



**DOMESTIC VIOLENCE:
AN ARKANSAS PRACTICAL GUIDE
FOR ATTORNEYS, JUDGES,
AND COURT CLERKS**



In Collaboration with:



Administrative Office of the Courts
Domestic Violence Program



CENTER FOR ARKANSAS
LEGAL SERVICES



PEACE at HOME
FAMILY SHELTER



SALINE COUNTY SAFE HAVEN
"A HOUSE OF HOPE AND HEALING"



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ACKNOWLEDGMENTS

Thanks must first be given to several individuals who tirelessly volunteered their time, energy, and expertise to the content of this publication. Also, a special thank you to the American Bar Association, which gave us permission to include pieces of its publication “Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order Cases;” to the Arkansas Administrative Office of the Courts, which gave us permission to include portions of the Arkansas Circuit Court Judges Bench Book - Domestic Relations Division; and to the North Carolina Administrative Office of the Courts, which gave us permission to include portions of the North Carolina Domestic Violence Best Practices Guide for District Court Judges.

- Kola Brown – Victim Advocate, Saline County Safe Haven, Inc.
- Jessie Burchfield – Director of Library Services, UALR William H. Bowen School of Law Library
- Rebecca Bush – Chief Deputy Prosecutor, 22nd Judicial District Prosecuting Attorney’s Office
- Kimberly Coble – Victim Witness Coordinator, 19th West Judicial District Victim Assistance Coordinator of the Prosecuting Attorney’s Office
- Dustin Duke – Managing Attorney, The Center for Arkansas Legal Services
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- M. Scott Hall – Hall Estill, Attorneys at Law
- Deven Harvison – Summer Intern, The Center for Arkansas Legal Services
- Lauren Lambert – Shelter Director, Saline County Safe Haven, Inc
- Angela McGraw – Executive Director, Women and Children First: The Center Against Family Violence
- Cynthia Nance – Dean Emeritus and Nathan G. Gordon Professor of Law, University of Arkansas School of Law
- Sherrie Norwood – Librarian, UALR William H. Bowen School of Law Library
- Michele Payne – Associate Director, University of Arkansas School of Law, Office of Communications
- Lynn Pence – Staff Attorney, The Center for Arkansas Legal Services
- Victor Richardson – Volunteer Attorney, Legal Aid of Arkansas
- Melissa Serafess – Librarian, UALR William H. Bowen School of Law Library
- Rebekah Tucci – Director, Domestic Violence Program, Arkansas Supreme Court Administrative Office of the Courts

*Appendix updated October 10, 2021 by Administrative Office of the Courts.

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LEGAL REPRESENTATION OF SURVIVORS

INTRODUCTION

This section of the Handbook is a guide for attorneys who represent or work with survivors of domestic violence. It is further divided into two sections: (a) Domestic Violence in the Civil Context, and (b) Domestic Violence in the Criminal Context.

Section (a) contains information as it relates to the best practices of civil attorneys representing domestic violence survivors. It guides an attorney through the process of representing a survivor of domestic violence in two ways: (1) by providing a Best Practices Guide to Representing survivors of domestic violence, sexual assault, and stalking, as created by the American Bar Association, and (2) by providing a quick, user-friendly Best Practices Guide for assisting survivors of domestic violence in obtaining Orders of Protection. Section (b) contains information as it relates to the best practices of prosecutors who prosecute batterers. Additionally, at the end of this Handbook is an Appendix containing all of the current and relevant domestic violence legislation, as well as a resources section containing information on the location of shelters located throughout Arkansas.

The terms “victim” and “survivor” are used interchangeably throughout this Handbook to refer to the person in the relationship who is being abused. The legal system often uses the word “victim” to refer to these individuals, but we also use the word “survivor” to emphasize the fact that those who have survived domestic violence are strong and courageous individuals.

When representing survivors of domestic violence, encourage them to change their situation by introducing them to the Stages of Change in Domestic Violence and Stage Matched Interventions, first introduced by Prochaska in 1979.¹

¹ https://www.ebmedicine.net/topics.php?paction=showTopicSeg&topic_id=160&seg_id=3164.

Table 3: Stages Of Change In Domestic Violence And Stage Matched Interventions

| Stage | Client | Provider |
|--------------------------|---|--|
| Pre-Contemplation | <ul style="list-style-type: none"> • The stage of denial • No intention to change • Unaware of the problem, or defines the problem differently than others do • “He only hits me when he’s high.” | <ul style="list-style-type: none"> • Ask about IPV • Raise doubt by sharing observations about the relationship⁵¹ • Educate about the impact on patient’s health⁵¹ • Empathize⁵¹ • Assess safety⁵¹ • Don’t push • Document • Offer resources |
| Contemplation | <ul style="list-style-type: none"> • May be more aware of the problem • Likely to be highly ambivalent • Weighs pros and cons of change; recognizes risks of leaving • May begin to think about the idea of change, but has not fully decided | <ul style="list-style-type: none"> • Explore ambivalence • Provide a neutral stance • Educate • Create a decisional balance chart to weigh the pros and cons of leaving⁵² • Assess safety⁵¹ • Provide resources |
| Preparation | <ul style="list-style-type: none"> • Decision making stage • Ready to accept that there is a problem and intends to make a change • Needs to establish his or her own personal criteria for change | <ul style="list-style-type: none"> • Make change a priority • Encourage movement • Provide a realistic plan • “Consultant role” • Make victim aware of the dangers of going into the action stage • Provide resources |
| Action | <ul style="list-style-type: none"> • Commit time and effort into implementing the planned changes | <ul style="list-style-type: none"> • “Right-sized” steps • Plan for high-risk situations • Provide resources |
| Maintenance | <ul style="list-style-type: none"> • An extended “stage” • Will develop new behaviors and coping skills • May “relapse” into abusive relationship | <ul style="list-style-type: none"> • If the victim returns to the abusive relationship, remind them that this does not imply failure • Provide support system that is personally/culturally relevant • Provide resources |

Please note that progression through the five stages depicted above is not usually linear. Relapse is an expected and natural part of change as the survivor may learn from his/her mistakes. When explaining the stages of change to your client, understand that as an attorney, you cannot force a survivor to change. Pushing a survivor to do more than he/she is ready to and feel capable of doing may only worsen his/her situation. Also, remember that leaving an abuser is often the most dangerous time for the survivor and his/her children.

DOMESTIC VIOLENCE IN THE CIVIL CONTEXT

American Bar Association’s Best Practices Guide for Lawyers Representing Survivors of Domestic Violence, Sexual Assault, and Stalking

The American Bar Association published the Standards of Practice for Lawyers Representing Victims of Domestic Violence, Sexual Assault, and Stalking in Civil Protection Order Cases (hereinafter referred to as “ABA Standards of Practice”) in 2007. The ABA Standards of Practice serve as an excellent reference for lawyers who provide this representation, and there seems no reason to “reinvent the wheel” for the purposes of this Handbook. It also provides lawyers with practice suggestions for representing clients who are survivors of domestic violence in all types of legal matters, not just orders of protection. The following sections are reprinted from the ABA Standards of Practice verbatim, with permission from the American Bar Association. To view the whole publication, please go to http://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/20110419_aba_standards_of_practice_dv.authcheckdam.pdf. Any italicized portions pertain specifically to Arkansas, and are additions to the ABA Standards of Practice material. The use of the word victim has been properly supplanted by the word survivor by more recent practitioners of this work, but that change has not been made in the following information.

