A court's order for separate maintenance allows the parties to live apart, although they are still technically married. A court that orders separate maintenance may also provide for child custody, child support, and spousal support (MCL 552.7, 552.13, 552.16).

A suit for separate maintenance is filed in the family division of circuit court the same way as a suit for divorce. As it does in a divorce, the court will order separate maintenance if the evidence shows that the marriage has broken down, and that that there is no reasonable likelihood it can be preserved. There is no need to show adultery or cruelty to get an order for separate maintenance.

Separate maintenance is available only if both parties are willing to accept it. The defendant in a separate maintenance suit can respond to the suit by filing for divorce. If that happens, the court can grant a divorce, but not separate maintenance.

There is no such thing as a "legal separation" in Michigan.

K. Custody, Parenting Time, and Support When the Parents Are Not Married

If the child's father has not acknowledged paternity, the mother has custody of the child.

If the mother and father have signed an acknowledgment of paternity, the mother is presumed to have custody of the child if there is no court order or written agreement that states otherwise. However, a father who has acknowledged paternity has the right to bring a claim in court for custody or parenting time. If this is a concern for you, you should seek the advice of an attorney to see whether you should get a custody order before the father does.

If the father signs an acknowledgement of paternity, he has a responsibility to support the child, and he must obey court orders for child support. If you are concerned about child support, you should seek an attorney's advice.

(Return to Overview) (Return to the top of Section VI)

VII. SUITS FOR CIVIL DAMAGES ("TORT" SUITS)

This section gives a quick overview of suits for civil damages. This is a complicated topic. It is not possible in this very brief format to completely explain the legal grounds for recovering civil damages, or the court processes involved in these suits. If you believe that a suit for civil damages might be appropriate in your case, the best thing you can do is to contact an attorney who can help you state your claim and navigate the court process.

Each party in a suit for civil damages must hire and pay for his or her own attorney. If you don't think you can afford an attorney to file a civil suit for damages on your behalf, consider that many attorneys will take cases on a "contingent fee" basis. This means that they will collect their fees from any amount of damages you are awarded at the end of the case. Usually a contingent fee is figured as a percentage of the eventual damages award – some attorneys will take as much a one-third of the award to cover their fees. Be sure that you understand the arrangements for attorney fees before you hire an attorney to represent you. Your local domestic violence program, your local county bar association, your local legal aid office, or the Michigan Bar Association can help you with attorney referrals.

A. What Is a Suit for Civil Damages?

In a suit for civil damages, a person who has been injured by another asks the court to order payment of money from the person who caused the injury. The amount of money requested is known as the "damages." This type of suit is also called a "tort" suit. Tort suits for civil damages can arise from such things as stalking, assault and battery, property destruction, trespassing, and intentional infliction of emotional distress.

In a tort suit, you can recover compensation for losses such as property damage, lost wages, and medical/therapy costs. In appropriate cases, it is also possible to recover for physical and/or emotional pain and suffering. You can sometimes recover court costs and reasonable attorney fees, but only if the law expressly permits it. In stalking cases, an amount of damages may be awarded to punish the stalker.

- If you are a victim of stalking, there is a special law allowing you to sue the stalker for the damages caused by the stalking (MCL 600.2954). A lawsuit may be brought under this law whether or not the stalker has been charged or convicted in a criminal case. This law permits recovery of costs and reasonable attorney fees.
- You may recover damages for intentional infliction of emotional distress if you have suffered severe emotional distress caused by conduct so outrageous and extreme that it goes beyond all possible bounds of decency, and is seen as atrocious and intolerable in a civilized community.

The behavior in question in a civil tort suit might also be the subject of a criminal prosecution or a personal protection order ("PPO"). For example, a person who assaults and batters you or maliciously destroys your property has committed a crime, and may have violated a PPO in addition to causing you financial loss and emotional or physical pain. Criminal, PPO, and tort proceedings in court may all be appropriate to hold the person accountable for his behavior. In the criminal case, the people of Michigan hold him accountable for an offense against the entire community. In the PPO case, the court holds him accountable for violating its order. In the tort case, you demand compensation for your private losses.

A previous divorce judgment or criminal conviction may have some implications in a later suit for civil damages. You should talk with your attorney about this question.

The law will only allow an award of damages in a tort suit if the claim was filed within a certain time (usually a number of years) after it arose. The time limits (known as "statutes of limitation") vary depending on the claim. You should talk with an attorney about this question.