A. Ethical Duties of All Lawyers Representing Victims

Lawyers are bound by their jurisdiction’s ethics rules in all matters. In order to most effectively discharge their ethical obligations, lawyers representing victims of domestic violence, sexual assault and stalking should comply with the standards of practice identified here.

1. Competent Knowledge of Law

a. Civil Protection Order Law

Before representing a client in a civil protection order case, the lawyer should have knowledge of the civil protection order laws in the relevant jurisdictions. Competent knowledge means, at a minimum, basic litigation skills, an understanding of the burden of proof, and knowledge of the requirements to obtain a protection order and remedies available to victims under the statutes of their particular jurisdiction.

Not only is domestic violence physical, sexual, economic or emotional abuse, it is also the infliction of fear of imminent harm to a person. The threat of imminent harm is measured from the perspective of the victim. Perpetrators often threaten to take minor children away from

victims, and victims are often told that they will never see their children again if they pursue legal action against the perpetrator. It is important for the lawyer to make clients aware of their rights and the best interest standards regarding child custody, visitation and child support in their jurisdiction. The lawyer should also be aware of remedies to seek when a child has been abducted and is in immediate harm by being with the perpetrator (i.e., how to obtain a writ of attachment for the immediate return of the minor child and language to include in the final protection order to prevent parental abduction). *In Arkansas one would file a habeas corpus action for the return of a child born outside marriage, if the perpetrator's name is not on the child's birth certificate.*

In Arkansas, the court may order the respondent to have no contact with the victim. The court may also enter orders of temporary child custody and child support, possession of the shared residence and other economic remedies.

b. Stalking

Stalking is a crime that is often misunderstood, minimized or missed entirely. As with sexual assault, the vast majority of victims are stalked by someone they know. In fact, a large percentage of stalking cases involve a perpetrator who is either a current or former intimate partner. It makes sense that there is a significant connection among the crimes of stalking, domestic violence and sexual assault. A large percentage of victims who are stalked by a current or former intimate partner were also previously physically and/or sexually assaulted by that partner.

Stalking is a crime under the laws of all 50 states, the District of Columbia, and the federal government. Yet, stalking is vastly underreported and under-investigated by the criminal justice system. Civil lawyers working with stalking victims should, therefore, be aware of the criminal stalking laws in their jurisdiction and the resources available to assist victims in accessing and navigating the criminal systems.

Additionally, civil lawyers should think about creative ways to assist stalking victims using the civil legal and social service systems in their communities. A majority of stalking victims take some type of self-protective measures to keep themselves safe from their offenders. Civil lawyers can help these victims by informing them about available protection orders, as well as housing and employment laws that may assist the victim (such as the ability to break a lease agreement or maintain employment status). Civil lawyers should also be mindful of the privacy concerns of stalking victims and vigilantly protect all client information.

c. Mutual Orders

The lawyer should be aware of the dangers of mutual protection orders. A mutual order is an order issued against both parties (i.e. both the client and the respondent) on the basis of only one petition. Because mutual orders are issued *sua sponte*, without a petition by the respondent and a finding that the respondent is entitled to protection, some jurisdictions prohibit mutual orders, pursuant to statute (*not so in Arkansas*). Mutual orders are generally discouraged because they often serve to further embolden the perpetrator to abuse and discourage the victim from

seeking legal assistance. Mutual orders lack a finding of the predominant aggressor, and frequently lead to unfair mutual arrest in any future incident of abuse.

Lawyers should also be aware that according to the federal Violence Against Women Act (VAWA), mutual orders are not entitled to full faith and credit in other jurisdictions, and the lawyer should counsel the client accordingly. If the lawyer discovers that there is a mutual order in place, the lawyer needs to identify who the original petitioner is. If the original petition was filed by the perpetrator, the lawyer should counsel the client to file an independent petition to avoid the mutual protection order problem. The lawyer should have a solid understanding of the dynamics of power and control in order to effectively counsel clients about the risks of agreeing to mutual orders.

However, “criss-cross” civil protection orders, in which each party petitions for and receives a separate civil protection order against the other, do receive full faith and credit in other jurisdictions. Often times a criss-cross or counter-petition is filed by a respondent as a form of retaliation or intimidation toward a victim of domestic violence. Lawyers should be alert to any fraudulent, frivolous or vexatious counter-petitions and prepared to defend against the issuance of criss-cross orders. Though mutual orders and criss-cross orders are technically different, the effect of the orders and potential danger that may result to the victim due to these orders may be the same. The lawyer should carefully distinguish and explain the consequences of mutual orders and criss-cross orders to the client.

In addition, federal law mandates that for state and tribal governments and courts to receive certain types of federal funding, the programs must meet statutory requirements regarding their arrest policies. Among the different requirements, the program must certify that their laws, official policies or practices prohibit the issuance of mutual protection orders except where both parties have filed petitions and the court makes findings of fact that both parties acted primarily as aggressors and that neither party acted primarily in self-defense. Therefore, lawyers should be aware that a court’s issuance of a mutual protection order without the filing of two separate petitions may be a federal law violation and should seek appropriate recourse, if necessary.

d. Federal Firearms Prohibitions

Lawyers should be cognizant of the federal and state firearms prohibitions and their effect on protection orders. Persons subject to a state court-issued civil protection order that meets the federal statutory definition are generally prohibited from possessing any firearm or ammunition that affects commerce (i.e., shipping or transporting any firearms in interstate or foreign commerce, or receiving any such firearm or ammunition). A violation of this prohibition while the protection order remains in effect is a federal offense punishable by up to 10 years imprisonment.

A state court-issued protection order meets the federal definition if one of the following terms are met: 1) the respondent received actual notice and had an opportunity to participate; 2) the petitioner is an intimate partner of the respondent (i.e., a spouse, a former spouse, has a child with, or cohabitates or has cohabitated); 3) the order restrains respondent from harassing,

stalking or threatening the intimate partner, child of the respondent, or child of the respondent's intimate partner, or the order restrains respondent from engaging in conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child; or 4) the order includes a finding that the respondent is a credible threat to the safety of the intimate partner or child, or the order explicitly prohibits use of physical force against the intimate partner or child that would reasonably be expected to cause physical injury.

When interviewing and counseling clients, lawyers should explain these firearm prohibitions to their clients and ask about potential firearm possession by the perpetrators. Lawyers should tailor case strategy based on the existence of firearms, including working with the prosecutor's office to prosecute the perpetrator, keeping the safety of all parties as the foremost concern.

e. Inter-jurisdictional Issues

Lawyers should be familiar with state and federal laws governing interstate custody and domestic violence cases, which may involve protection orders, relocation, custody, jurisdictional and parental kidnapping laws. These laws fit together in complex ways, allowing lawyers to answer critical questions such as the following: May a client flee for safety to another state with his/her children without being charged criminally? May a client file for custody in a refuge state? (*In Arkansas - only on an emergency, temporary basis*) May a court issue a custody provision within a protection order? (*In Arkansas - yes*) Lawyers who understand the relevant laws can assist the client so that he/she does not lose custody of his/her children, jeopardize his/her safety, or serve time in jail for attempting to escape from abuse.

2. Knowledge of Related Legal Issues

The lawyer should screen for related legal issues arising from the incidence of domestic violence, sexual assault or stalking. If the lawyer is not competent or available to represent the client in related matters, the lawyer has a duty to refer the client to competent counsel.

Clients who are seeking civil protection orders often have a myriad of legal and non-legal issues that intersect with their civil protection order matters, such as housing, education, employment, privacy and privilege, child protective, child custody, emancipation, criminal justice or immigration issues. Therefore, the lawyer must be competent in the intersecting area of law or appropriately refer the client.

a. Clients with Disabilities

Clients with disabilities (including age-related disabilities) often depend substantially on other people in matters ranging from economic support to help getting dressed. In domestic violence cases, clients with disabilities may have particular concerns about leaving an abusive partner because of their fear of institutionalization and/or the fear of losing custody of their children. The lawyer should be prepared to argue why the client's disability should not be used as the basis for denying the client custody of the children. The lawyer should also be prepared to

develop a plan for attendant care, transportation, medical treatment, food, housing and financial aid in order to permit a client with disabilities to remain independent of the perpetrator.

People with cognitive disabilities tend to experience much higher rates of sexual victimization than people who do not have a disability. Increased dependence on caregivers, social isolation and institutions that fail to adequately supervise and perform criminal background checks on other clients, staff, and volunteers all contribute to the high rates of sexual abuse. In discussing sexual abuse with a client, the lawyer should be aware that the client may have a different understanding of what is considered sex, and how and when it is considered abusive.

A disabled person might suffer abuse specific to his/her disability that does not fit neatly under the definition of abuse in most states' protection order statutes. For example, leaving someone unattended without readily available food or water for extended periods of time, moving phones or assistive devices out of reach, taking pictures of the victim performing sexual acts, placing furniture to obstruct the victim's path, denying medication or overdosing are all sufficient to constitute abuse.

b. Clients with Limited English Proficiency/Use of Interpreters

If the lawyer is using an interpreter to communicate with the client, the lawyer should know how to work effectively with interpreters and be aware that it may take longer than English-speaking communications. Similarly, the lawyer should be aware of whether the interpreter is in any way acquainted with the client or the client's family, and have procedures in place to respond to situations where interpreters and clients are from the same small ethnic community, as this could affect the client's ability to communicate openly and effectively. *In Arkansas, certified interpreters are available through the Administrative Office of the Courts, and the court is required to provide an interpreter during all court proceedings if one is requested or it is clear one is needed.*

c. Economic Concerns

A victim of domestic violence, sexual assault and/or stalking who is low income or who is prevented from accessing shared resources may struggle with economic issues related to the violence. Economic stability is tantamount to client safety in many cases. For example, clients may need to move quickly for safety or because the violence occurred in the home and they can no longer bear to reside there. Clients may experience harassing behavior at work or have excessive absences due to physical and/or psychological injury, which may be creating job insecurity. Clients may have a new or continuing need for public benefits such as food stamps, Temporary Assistance for Needy Families and Medicaid. The lawyer should have a general understanding of the myriad of ways a client can lose economic support and stability because it is fundamental to effective representation and meaningful, appropriate referrals.

d. Elder Abuse

Elder abuse is the physical, sexual, emotional or financial abuse, or neglect or abandonment, of an older person by a family member, friend, fiduciary or caregiver. Elder abuse includes domestic violence and sexual violence in later life, and may be committed by a current or former spouse or intimate partner, as well as by adult children, grandchildren, other family members, a “friend,” or a non-relative caregiver or fiduciary. Issues related to an older person’s legal capacity and right to autonomy add to the complexity of dealing with older abused persons in many cases. In addition, older persons may be reluctant to disclose abuse, especially sexual assault, because of embarrassment or shame, or legitimate fears of retaliation, disbelief or institutionalization.

The lawyer should consider the wide range of civil legal remedies that may be available to the older client. Lawsuits to recover money or property, restraining orders or injunctions, or actions for damages all may be appropriate responses to elder abuse. In addition, the perpetrator should be removed from the setting and alternative care should be secured if the perpetrator was the client’s primary caregiver. The lawyer should be familiar with state laws governing reporting of elder abuse.

Older victims are often accompanied by others when they visit a lawyer’s office. The lawyer must be clear as to who is the client and then make that information known to everyone involved. If the client is the elderly person, the lawyer must meet with the client separately in order to preserve confidentiality and to ensure that the client is not subjected to undue influence.

The lawyer should strive to achieve remedies that place the fewest restrictions on the client’s independence and autonomy. Guardianship or conservatorship of the client or placement in a nursing home or other facility is sometimes necessary, but is certainly not the only means of terminating the abuse, and should be considered only as a last resort.

e. Immigrant Clients

When meeting an immigrant client for the first time, the lawyer’s primary concern should be whether the client qualifies for a civil protection order, and not the client’s immigration status. Immigration status has no bearing on a client’s eligibility for a civil protection order. Other services and relief may also be available. The lawyer should have a ready list of referrals of service providers that can handle the immigration issues of the client within the service area.

VAWA now provides immigrant victims of domestic violence with access to some form of immigration relief. However, many immigrant victims are unaware of these remedies. Perpetrators use this fact to solidify their power and control and inhibit the immigrant victim’s ability to successfully escape violence. In addition, immigrant victims may have justified concerns about the safety of family in their home country, a fear of parental abduction of the children by the perpetrator or other acts of retaliation by the respondent. Many immigrant clients are reluctant to obtain a final protection order against the respondent for fear that it will result in the respondent’s deportation and a loss of financial support. A violation of a civil protection order may be a deportable offense. Similarly, many immigrant clients are reluctant to obtain a

civil protection order against their employer or coworker for sexual assault, sexual harassment or stalking due to a fear of job loss, which may in turn, result in a loss of housing or even loss of legal status. The lawyer should be aware of any specific remedies for victims of sexual assault or stalking that may exist for immigrant clients and refer them to appropriate resources as necessary.

f. Lesbian, Gay, Bisexual and Transgender (LGBT) Relationships

Most LGBT victims of abuse, assault or stalking (and especially men and transgendered individuals) do not have the same access to support services, including legal services, as heterosexual victims. Even when LGBT victims are provided services, they may experience severe homophobia. Legal complexities can arise in same-sex domestic violence cases when the relationship between the victim and the perpetrator is not legally acknowledged. Some examples include difficulties with child custody, excluding the respondent from the home, or allocating property.

Homophobia is a major barrier to LGBT victims of sexual assault. Lawyers should be aware that often LGBT victims are reluctant to discuss sexual assault, since LGBT sex is often perceived as deviant and/or criminal. LGBT victims may also be reluctant to disclose childhood sexual abuse due to fear of a homophobic reaction (e.g., “you’re LGBT because you were sexually abused”). Also, homophobic assumptions about LGBT adults working with youth (e.g., that they are pedophiles, or are “recruiting”) further serve to discourage LGBT victims from disclosing sexual assault. Homophobia is also a barrier in same-sex stalking cases where there is not a pre-existing relationship between the stalker and the victim.

It is not uncommon for police officers (and judges) to disregard or downplay same-sex domestic violence, sexual assault or stalking. Lawyers should be specifically aware of the danger of the issuance of mutual civil protection orders if the victim and perpetrator are the same sex, because of the minimization that clients may experience when they seek to enforce the order. Enforcement of civil protection orders issued to LGBT individuals may be unreliable because of institutionalized prejudices towards LGBT people by law enforcement and the courts.