B. What Happens in a Suit for Civil Damages?

A suit for civil damages is started when the injured person (the "plaintiff") files a "complaint" with the court and serves the complaint on the person who allegedly caused the injury (the "defendant"). The complaint explains why the injured person should be awarded damages, and describes the harm that the injured person suffered. Suits for civil damages are filed in circuit court if the amount of damages claimed is more than $25,000. If the amount of damages claimed is $25,000 or less, the suit is filed in district court. For lawsuits involving financial claims less than $3,000, the plaintiff can choose to file suit in a special part of the district court called the small claims division. If you file suit in small claims court, however, you give up the right to a jury trial, and the right to appeal the court's decision to a higher court if you are dissatisfied with it. You also give up the right to representation by an attorney.

After service of the complaint, the defendant has a certain amount of time to file an "answer" and serve it on the plaintiff. If the defendant does not answer the complaint, the court will enter a judgment against him, called a "default judgment." The plaintiff will then have the right to collect damages based on the default judgment. Sometimes a defendant will respond to a complaint by making claims of his own against the plaintiff. The defendant's claim for damages from the plaintiff is called a "counterclaim." The plaintiff will have to defend against a counterclaim in addition to proving her own claim.

Once the defendant files an answer to the complaint, the parties will begin preparing their cases for trial. In more complicated cases where a larger amount of damages is at stake, pretrial preparation typically includes a process called "discovery." During discovery, the parties gather information from each other to support their cases. Sometimes the information gathered during discovery can lead a party to decide that he or she should "settle" the case rather than taking it to trial. To reach a "settlement," the parties' attorneys negotiate mutually agreeable terms for their clients. For example, the defendant might agree to pay the plaintiff somewhat less than the amount requested in the complaint in exchange for the plaintiff's agreement to dismiss the lawsuit. The plaintiff might agree to "settle the case" in this way to avoid the risk, delay, and expense of taking the case to trial.

Sometimes, however, "discovery" can become a long, expensive process that a party uses to harass an opponent. For example, a party can make lengthy, burdensome requests for discovery, or run up an opponent's legal expenses by refusing to comply with requests for information.

During discovery, you can expect that your opponent will call you to appear for a "deposition." A "deposition" is an oral examination under oath by the opposing party's attorney. The other party is typically present at the deposition along with his or her attorney. You might also expect to receive questions to answer in writing, and requests for documents that are relevant to your case. If you have claimed damages for physical injury, you might expect a request for medical information.

Before trial, the court may require the parties and/or their attorneys to appear for pretrial conferences. The general purpose of these conferences is to schedule the events in the case and to clarify the issues for trial. Sometimes, the possibility of settlement is discussed.

The court may also send the case to "case evaluation" prior to trial. In "case evaluation," a panel of three members reviews the case and holds a hearing. Each party has the right to attend the hearing. Within 14 days after the hearing, the panel will notify each party or his or her attorney of the amount of damages (if any) that the evaluators think the plaintiff should recover. Each party then has 28 days to file a written acceptance or rejection of the evaluation with the court. If both parties accept the evaluation, judgment will be entered according to what the evaluators decided. If either party rejects all or part of the evaluation, the case proceeds to trial. Parties who reject the evaluation may later have to pay their opponents' attorney fees and court costs, unless the outcome of the trial is more favorable to them than the case evaluation was.

"Case evaluation" is required in circuit court. It can be used in district court, but it is not required. It is possible to object to case evaluation by filing a motion with the court and showing good cause that case evaluation would be inappropriate. The court will hold a hearing on this motion, after notice to the other party.

Mediation may also be ordered in a case. In mediation, a neutral outside person (called a "mediator") helps the parties work together to settle their differences. The mediator does not come up with a solution for the parties – if the parties cannot come up with an agreement on their own, the mediation will end without one. If the parties do come up with an agreement, however, the mediator helps them write it down. This agreement then becomes a binding contract between the parties that a court will enforce.

A mediator may be chosen by agreement of the parties. If the parties do not agree about who the mediator will be, the court might recommend one to them, or the court's mediation clerk might assign one to their case.

For the reasons noted in Section VI.D, mediation is not usually workable in situations where there is domestic violence. You should be aware that in a suit for civil damages, the mediation rules are different from the mediation rules in divorce cases. The mediation rules in suits for civil damages do not have exceptions for domestic violence or child abuse cases the way the rules in divorce cases do. However, you may still object to mediation in a suit for civil damages, by filing a motion within 14 days after the court orders it.