LGBT clients are sometimes sensitive to any public disclosure of their relationships because employment and other positions may be jeopardized. The lawyer must remember that there may not be a mechanism for confidentiality in court proceedings and police intervention. In some cases it may be safer for a victim to seek shelter and remain anonymous. As with all cases, victims should decide the best option for themselves, in consultation with the lawyer.

g. Mental Health

A client’s mental health can have a bearing on effective representation. While many victims of domestic violence, sexual assault or stalking experience no significant or chronic mental health issues, some may be coping with pre-existing mental health issues in addition to the experience of violence, while others may develop problems as a result of being victimized. Typical ailments may include depression, increased anxiety, disassociation, sleep or eating disorders, drug and alcohol dependence and/or post-traumatic stress disorder (PTSD). The

lawyer should always inform the client of relevant mental health services if the client seems to be suffering with mental health issues, while being careful to safeguard the client's privacy and protect against the possibility of impeachment. If the victim does have a mental health issue and is receiving treatment, the lawyer should consult with the mental health professional to determine how the client's condition, medication and treatment may affect strategy in the case.

h. Military Concerns

Victims of domestic violence or sexual assault who are associated with the military have the option of "restricted reporting," which allows a victim to confidentially disclose the details of an assault to certain individuals within the military community and receive medical treatment and counseling, without triggering the official investigative process. Under these circumstances, the victim's report and any details provided to the individuals identified above will not be reported to law enforcement to initiate the official investigative process unless the victim consents or an established exception is exercised under the Restricted Reporting Directive. However, lawyers must check local law and practice to ensure that the facts and injuries in the case do not trigger state mandatory reporting laws.

Lawyers should be aware, however, that if clients do not elect to make a restricted report, current Department of Defense policy requires all members of the military community, including personnel on active duty, their family members, civilian employees, and contractors, to report known or suspected crimes to their commanding officer, including known or suspected incidents of domestic violence or sexual assault. The lawyer must be aware that if he/she advises a client to make an unrestricted report of an incident of domestic violence or sexual assault to military personnel, such personnel will initiate an investigation that will involve contacting the alleged perpetrator and any witnesses, such as medical staff, military police or other officers. If a client wants to speak to someone confidentially about options for services/interventions, the lawyer may make a referral to civilian, community-based domestic violence programs or rape crisis centers.

Under the Armed Forces Domestic Security Act, military commanders are required to take all reasonable measures to ensure that a civilian protection order preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person is given full force and effect on a military installation. However, it excludes a support or child custody order issued pursuant to state divorce and child custody laws except to the extent that such an order is entitled to full faith and credit under other federal law. The lawyer should contact the installation's legal office to register any civil protection order pertaining to a person in the military, whether that person is on active duty, a civilian employee, contractor, or a family member of these.

A military protection order is issued by a commanding officer to an active duty service member to both protect a victim of domestic violence or sexual assault, and to regulate the behavior of the offending service member. A military protection order may be oral rather than in writing, although written orders are preferred. Because a military protection order is issued by a commanding officer, it becomes invalid if the service member is reassigned to another command. Furthermore, civilian law enforcement agencies and civilian courts cannot enforce

military protection orders because they do not meet the due process requirements under the full faith and credit provisions of VAWA. However, civilians can notify military law enforcement that a violation has occurred and in many cooperative agreements between local law enforcement and military installations, offenders are to be held until military police arrive or taken and turned over to the military police by civilians.

It is important to note that a military service member is always subject to the Uniform Code of Military Justice (UCMJ). Hence, if a service member violates a military protection order, command can be notified of the violation and take action because the person violated a direct order and engaged in conduct unbecoming, both of which are prohibited under the UCMJ.

Finally, a service member may request temporary suspension of civil judicial and administrative proceedings (such as those regarding protection orders) pursuant to the Service Members Civil Relief Act, when the service member's ability to participate in those proceedings is materially affected by his/her military duty. However, if the commander is aware that the subject of the proceedings is the protection of another person from violence or harassment, the commander is unlikely to concur with the request. The lawyer should take steps to ensure that the commander is apprised of the nature of the proceedings.

i. Minor Victims

Many minor victims of domestic violence, sexual assault or stalking may not meet the age or relationship requirements of their state's protection order statutes, and must resort to more cumbersome procedures in order to obtain civil protection orders. For example, many states (*Arkansas among them*) prohibit unemancipated minors from bringing actions for protection on their own behalf. In these jurisdictions, an adult must bring the action on the minor's behalf or the court must appoint a lawyer or guardian ad litem to represent the minor's interests.

Lawyers must be familiar with the child abuse and neglect laws of the jurisdiction, as well as juvenile delinquency statutes and the Indian Child Welfare Act. In sexual assault cases, lawyers must also be familiar with statutory rape laws, the age of consent for minors to engage in consensual sexual relations and what the local prosecutors' policy is with regard to minors engaging in consensual sexual relations. Similarly these issues will likely impact whether a minor can successfully petition for a civil order of protection given the criminal analysis of whether a crime has occurred or if the minor has exposed herself/himself to possible criminal sanctions for engaging in illegal activity prior to the assault, such as alcohol consumption.

Lastly, lawyers working with minors must be careful to distinguish the minor client from the caregiver who may accompany him/her.

j. Native American Victims

American Indian and Alaska Native women are victimized at a much higher rate than any other group of women in the United States. When the perpetrator is non-Native, particular jurisdictional challenges arise. When deciding whether to secure a protection order in state or tribal court when both appear to have jurisdiction, the ability to enforce the protection order

should be considered. The tribal court may have limited subject matter jurisdiction, or limited court dates.

Because tribes are sovereign entities, their governments will vary in their statutory and judicial responses to domestic violence, sexual assault and stalking. Lawyers serving Native victims must be aware of which tribe is involved, either because the victim is a member or because the offense took place in Indian Country, and then review the applicable code provision that will affect her/his client. In addition, seeking redress in a tribal court may afford the victim a means of justice that differs both judicially and culturally from a state or federal system. Prior to moving forward with representation, it is imperative that the laws of the involved tribe be consulted, the jurisdictional status be reviewed and the client consulted regarding her desire to seek redress in the community which may, or may not, afford a more holistic, or traditional response to the offense. Finally, the lawyer should ensure that she/he is respecting tribal sovereignty by affording full faith and credit to all forms and orders of the court, regardless of whether they are handwritten or contain provisions that may be outside the scope of her/his usual practice.

k. Substance Abuse Issues

Some victims of physical, sexual and psychological abuse may attempt to numb their physical and emotional pain by using drugs and/or alcohol. Other victims are coerced into drug use by their abusive partners. Whatever the initial motivator, a client's drug use or addiction provides the perpetrator with another weapon to undermine the client's credibility.

Clients who use drugs and alcohol may not be believed or taken seriously by others when they report abuse. They also may be unable to access certain emergency services such as shelters, many of which have a "sober-first" policy. The use of chemicals can compromise cognitive functioning and motor coordination, leaving clients less able to identify cues or indicators when violence escalates, inhibiting their ability to defend against a physical assault, to make use of a safety plan, or to present well in court. If you suspect your client may be dealing with substance abuse issues, it is imperative that you inform the client of the relevant treatment resources.

B. Competent Knowledge of Domestic Violence, Sexual Assault and Stalking

Before representing a client in a civil protection order case, the lawyer should have competent knowledge of the dynamics of domestic violence, sexual assault and/or stalking. In particular, the lawyer should understand the potential risk of escalated violence due to litigation, and how the experience of domestic violence, sexual assault and/or stalking may affect the client-lawyer relationship, including the process of establishing rapport with and gathering information, evidence and case direction from the client.

Competent knowledge means, at a minimum, an accurate understanding of the dynamics of domestic violence, sexual assault and/or stalking, in addition to understanding the statutes that protect victims against these types of violence.

The lawyer should be aware of the issues a particular client may face and be able to counsel the client about the pros and cons of obtaining a civil protection order. For example, for domestic violence victims, the risk of violence increases significantly when a victim attempts to leave the batterer. Therefore, the lawyer should discuss with the client different strategies for getting protection, which may include not immediately obtaining a civil protection order if obtaining an order will compromise safety. Additionally, sometimes being served with a petition for a civil protection order prompts respondents to file a retaliatory cross-petition.