Trial of a suit for civil damages may be before a judge or jury. Either the plaintiff or defendant can request a jury trial. At trial, each side will present its evidence. At the close of the evidence, the jury (or judge, if it is not a jury trial) will issue a verdict, and the court will enter a judgment, either for the plaintiff or the defendant. Either side has the right to appeal the judgment to a higher court if it is dissatisfied.

A civil suit for damages can take a long time to go through the court system. Ask your attorney for an estimate of the time it might take in your case.

(Return to Overview) (Return to the top of Section VII)

VIII. GOING TO COURT

No matter what type of case you are involved in, going to court is hard. Nonetheless, some women do find testifying a positive and empowering experience. Do the best you can and take care of yourself in what may be difficult circumstances.

We hope these thoughts will make it easier for you.

Realize that you don't have much control over what goes on in court. In prosecutions for crimes and personal protection order violations, the prosecuting attorney is in charge of pursuing the case, not you. Lots of time people put the focus on the survivor for winning in court (if only she did this, if only she didn't do that). In fact, you don't have a lot of control over what happens in court, although you can make a difference.

Get a map to the courthouse, know where the parking is, and leave enough time to park. Don't forget change if you're going to be in a metered lot. If you can, do a trial run, by driving by.

Ask your attorney, the prosecuting attorney, or an advocate to go over for you what is going to happen. Find out if you will be able to stay in the courtroom the entire time or whether you will need to be outside the courtroom until after you testify. Let your attorney or the prosecuting attorney know what things you think are particularly important to stress, and ask what questions he or she plans to ask you. Make sure you've told your attorney (or the prosecuting attorney) any thing that your assailant plans to use against you (past arrests,

history of drug abuse). Tell them this information before the day of trial, if possible, so that they have time to prepare for it.

Inevitably, you will be waiting (often for hours). Sometimes you will wait and the court proceeding will be adjourned (postponed for another day). Bring a book, or headphones (as long as they are quiet), or a book on tape, or sewing, or something to do while you wait.

Take someone supportive with you if you can. (Other survivors say this is really important). Your local domestic violence program can usually send an advocate with you to court. Choose a support person carefully (although sometimes choices are limited). Sometimes a survivor will bring a family member or friend along who is not supportive, who argues with the survivor, or who needs a lot of emotional attention.

Most courthouses do not have waiting areas for children. **If you can manage child care, don't bring your kids.** It's hard for them, and distracting for you. If you really have to bring your children to the courthouse, bring something to keep them quietly occupied while you are waiting or talking with the judge or court employees.

If you are representing yourself in a divorce, custody, or personal protection order case, **let the bailiff or the judge's clerk know when you arrive in the courtroom.** (The bailiff is the law enforcement officer assigned to the courtroom.) If you are the victim/witness in a criminal case, let the prosecuting attorney know when you arrive.

The assailant, the assailant's friends, and members of the assailant's family might try to approach you, talk to you, get into an argument with you, or harass you. Sometimes you and supporters of the assailant are waiting in the same hall. If your assailant is not in custody, he may be sitting near you. His sister might follow you to the bathroom. Stay with your support people if you can. There is usually another private room that you can wait in — check with the bailiff or judge's clerk, your attorney, prosecuting attorney, or advocate. You may need to explain the reason for your request.

Your assailant's attorney or the defense attorney may come up to you at the hearing (or call before hand) to talk about the case. You are not required to talk to the assailant's attorney or to the defense attorney. He or she may try to make you feel guilty or pressure you.

Report any unwanted contacts or other problems to the prosecuting attorney or your attorney. **Don't be afraid to approach the bailiff or any police officer.** Tell him or her that you're a victim of domestic violence, your assailant (or his friends or family) is around and you would appreciate his (or her) keeping an eye on the situation. Let him or her know about any "no contact" or personal protection orders that might prohibit the assailant or members of his family from approaching you. You can ask for a law enforcement officer to walk you to your car after the court appearance.

Take care of yourself both physically and emotionally before and during court time. Avoid using alcohol or other drugs, and do try to eat something. Talk to people who are emotionally supportive of you. Before you get on the stand, take several deep breaths and center yourself. If you find comfort in prayer, do it! You might come up with a personal mantra "I am strong. I am clear. I am ready to speak out" and repeat it to yourself.