The lawyer should be prepared to discuss this possibility with the client, and prepare the client for defending against a cross-petition. In sexual assault cases, many victims are very concerned about maintaining their privacy. Civil protection order actions may result in family, friends, employers and other institutions learning compromising details about a victim's sexual or personal history. Lawyers should be mindful that such disclosures can have very harmful consequences to a victim's social and economic life. Protecting the victim's privacy is integral to protecting his/her safety, and therefore privacy concerns will inform case strategy.

The lawyer must also be knowledgeable about the dynamics of violence in order to craft appropriate and effective orders for relief. For example, final protection orders which prohibit contact "except to discuss the children" or prohibit weapons "except for hunting" are seldom useful to the client and are extremely difficult to enforce, due to their vagueness. Similarly, sexual assault protection orders which allow the perpetrator to continue to attend class with the victim may be useless in helping the victim remain in school.

Some clients who have experienced domestic violence, sexual assault or stalking may require a heightened level of patience and assurance from the lawyer before they will be willing to disclose essential information. The additional client interview time this may require is well worth the investment, as it will likely result in more thorough, accurate and efficient trial preparation.

The lawyer must understand the dynamics of power and control in abusive relationships in order to understand that it is common for victims of domestic violence to return to the perpetrators, even after multiple separations. Often victims will leave numerous times before finding the social, economic, and emotional resources to remain independent of their abusers. The lawyer should remain nonjudgmental toward clients who reunite with their perpetrators, and should assure clients that should they decide to leave in the future, resources will be available to help them.

C. Culturally Competent Representation

The lawyer should be aware of the culture of the client and of how violence is understood within that culture. In particular, the lawyer should understand how the culture of the client may affect client-lawyer communication and trust, identification and presentation of evidence, and remedy selection.

Cross-cultural communication is an essential component of effective legal representation in domestic violence, sexual assault and stalking cases. Lawyers who develop what is often

referred to as “cultural competence” will be able to enhance rapport with clients, gather more information, investigate cases thoroughly, develop more meaningful strategies for resolving problems, counsel clients appropriately, negotiate comprehensive agreements and conduct trials in a more effective manner.

The lawyer is more likely to be aware of cross-cultural differences when representing a client who was born in another country or a client who does not speak English as a first language. However, cross-cultural communication extends beyond differences in ethnicity and language and encompasses differences among individuals based on a variety of factors including race, religion, education, socioeconomic status, gender, sexual orientation and age. In addition, there are tremendous differences within cultural groups. Individuals who may be identified as Latino or Asian, for example, hail from a host of countries which have their own unique histories, language/dialects, foods, religions and customs.

Cultural differences exist in the ways in which survivors of domestic violence react to the violence they experience, interact with police, lawyers and judges, describe events which have transpired, communicate needs and goals, and make decisions about how best to address the situation. While lawyers need to develop cultural awareness, it is important not to reinforce stereotypes in the process. In order to enhance cross-cultural communication, lawyers should (1) refrain from making assumptions about a client based on the client’s cultural affiliation(s), and (2) refrain from generalizing based on the lawyer’s own experience. Instead, the lawyer must learn about the individual client’s value, experiences and priorities through sensitive questioning, and perhaps more importantly, through careful listening and attention to verbal and nonverbal cues.

Culturally competent practice for lawyers representing victims of domestic violence, sexual assault and stalking include (but are not limited to) the following:

1. Listening attentively to clients, using reflective listening and empathetic responses;
2. Asking clients about their views or perceptions of events and interactions, spending significant time gathering information;
3. Not assuming all people from a particular cultural group are the same or share the same values and priorities; learning about the clients’ beliefs and priorities through discussion with them; asking clients how they define themselves culturally;
4. Being aware of the lawyer’s own cultural beliefs, values, customs and biases;
5. Identifying areas in which the lawyer and the client share similarities, and using these areas of commonality to build rapport with the client;
6. Becoming educated about other countries, cultures, and customs;
7. Explaining how the U.S. legal system works, using simple, straightforward language (orally and in writing);
8. Being careful in the use of humor;
9. Before making negative judgments about a client, determining whether there may be cultural explanations for the client’s behavior or decision;

10. Developing creative, flexible solutions which respect a client's priorities and cultural beliefs;
11. For non-citizen clients, consulting with an immigration lawyer about the possible immigration ramifications of actions taken in a domestic violence, sexual assault or stalking case; and
12. Developing methods for using interpreters effectively.

D. Effective Client Communication

1. Communication with Clients

The lawyer should always personally consult with the client prior to representation and prior to court proceedings for a private and meaningful exchange of case-related information. Victims of domestic violence, sexual assault and stalking are a unique client population because their legal concerns are often embedded in very personal, private matters. Effective representation requires that the lawyer earn the trust of a client who has experienced betrayal and/or abuse. It is not uncommon for clients to withhold crucial information from lawyers out of self-doubt, shame, fear of disapproval or disloyalty.

Traumatized clients may have difficulty processing or remembering new or technical information. It is important for the lawyer to take adequate time to communicate effectively with the client, to learn all the relevant facts of the case, and also to ensure that the client has a complete understanding of the legal process, remedies, and consequences. The lawyer should listen reflectively with minimal interruption, avoid the use of jargon, be prepared to repeat information, and allow time for the client to absorb and consider her/his options.

In cases where this is simply not possible, the lawyer should work closely with an advocate who can take the necessary time to communicate effectively with the client, and who can serve as a client-lawyer liaison throughout the case.

2. Physical Access to Direct Legal Representation

All clients should have comparable access to the lawyer. When working with clients with physical and/or mental disabilities, the lawyer is obligated to ensure that the appropriate accommodations are in place.

The American with Disabilities Act (ADA) requires, among other things, that the lawyer's office and the courtroom be free of architectural and communication (e.g., signs, alarms) barriers, and that auxiliary aids or services be provided when they are necessary to ensure effective communication (e.g., using a TTY or relay service for clients who are deaf or hard of hearing; reading documents to a client if providing it in Braille is too expensive). Also, service and companion animals must be permitted in facilities unless the animals pose a direct threat to the health and safety of others. The lawyer should remember that the ADA prohibits charging persons with disabilities to cover the costs of needed accommodations.

In addition to ADA requirements, it is good practice to be aware of the effects of any medications the client may be taking, or of any cognitive impairments or psychological diagnoses the client may have, both to facilitate client communication and to better prepare for the civil protection order hearing.

The ADA describes the legal minimum for providing services to people with disabilities. Lawyers are encouraged to go beyond these minimum guidelines to provide the most accessible services possible. Appropriate accommodation will enhance representation by facilitating effective client-lawyer communication.

3. Interpreters and Other Language Resources

When the client is not proficient in English or is deaf or hard of hearing, the lawyer should ensure a neutral, professional, qualified interpreter is available for all client meetings and court proceedings.

In no case should the lawyer allow the client's child or other family member to interpret. (*In Arkansas, qualified interpreters are available through the Administrative Office of the Courts.*) If a professional or certified interpreter is not available, the lawyer should seek out community resources, such as language departments of local universities, listserves, and referral sources to find an interpreter who is neutral and competent. If such an interpreter is not available, the lawyer should seek out other resources, such as the AT&T language line or relay service, to ensure that the client can fully participate in all proceedings.

If a client is working with a bilingual advocate from a community-based domestic violence or sexual assault program, it is not appropriate to use the advocate as an interpreter. The advocate's role is to advocate on behalf of the client, not to act as an interpreter.