Dress conservatively and comfortably. Avoid party or sports clothes, and extremes of dress or makeup. Dress the way you would to apply for a job, or go to a funeral.

Take some time before going to court to think about and accurately recall the events that you will be talking about on the stand. Refresh your own memory. If you have a copy of the police report, reread that.

The most important thing is to tell the truth as best you can remember it.

Avoid talking to or looking at the assailant. You may be directed by the judge to identify the assailant by where he is sitting and what he is wearing. Aside from that, the courtroom is typically set up so if you look straight ahead or at the judge or jury, you will not see him.

When you testify, look at the jury. If there is no jury, look at the judge. If one juror looks skeptical or bored, find one that looks interested and look at him or her. If the attorney for the assailant complains, look at the judge for direction. If the judge tells you to look at the attorney for the assailant, look just over his head.

Sometimes your assailant's attorney will ask you several questions at once. For example: "When did the police arrive and what did they do when they got there?" Pause before you answer and look at the prosecuting attorney or your attorney to give them time to object to the question. If there is no objection, answer the first question. Don't try to answer more than one question.

Take a deep breath and think for a second before answering questions. (If you do this before answering questions from your assailant's attorney, it will give the prosecuting attorney or your attorney time to raise objections to the questions.) **It is okay to say, "I don't know**" if you don't know the answer to a particular question. It's also fine to say, "I don't understand the question," or "Could you repeat that question, please?"

If the assailant's attorney asks you something insulting or nasty, pause before you answer and look at your attorney (or the prosecuting attorney) giving them time to object. If there is an objection and the judge agrees, you may not have to answer the question. If there is no objection, or if the judge tells you to answer the question, remain calm! Answer as politely and truthfully as you can, without returning an insult for an insult. As part of his or her trial strategy, the assailant's attorney may deliberately try to rattle you. If you can, try to remain calm. Remember, juries also watch assailants' attorneys and their game playing will reflect poorly on them.

Sometimes your assailant's attorney will try to twist what you said or misinterpret it. For example: "You were furious at him, weren't you?" or "You wanted him to get in trouble and that's why you called the police, right?" Feel free to say, "That's not what I meant," or "That's not what I said." Remember, just because the assailant's attorney says something, it doesn't mean that it's true!

Good luck, and may justice prevail!

(Return to Overview) (Return to the top of Section VIII)

IX. FIREARMS RESTRICTIONS

Both Michigan and federal law place restrictions on the purchase or possession of firearms by people who are subject to certain criminal proceedings or court orders. This section will give a brief outline of a very complicated subject. If you are concerned about firearms restrictions and need more information, contact the prosecuting attorney's office or your local domestic violence program.

The discussion in this section does not apply to government employees who must carry a firearm in the line of duty (such as corrections or police officers). Different rules apply for them, and you should contact the prosecuting attorney's office or your local domestic violence program for more information.

In this section, a "pistol license" is a license to purchase, carry, or transport a pistol under Michigan law. A "concealed weapon license" is a license to carry a concealed pistol under Michigan law.

- A person charged with a felony may not get a Michigan pistol license or a concealed weapon license.
- A person charged with a misdemeanor may have an existing Michigan concealed weapon license suspended.

- Federal law prohibits a person convicted of any felony or a misdemeanor crime of domestic violence from purchasing or possessing firearms or ammunition.
- Federal law prohibits a person who is subject to a court order restraining him from abusing a domestic partner from purchasing or possessing firearms or ammunition for the duration of the order. The court order might be a personal protection order, a pretrial conditional release order in a criminal case, or a probation order with conditions to protect one of the following: 1) the restrained person's spouse or former spouse, 2) someone who has a child in common with the restrained person, or 3) someone who lives or has lived with the restrained person. (Dating relationships are not covered by this federal law.)

For various reasons, the above restrictions are often not enforced. For example, there is disagreement in the legal community about when to apply the restrictions for persons convicted of domestic violence misdemeanors. These complicated restrictions are also not always well-understood by judges or law enforcement officers. Therefore, it is unsafe to assume that your assailant will not have a firearm, even if one of these restrictions applies to him. However, the chances for enforcing these restrictions are increased if you tell the police, the prosecutor, or the court about any firearms you know your assailant has.

(Return to Overview)

X. DEFINITIONS OF LEGAL TERMS

Action:

Another word for a court case or a lawsuit. "Bringing an action" means the same thing as "filing suit."