If the client is deaf or hard of hearing and from another country, the lawyer should be aware that he or she may use a different form of sign language (i.e., not American Sign Language). The lawyer should establish the best and safest way to communicate with the client throughout the case if a qualified interpreter is not available, either by email, text telephone device, and video relay or through the use of multiple interpreters, to minimize and avoid perpetrator manipulation of these devices.

The lawyer should also be aware that some language communities are very small and that the client must be comfortable with the interpreter chosen, and satisfied that there are no potential conflicts of interest.

Title VI of the Civil Rights Act (prohibiting discrimination on the basis of national origin) and the ADA both describe the legal minimums for providing language access to clients. Lawyers are encouraged to go beyond these minimum guidelines to provide the most accessible services possible. Appropriate accommodation will enhance representation by facilitating effective client-lawyer communication.

4. Confidentiality and Third-Party Privilege Issues

The lawyer should inform the client that ordinarily, communication exchanged between the lawyer and client is protected by the attorney-client privilege. The lawyer should advise the client about the applicable rules and laws regarding confidentiality of communications with third parties (e.g., advocates, interpreters, counselors, personal care attendants, legal guardians, support persons) and any effect of these parties' presence on attorney-client privilege. The lawyer should be aware that the scope of different types of privilege varies by jurisdiction. Privilege concerns should be addressed first with the client and, if the client consents, then discussed in the presence of the client and the third party.

The lawyer should be cautious about including third parties who may be mandated to report suspected child or vulnerable adult abuse to authorities. If the client consents to the release of information to a third party, the consent should be in writing, specify exactly what information may be released, and that the release is time-limited.

E. Client Safety

1. Lethality Assessment and Safety Planning

The lawyer should ensure that comprehensive lethality assessment and safety planning occur with the client throughout the case. In most instances, clients will be best situated to assess their own safety and lethality risks, and the lawyer should defer to their concerns. In some cases, clients will minimize their risk as a means of coping, in which case the lawyer should nevertheless ensure that the client is provided with responsible information about safety planning. As an added consideration, discussing safety and lethality risks with the client can often reveal valuable evidence for the case. The lawyer should research the current practice in lethality assessment to determine how best to assess the perpetrator's lethality. However, if the lawyer is not familiar or comfortable with threat assessment or safety planning, he or she should consult with and connect the victim with someone who is—an advocate or trained law enforcement.

Safety planning is intended to limit the risks of violence, regardless of the victim's relationship with the perpetrator. A safety plan is not static, but is dynamic and unique to each client. The lawyer should consider how the safety plan fits in with the broader case strategy.

In domestic violence cases, safety planning does not necessarily require that the client leave the abusive relationship; in fact, in many cases leaving will increase the risk. A domestic violence safety plan may include (but is not limited to): methods for limiting harm during a violent incident; keeping children safe from abuse; preserving assets; minimizing opportunities for abuse at court, at home, at work, online, or at school; planning before leaving an abusive relationship; and enforcing a protection order. If the client has made the lawyer aware that the respondent is in possession of weapons, the lawyer should take the necessary steps to ensure that the respondent will have to go through a metal detector or other security screening prior to any hearings, depositions, etc.

In sexual assault or stalking cases, safety planning may include helping clients to identify what they need to feel safe—at work, at home, at school, and in transit. Other measures that can be taken include having the victim change routines, relocating and informing friends and family of the stalking. The lawyer should be familiar with the various models of effective safety planning that exist. If a lawyer is not competent in safety planning, an advocate should assist.

Clients should conduct on-going lethality assessment and safety planning as the case moves forward. The lawyer should often check in with the client about his/her safety plan and encourage the client to work with community-based advocates to help facilitate this process. When appropriate, the lawyer should make a safety plan for himself/herself and staff.

The lawyer should always discuss with the client the safest way to conduct the client-lawyer relationship. For example, it may not be wise for the lawyer to call the client at home, leave messages, send mail or be seen publicly with the client. The lawyer should notify the client in advance of legal developments, e.g., when the perpetrator will be served so the client can adapt the safety plan.

2. Sensitivity to Effects of Trauma

Lawyers should be sensitive to the effects of trauma in their clients, and aware of the effects of vicarious trauma on themselves and their staff. While many victims of domestic violence, sexual assault and stalking will display no signs of trauma at all, lawyers must be prepared to accommodate the effects of trauma in their clients. Some clients may present as excessively hostile or difficult or, in contrast, be surprisingly flat in their affect. Aggressive or emotional over-reactions and emotional numbness (sometimes with accompanying high-risk behaviors) are normal responses to both one-time and ongoing assaults and should not be taken as indicators of instability or lack of credibility of the client. It is also common for trauma victims either to remember their abuse with vivid detail or to block it out entirely. Other victims may remember certain incidents or moments of assault vividly, but not others, and may not remember the incidents or moments in sequential order.

Additionally, vicarious trauma is a well-recognized phenomenon among helping professionals, and involves symptoms and behaviors similar to those exhibited by persons directly exposed to traumatic situations. Because working with victims of domestic violence involves stressful issues and situations, lawyers should be aware of the possibility of the effects of vicarious trauma on themselves and their staff. The lawyer should have access to counseling and other support referrals so that the client or others can be referred if necessary.

F. Scope of Representation

1. Client-Centered Representation

The lawyer should advise the client about legal options and consequences, but must ultimately defer to the client regarding legal decisions. As with all litigation, the right to decide what action to take in a case ultimately belongs to the client. In all cases, the lawyer must avoid dictating a course of action to the client. Often, victims of domestic violence seriously question

their judgment and blame themselves for the assault. Clients may look to the lawyer to make decisions for them because the violence may have damaged their self-confidence and self-reliance. Because a client's ability to make decisions about the case may be compromised, the lawyer should be prepared to clearly articulate the choices available to the client and the risks and benefits associated with each.

The lawyer must remind clients that the case is theirs and that they are able to make their own decisions (including firing the lawyer). In some cases a client will make decisions that the lawyer believes are unsafe or unwise, but voicing disapproval is rarely helpful or responsible. The lawyer must ensure that the client is educated and informed about legal options and choices, and the likely consequences of those choices. Once this information has been conveyed, the lawyer must respect the client's autonomy.

2. Legal Capacity and Duty of Loyalty

The lawyer should determine whether the potential client has the legal capacity to enter into and/or sustain the client-lawyer relationship pursuant to the rules of the jurisdiction, and communicate this to the client. Once the client-lawyer relationship is established, the lawyer must refrain from divulging case-related information gained in interviewing or representing the client to unauthorized third parties.

All lawyers have the duties of loyalty and confidentiality, but these duties are heightened in cases where the lawyer may represent teen, elderly or disabled victims of domestic violence. In these cases, the potential client may have limited legal capacity, and may also be accompanied by a third-party caregiver. In some cases, the third-party caregiver may actually be the abuser.

The lawyer must refrain from sharing information with or taking direction from third parties claiming to represent the interests of the client, such as parents, adult children, or other caregivers, without the client's express and informed consent.

3. Scope of Representation, Case Closing and Withdrawal

The lawyer should be clear about his or her role in the client's legal matters from the outset of the case, including communicating to the client the limits of the lawyer's role and the anticipated time the lawyer will fulfill that role.

A written retainer agreement, even in cases where legal services are free, is always recommended. If the lawyer will represent the client only for the civil protection order (or for an even more limited purpose), or if the lawyer must withdraw for any reason, the lawyer should nevertheless make the client aware of the client's ability to pursue, appeal, enforce, modify or renew the civil protection order.