Alleged/Allegations:

In criminal cases, the word "alleged" is used when a person is suspected of committing a crime, but has not yet been convicted of it. This word is used because in a criminal case, the accused is presumed to be innocent of the charges until proven guilty. Thus, you may hear police officers or attorneys refer to the person charged with a crime as the "alleged" assailant; you may even hear them speak of the "alleged" victim.

The term "allegations" also generally refers to statements that a complainant expects to prove at trial.

Arraignment:

In a criminal case, an "arraignment" is a court hearing before trial where the court reads the charges to the person accused of a crime (the "defendant"), sets "bond" and/or "pretrial release conditions," and appoints a lawyer for the defendant if he cannot afford to pay for one. See Section IV.B.

Bail/Bond, Bond Conditions:

A person who has been charged with a crime is usually entitled to be "released on bond" (or "released on bail") before his case comes to trial. When a person is released on "bail" or "bond," he promises to pay the court money if he does not appear before the court on the date set for trial of the case. The court decides how much money the person must promise to pay at "arraignment."

Sometimes the court does not require the person to pay any money to guarantee that he will appear for trial. If this happens, the person is released "on his own recognizance." (Also called "personal recognizance" or a "P.R. bond.")

In addition to deciding the amount of bond money the person must pay, a court may restrict the person's behavior during the time between the arraignment and the trial. To do this, the court issues a "conditional release order" (or "pretrial release order"). This order may have many different restrictions. Common restrictions are that the accused have no contact with the victim of the crime, that he not have a firearm, or that he stop using alcohol or illegal drugs.

The court may deny bond and hold the accused person in jail before trial, but only if he is charged with a serious violent crime, like murder.

Bailiff:

A law enforcement officer who provides security in a courtroom.

"Binding Over" a Person Accused of a Crime:

See "Preliminary Examination."

Child Support:

The amount of money a parent must pay to meet a child's needs, such as food, clothing, housing, medical care, etc. See Section VI.I.

Circuit Court:

The circuit court handles suits for civil damages that request over $25,000.

The trial and sentencing of persons accused of felony and high misdemeanor crimes is held in circuit court, after the accused has been "bound over" from district court.

The "family division" of circuit court handles the following types of cases: personal protection orders, divorce, separate maintenance, paternity, child protection, juvenile delinquency, name changes, and adoptions.

The circuit court also handles appeals from district court and appeals from decisions of administrative agencies.

City/Township/Village Attorney:

This person is a prosecuting attorney who works for a city, township, or village. This attorney is responsible for bringing charges in court against persons who commit crimes within the city, township, or village. These crimes are often created by local ordinances, which are laws that apply only within a city, township, or village.

Complainant:

In a criminal case, the crime victim is sometimes called the "complainant" or the "complaining witness." However, it's actually a police officer who signs the complaint accusing the assailant of a crime.

The person who files a suit for divorce or civil damages may be called the "complainant." It's also common for this person to be called the "plaintiff."

Complaint:

In a criminal case, a complaint is a sworn written accusation. It states that a crime has been committed and that there is probable cause to believe that the person named in the complaint is guilty of the crime. Typically, a police officer signs a complaint after investigating a crime.

In a suit for divorce or civil damages, the complaint is the first paper filed with the court, in which the person who filed it (the "plaintiff") gives the reasons for the suit and asks the court to make a ruling.

Conditional Release Order:

An order a court issues before trial in a criminal case that restricts the behavior of the person accused of a crime during the time before trial. A conditional release order may also be called a "pretrial release order" or a "bond condition." See also "Bail/Bond" and Section IV.C.

Contempt of Court:

An act or failure to act that violates a court order. Contempt of court can be punished by a fine and/or a jail sentence. Courts must impose contempt penalties for violations of personal protection orders. A person who violates a court's custody or support order might also be punished by contempt penalties in some cases.

Convicted/Conviction:

A person found guilty of a crime by a court is "convicted" of the crime. After a person's "conviction" of a crime, the court will sentence him to a punishment determined by law. See Section IV.G on sentencing.

Court Proceedings:

The events that take place in a court are often called "court proceedings."

Custody:

In divorce, paternity, or separate maintenance cases, "custody" means the legal right to have children live with you (known as "physical custody") and/or the legal right to make decisions about the children's welfare (known as "legal custody"). See Section VI.F.

In criminal and personal protection order cases, a person who has been "taken into custody" is a person who has been arrested by the police and taken to jail.

Dating Relationship:

The law defines a "dating relationship" as "frequent, intimate associations primarily characterized by the expectation of affectional involvement." The term does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context. People in "dating relationships" include high school students, lesbian, and gay male couples who have not lived together.

Defendant:

This is the person who is charged with a crime, or the person against whom a suit for divorce or civil damages is filed.

Defense Attorney:

This is a lawyer who represents a defendant. The accused in a criminal case has a constitutional right to the assistance of a defense attorney. Thus, if a criminal defendant has no money to pay for an attorney, the court must appoint an attorney for the defendant if it might sentence him to jail, or if the possible penalty for the charged crime is 93 days or more in jail. Court-appointed attorneys are sometimes called "public defenders."

District Court:

The district court handles suits for civil damages that request a maximum of $25,000. For suits requesting less than $3,000, there is a special part of district court called the small claims division.

The district court is where all adult criminal cases begin. In performing this function, the district court issues arrest and search warrants, and holds arraignments and preliminary examinations.

Adult criminal misdemeanors that are punishable by up to one year's imprisonment are tried in district court. The district court also sentences persons convicted of these crimes. See Section IV.G on sentencing.

The district court handles civil infractions (such as traffic violations) and landlord/tenant disputes.

Ex parte:

When a court issues an order "ex parte," (pronounced *"ex party"*) it does so after hearing only one party's side of the case. To get a court to issue an "ex parte" order, you have to show that there is an emergency so serious that you will be irreparably harmed if the court waits to hear from the other party to the case. Personal protection orders are often issued "ex parte," as are temporary orders for child custody. See Section V.C on personal protection orders, and Section VI.C on custody orders.

Family Division of Circuit Court:

The division of circuit court that handles the following types of cases: personal protection orders, divorce, separate maintenance, paternity, child protection, juvenile delinquency, name changes, and adoptions.

Felony:

A felony is a crime punishable by a year or more in prison that has not been designated a "misdemeanor" by the Legislature.

Friend of the Court:

In making decisions about custody, parenting time, and support in divorce cases, courts are assisted by an office called the "friend of the court." Friend of the court employees gather information about the case, and make recommendations to the court about custody, parenting time, and support.

The office of the friend of the court also helps the court enforce its custody, parenting time, and support orders after they are issued.

Hearing:

During a "hearing," the court listens to the parties to a case as they testify or present evidence about a question in the case. Typically, the court schedules a hearing in response to a party's request that the court take some action in the case. The party who made the request must give his or her opponent advance notice of the request and the time and date for the hearing, so that each side will have the chance to be heard in court. After the hearing is over, the court will announce its decision on the question before it.

Interim Bond:

After a person is arrested for a crime, he may be released from jail by posting bond. When a person posts bond, he promises to pay the court money if he does not appear before the court on the date set for trial of the case. Usually, the amount of bond a person must pay is set at arraignment. If the arraignment cannot be held immediately after the arrest, a person facing misdemeanor charges can be released from jail by paying an "interim bond" at the jailhouse. This "interim bond" guarantees that the person will appear before the court for arraignment.

Interim bond is restricted in cases where the person has been arrested for misdemeanor domestic assault. See Section III.B.

Juvenile Delinquent:

A person under age 17 who has committed a crime. Court proceedings for juvenile delinquents are different from adult criminal proceedings, and are handled in family division of circuit court.

L.E.I.N. Network:

These are the initials for the **L**aw **E**nforcement **I**nformation **N**etwork. The L.E.I.N. system is a computer network that gives all police officers access to information about:

- Arrest warrants.
- Personal protection orders ("PPOs").
- Criminal court orders that protect named persons, such as bond orders before trial, or probation conditions after conviction of a crime.
- Parole orders with conditions to protect named persons.

The information in the L.E.I.N system is important because it helps police to arrest potentially dangerous persons. If a person is named in an arrest warrant, information about the warrant in the L.E.I.N. system lets the police immediately verify that they should make an arrest when they come upon that person.

In cases where a PPO, criminal court order, or parole order restricts a person's behavior, the order will state that the police can arrest the person immediately if he violates any restriction in the order. This provision for immediate arrest is an exception to the general rule that the police must first ask a court for a "warrant" before they can arrest a person. The ability to make an immediate arrest without a warrant is very important for the safety of survivors. The warrant process is time-consuming, and does not offer adequate protection against dangerous person in emergency situations.