Best Practices of Assisting a Victim with Obtaining an Order of Protection

A. General Best Practices

1. Attend Domestic Violence Trainings.
 - a. Trainings will ensure your familiarity with applicable domestic violence statutes and resources.
 - b. It is important to attend a training at least once every five years as statutes and resources change.
2. Form a network with other attorneys who represent survivors of domestic violence; it's helpful to bounce ideas off and share pleadings with other attorneys who practice in this area.
3. Join the National Domestic Violence listserv.
4. Know the Arkansas Orders of Protection Statutes.
 - a. These statutes will be necessary in your everyday practice.
 - b. Review for legislative changes after each legislative session.
5. Familiarize yourself with your community's resources. Know information related to emergency shelters, mental health services, substance abuse services, the Arkansas Crime Victims Reparations Division of the Arkansas Attorney General's Office, interpreter services, etc.
6. Form a trust relationship with your client.
 - a. The more your client trusts you and feels safe around you, the more you will be able to help him/her.
 - b. Immediately begin working with your client to create a safety plan that contains short term and long term goals. Creating a safety plan involves careful consideration of the dangers (possession of firearms, stalking behavior, etc.), as well as the precautionary measures necessary to avoid the harm posed by the abuser.

B. Petition and Affidavit

1. What should be included in the Petition?
 - a. Your client must clearly describe in the petition and affidavit what his/her abuser did or threatened to do.

- b. Your client might describe the two most recent incidents of physical abuse and the two worst incidents of physical abuse.
 - c. Your client should also state whether his/her abuser has used or threatened to use lethal weapons.
 - d. A judge will not grant an order of protection based solely upon mental abuse.
2. How do I file a Petition and Affidavit?
- a. Order of Protection forms can be obtained at the County Courthouse or online www.arlegalservices.org.
 - b. The petition can be filed in the county where your client lives, where his/her abuser lives, or where the abuse occurred.
 - c. If your client is in a shelter, the petition can be filed in the county where the shelter is located.
 - d. There is no charge to file the petition.
 - e. If you do not plan on representing your client at the hearing for the issuance of the permanent order of protection, make sure your client understands that he/she must attend the hearing. If he/she does not attend, the order of protection will be dismissed.
 - f. You should make sure your client does not bear any of the costs associated with the filing, issuance, registration, service, or enforcement of his/her order of protection.

C. Granting of the Ex Parte Temporary Order of Protection

After the petition and affidavit are completed and filed, a judge will review them. If the judge decides the information provided meets the statutory requirements, he/she will grant an ex parte (temporary) order of protection. In the event that the judge determines your client did not provide enough information to meet the statutory requirements and thus denies temporary relief, your client has the right to a hearing. This hearing will give your client the opportunity to explain to the judge why an order of protection is needed. During this time, an order of protection is not in place, although the petition and affidavit have likely been served on his/her abuser. This is a very dangerous time for your client, and you should revisit the safety plan with your client to ensure his/her safety.

What else can be included in an Ex Parte Order of Protection?

1. The judge can include your client's children as persons protected by the order, and can award custody and child support to your client.
2. The order of protection can exclude your client's abuser from the shared residence, your client's work address, the children's schools, etc.
3. The judge can also exclude your client's current physical and work addresses from all pleadings to help ensure his/her safety.
4. The order of protection can also state that your client be allowed to retrieve personal items from the shared residence and that law enforcement accompany him/her in doing so.

D. Service of the Order of Protection

1. Filed copies should be given to the local sheriff's office so your client's abuser can be served. Some clerk's offices will provide the sheriff with the filed order of protection; however, other counties (such as Washington County) requires the attorney/victim to provide copies to the sheriff's office. You may also serve your client's abuser via process server; however, service by certified mail is not recommended.
2. Your client's abuser cannot be arrested for violating an order of protection if he/she has not been served. However, if the abuser violates the order of protection after having been served, the order allows law enforcement to arrest the abuser without the issuance of a warrant.
3. Copies of the order of protection should be provided to the children's daycare or school if the children are protected under the order.
4. Make sure to advise your client to keep a copy of the order of protection with him/her **at all times**. Should the order of protection be violated, responding law enforcement officers are likely going to ask to see it.
5. You should take the necessary steps to ensure that the order of protection is served on your client's abuser and entered into all relevant databases including the Crime Information Center Protection Order File Database.

E. Permanent Orders of Protection

1. Attending the Hearing

- a. A hearing will be held within 30 days. The hearing will provide both your client and his/her abuser an opportunity to tell the judge why the ex parte order of protection should be dismissed or extended.

- b. Your client must attend the hearing or the order of protection will be dismissed. Before the hearing, explain the court process to your client so that he/she will know what to expect.
- c. Presenting Evidence at the Hearing:
 - i. Both parties will be allowed to present evidence, but remember that the Arkansas Rules of Civil Procedure and the Arkansas Rules of Evidence will apply.
 - ii. Evidence may include: witnesses, text messages, social media postings, medical records, police reports, photographs of any visible marks left by the abuser (helpful to include the date and time that the picture was taken), etc.
 - iii. If you allow your client to testify, have him/her describe the last two incidents of violence; the worst two incidents of violence; whether his/her abuser has threatened to physically hurt or kill him/her; whether his/her abuser has used lethal weapons or threatened to use lethal weapons, especially firearms; whether his/her abuser is in possession of lethal weapons; etc.
 - iv. In cases in which the judge seems uneducated about domestic violence, you should consider using an expert witness to educate him/her.
- d. After the evidence is presented, the judge will determine whether you have proven that your client is in danger of imminent physical abuse. If the judge finds that your client is in danger, a permanent order of protection will be entered.
- e. Consider the need for an Attorney *ad litem* for the children.

2. Obtaining the Permanent Order of Protection

The permanent order of protection can last from a few months to 10 years, and your client can ask the judge for an extension at the end of the period as long as he/she can prove there is continuing danger of imminent physical abuse.

DOMESTIC VIOLENCE IN THE CRIMINAL CONTEXT

Best Practices of Prosecutors

The prosecution of domestic violence cases can be one of the most rewarding or the most frustrating experiences in the career of a prosecutor. On the one hand, domestic violence cases can sometimes be difficult because the survivor is conflicted and may be reluctant or refuse to participate in the prosecution or may vacillate during the pendency of the proceedings. On the other hand, helping to restore power and autonomy to one who has been abused is a rare and wonderful experience.

Everyone understands that it is wrong to kill someone or to steal from another, but somehow violence in the arena of the marital relationship has been tolerated until relatively recently. Historically, the criminal justice system has turned a blind eye to domestic violence. All evidence indicates its historical acceptance across most cultures and continents.²

Traditionally, the man was king of the castle and made the rules for his family. If violence or sexual abuse occurred within the family, those matters were kept secret and handled discretely. Consequently, many cases of domestic violence and sexual assault were never reported to police, and many families, even in today's climate, have untold secrets in their past. As a result of the historical view of society towards domestic violence and the added complication of the intimate nature of the victim/abuser relationship, domestic violence cases can be some of the most difficult cases to prosecute successfully.

Domestic violence cases are unlike other types of crimes. Rarely will there be a prosecution of other types of crimes that both the survivor and the defendant live under the same roof and have continuous contact. While a no contact order will be issued by the Court, the reality is that many times the survivor/defendant will remain in contact with one another. The perpetrator of domestic violence and his/her victim are in an intimate relationship that will affect almost every aspect of the case. To be successful in prosecuting these types of cases, the prosecutor must be aware of the pitfalls that this intimate relationship can cause, as well as the societal myths that arise about domestic abuse.