Information about PPOs, criminal court orders, and parole orders in the L.E.I.N. system lets police make "warrantless arrests" at the scene of a domestic violence incident. The police can look for this information in the L.E.I.N. system, and verify whether a person is violating restrictions on his behavior. If the person is violating a restriction, the police can immediately arrest the person based on the information found in the L.E.I.N. system. For example, if you call the police because your assailant is violating a PPO that forbids him from coming to your residence, the police will look up your assailant's name in the L.E.I.N. system. The conditions in the PPO should appear on the system. When the police verify these conditions, they will be able to make an immediate arrest of your assailant.

Magistrate:

A magistrate is an officer of the district court who functions like a judge, but in a restricted role. In criminal cases in district court, warrants, arraignments, and pleas are often handled by the magistrate.

Misdemeanor:

Any crime that is not called a felony in the law. Most misdemeanors are punishable by less than a year in prison, although there are some serious misdemeanors for which an offender can receive up to two years in prison. These serious misdemeanors are called "high misdemeanors," "high court misdemeanors," "circuit court misdemeanors," or "two-year misdemeanors."

Motion:

A formal request (usually in writing) to the court made by a party to a case, asking the court to take an action or make a decision in a case. Typically, a court will schedule a hearing to consider a party's motion. Before the hearing, the court will require the party who filed the motion (called the "moving party") to notify his or her opponent about the motion and the hearing, so that the opponent will have a chance to raise any objections to the motion. Notice is given by serving the opponent with a document called a "Notice of Hearing."

No-contact order:

In a "no-contact" order, a court prohibits a person from having any kind of physical or other contact with someone else. Courts typically issue "no-contact" orders to protect survivors from domestic violence perpetrators. A "no-contact" order may be part of a personal protection order, a pretrial release order in a criminal case, or a probation order. Parole orders may also have "no-contact" provisions.

Parenting Time:

A parent who is not awarded physical custody of a child in a divorce, separate maintenance, or paternity case is usually allowed to spend some time with the child. This time is known as "parenting time." (It used to be known as "visitation.") See Section VI.F for more information.

Parole:

A person serving a prison sentence can sometimes get an early release, known as "parole" (for good behavior, for example). In this case, the Department of Corrections will issue a "parole order." This order may have many different restrictions. Common restrictions are that the person have no contact with the victim of the crime he committed, that he not have a firearm, or that he not use alcohol or illegal drugs.

Parties to a Case:

In a criminal case, the "parties" are the person accused of the crime (the "defendant") and the community whose law was violated. If a state law was violated, the "People of the State of Michigan" will be a party to the case. The county prosecutor will represent the state. If a local ordinance was violated, the city, township, or village issuing the ordinance will be a party. The city, township, or village attorney will represent the city. The whole community is a party to the case because the law views a crime as a harm against all of society. The victim of the crime is a witness to the crime, rather than a party to the case.

In a suit for divorce or civil damages, the "parties" are the "plaintiff" who filed the complaint, and the "defendant."

In a personal protection order case, the parties are the "petitioner" (the person who needs protection) and the "respondent."

Personal Protection Order ("PPO"):

In a personal protection order ("PPO"), a court orders a person to stop contact, threats or violence against someone else. The court issues this type of order in response to a "petition" filed by the person who feels threatened or endangered. The person filing the petition is called the "petitioner." The person against whom the order is issued is called the "respondent."

A PPO can prohibit the respondent from doing many things, including: having contact with the petitioner; removing minor children from a person having custody of them; threatening the petitioner; sending objects, letters, or e-mail to the petitioner; going to the petitioner's home, school or workplace; interfering with the petitioner's work or educational opportunities; having access to school or medical records of the minor children that would disclose the petitioner's location or residence; and stalking the petitioner.

If the respondent violates a PPO, he may be arrested immediately by police and taken to court to face criminal contempt charges for the violation. If the court finds the respondent guilty of violating the PPO and the respondent is age 17 or older, the court may sentence him to jail for up to 93 days. It may also fine him up to $500.

More information about PPOs appears in Section V of this handbook.

Petitioner:

A petitioner is the person who files a petition with the court requesting a personal protection order.

Plaintiff:

The plaintiff is the person who sues or files a complaint in court. If you file for divorce or civil damages, you are the plaintiff.

Plea:

In a criminal case, the plea is the defendant's response to the charges. See Section IV.B for more information.

Preliminary Examination:

When a person is accused of a crime that must be tried in circuit court, he has a right to first have a hearing in district court to decide whether there is probable cause to believe that he committed the crime. This hearing is called the "preliminary examination." If the district court finds probable cause to believe the accused person committed the crime, the person is "bound over" to the circuit court for trial. See Section IV.E for more information.

Pretrial Release Order:

See "Bail/Bond" and "Conditional Release Order."

Probation:

After a person has been convicted of a crime, the court may sentence him to probation. A person put on "probation" is usually not held in jail. Instead, his behavior is restricted by a court's "probation order." This order may have many different restrictions. Common restrictions are that the convicted person have no contact with the victim of the crime, that he not have a firearm, or that he stop using alcohol or illegal drugs. He should also be required to report regularly to a probation officer for supervision. If the person violates a

condition in his probation order, the court may revoke his probation and put him in jail, or impose more restrictive conditions of probation.

Proof of Service:

A court form verifying that a person has received delivery of court papers in a way that meets the court's requirements. See Section V.D for more information about this form in personal protection order cases.

Prosecuting Attorney:

In criminal cases, the "prosecuting attorney" is an attorney employed by a county, city, township, village, or the U.S. government. This attorney's job is to prove in court that a person accused of a crime in fact committed that crime. The term "prosecutor" usually refers to a prosecuting attorney who is employed by the county. A "city/township/village attorney" is a prosecuting attorney who works for a city, township, or village. A "United States Attorney" is a prosecuting attorney who works for the federal government. See Section I.A for more information about the prosecuting attorney's role in a criminal case.

The county prosecutor is responsible for prosecuting violations of personal protection orders, although a petitioner may also hire a private attorney to do this.

Public Defender:

The public defender is a court-appointed defense attorney employed at public expense to defend people in criminal cases who do not have money to hire an attorney.

Reasonable Cause/Probable Cause:

This means any facts that would induce a fair-minded person of average intelligence to believe that a person has committed a crime

Referee:

A judicial officer who makes custody, parenting time, and support recommendations to the judge in divorce cases. See Section VI.A for more information.

Respondent:

The respondent is the person against whom a personal protection order is issued.

Restitution:

In criminal cases, the amount of money that the convicted offender is required to pay the crime victim to compensate for financial or out-of-pocket losses suffered as a result of the crime.

In suits for civil damages, the amount of money necessary to restore the person who was wronged to the position he or she was in prior to suffering the wrong.

Service:

Delivery of court papers to a party to the case in a way that meets the court's requirements. Service of a personal protection order is covered in Section V.D.

Spousal Support:

During or after a divorce case, the amount of money that one party to the divorce must pay the other to meet the other's financial needs. See Section VI.H for more information. "Spousal support" used to be called "alimony."

Suspect:

This is used to refer to the person who the police suspect committed a crime. In assault and battery cases, it would be your assailant.

Subpoena:

This is a court order telling people that they must come to court. You may get a subpoena (pronounced "*sup-EEna*") to appear as a witness in a trial. You must obey a subpoena unless the court excuses you from doing so. (You may ask the court to excuse you from coming to court if you have a legal basis for your request.) Failure to obey a subpoena without an excuse from the court may result in punishment for contempt of court.

If you have questions about a subpoena in a criminal case, you can ask the prosecuting attorney. If you are not comfortable asking the prosecuting attorney about it, you should ask a private attorney for help.

If you have a question about a subpoena in a divorce or suit for civil damages, ask a private attorney.

A **subpoena duces tecum** is used when the court wants a witness to bring written records or other material described in the subpoena.

Tort:

An injury or wrong that harms the person or property of another. A person who commits a "tort" is liable to pay civil damages to the injured person.

Venue:

The place where a court case may be begun. This is often the place where an injury occurred. If the respondent is age 18 or older, a petition for a personal protection order can be filed in any county in Michigan.

Warrant:

A paper issued by a judge or magistrate that allows the police to arrest a person or search a place. Unless there is an exceptional situation described in the law, the police may not arrest or search a person without first going to court to get a warrant.

Warrantless arrest:

An arrest made by a police officer without an arrest warrant issued by a judge or magistrate. Warrantless arrests are permitted for certain crimes defined by the law, and for violations of certain court orders issued

to protected named persons, such as personal protection orders, conditional release orders, and probation orders.

(Return to Overview) (Return to top of Definitions)

AUTHORITY: FIA Director