A. Common Misconceptions and Behavioral Patterns

Certain myths and misconceptions exist about domestic violence, and prosecutors will discover these misconceptions in the attitudes of survivors, abusers, police, judges, defense attorneys, and jurors. The following are a few myths and misconceptions you will see when prosecuting domestic violence cases:

1. Abusers do not necessarily fit the public's image of what a criminal should look like. Abusers may be lawyers, judges, doctors, police officers, teachers or other professionals. Society can sometimes be reluctant to brand these people "criminals."

² Instructional Aides, Inc. *Domestic Violence: No Longer Behind the Curtains* (1983).

2. While it is true that some survivors suffer psychological effects such as post-traumatic stress disorder or depression as a result of abuse, most do not have a mental disorder.
3. Survivors are often held responsible for the abuse because he/she does not leave the abuser. The truth is that many survivors desperately want to end the abuse and try to leave a number of times, but the abuser uses various means to compel them to return.
4. Domestic violence happens across all socioeconomic levels, races, and ethnic groups. No one is immune to the possibility of domestic violence.

B. Why Doesn't the Survivor Just Leave?

Some prosecutors might become frustrated when the survivor returns to the abuser following an episode of domestic violence. It can be a struggle to understand why a person would return to an abusive relationship. It is critical for the prosecutor to understand some of those reasons when determining how to proceed with the case. There are many reasons why a person who is in an abusive relationship returns to his/her abuser:

1. The intimate nature of the relationship between the survivor and the abuser creates a drastically different situation than in other violent crimes. A domestic abuse survivor may have very conflicted emotions about his/her abuser and may still love him/her.
2. The survivor may hold out hope that the relationship will continue and may believe that further prosecution of the abuser would conflict with his/her attempt to resume the relationship.
3. The abuser promises reform. Many survivors believe that the threat of prosecution will cause the abuser's behavior to change.
4. Oftentimes, the survivor is financially dependent upon the abuser and may lack job skills and have little or no personal financial resources.
5. The survivor may feel responsible for the abuse and embarrassed about the fact that the marriage/relationship is not working.
6. The survivor may not understand the judicial process, or he/she may face such practical difficulties as having to take off from work or arrange for transportation and childcare during court proceedings.
7. The survivor may be simply exhausted from the abuse or may have physical or mental trauma from being repeatedly abused.

8. The survivor may fear that if the abuser is prosecuted, he/she will reveal secrets about the survivor that will be embarrassing or have criminal implications.
9. The survivor may have religious objections to divorce.
10. The survivor may fear that the abuser will retaliate with violence or by making false claims about her/him that will call into question the survivor's ability to parent the children.
11. Frequently, an abuser abuses a victim over a long period of time. Besides physical injury, the result is psychological harm and a victim who is afraid to seek help.
12. The survivor may have been subject to verbal abuse, humiliation, threats, isolation, and threats to loved ones.

These conflicting emotions toward the abuser, coupled with the survivor's uncertainty about a potential prosecution and the effect it will have on his/her future may create an adversarial relationship between the prosecutor and the survivor. The prosecutor must realize the real life consequences to the survivor with regard to the decision to proceed or participate in criminal prosecution. Often, the survivor and abuser are married and have children. The survivor may be contemplating divorce proceedings or battles over child custody and visitation, in addition to the criminal proceedings.

In short, the survivor is in an extremely stressful situation. Understanding some of the complexities of domestic violence victimology and societal impressions helps the prosecutor to address some of the survivor's concerns, successfully bring offenders to justice, and more importantly, help insure the survivor's safety.

C. Individual Interests vs. Community Interests

Deciding the extent to which the survivor's wishes should be taken into account in the charging and disposition of the case is difficult. On the one hand, it is the survivor's life, and he/she will have to live with the consequences. The survivor's safety is at risk, and domestic violence victims are in greatest danger when they attempt to seek help.³

On the other hand, the prosecutor needs to send a strong message to the community, the survivor, and the abuser: domestic abuse is a serious crime that is offensive to the community and affects more than just the individuals directly involved. The following are things to take into consideration when determining how to proceed:

1. Children who have witnessed abuse may be disturbed, angry, frustrated or afraid, and may have behavioral or emotional problems in their school or daycare. The

³ See Barbara J. Hart, *Battering and Family Therapy: A Feminist Perspective* (1993), citing a study asserting that 73% of the battered women seeking emergency services sustained injuries after leaving the batterer.

multi-generational transmission of domestic violence has been well documented.⁴ A child who witnesses domestic violence between his/her parents is more likely to view violence as an acceptable method of conflict resolution.⁵ Studies have consistently shown that boys who witness domestic violence are more likely to become abusers, and girls who witness domestic violence are more likely to become victims of domestic violence.⁶ The transmission of domestic violence to the next generation further compounds the long-term costs to society.

2. Survivors often lose their jobs because of absenteeism due to illness or injury as a result of the violence. Absences occasioned by court appearances can also jeopardize their livelihoods.
3. Survivors may have to move many times to avoid violence. Moving is costly and can interfere with continuity of employment.
4. The cost of replacing property damaged by an abuser is also a direct cost of domestic violence.
5. The costs of healthcare services, social and welfare services, counseling, police and criminal justice services, legal services, transportation, housing and other refugee services used by survivors of domestic violence and special education services used to treat children of abused victims are impacted.
6. The survivor may have been physically and emotionally isolated from his/her family and friends.

Balancing these interests can be a daunting task for a prosecutor. Almost immediately after the police have arrested the abuser and the case has been presented to the prosecuting attorney for a charging decision, the abuser will oftentimes encourage the survivor to drop the charges. There can also be a “honeymoon” period where he/she is on his/her best behavior. While there will most certainly be a no contact order between the survivor and the abuser, the abuser will often continue to contact the survivor, trying to influence his/her behavior.

The survivor needs to understand that once the police are called and an arrest has been made, it is the state that brings the charges, not the survivor. Sometimes a survivor who has been pressured by an abuser to drop charges is relieved that someone else will make the decision and that the survivor can tell his/her abuser that he/she tried to get the charges dropped but that the prosecutor refused to honor the request.

The prosecutor should be guided by the reasons for criminal justice intervention, such as to protect the survivor and his/her family from future incidents of abuse, to reinforce that

⁴ See, Butchart et al., *Preventing intimate partner violence and sexual violence in women*, 17; Morrison and Orlando, “Social and Economic Costs of Domestic Violence: Chile and Nicaragua,” 51-52, 64.

⁵ Unicef Innocenti Research Centre, *Domestic Violence Against Women and Girls*, 12.

⁶ Duvvury, Grown and Redner, *Costs of Intimate Partner Violence at the Household and Community Levels*, 11; Morrison and Orlando, “Social and Economic Costs of Domestic Violence: Chile and Nicaragua,” 51-52, 64.

domestic violence is a crime, to empower the survivor by providing him/her with community support, to hold the abuser accountable, and to protect law enforcement who may respond to future incidents of violence. Unless the prosecutor understands the potential reasons why the survivor may return to the abuser, the prosecutor may not charge the case correctly, make the appropriate referrals, or handle the contact with the survivor in an appropriate manner. The overarching concern in a domestic violence situation should be the safety of the survivor.

If a survivor does not want to proceed, the prosecutor may decline to file the charges, decide to file charges and defer disposition for a period of time, or file charges and proceed despite the survivor's wishes. Most survivors simply want the abuse to stop, and sometimes they believe that if their abusers obtain counseling, it will stop. However, survivors should understand that no counseling or educational program is an absolute solution, nor should it instill in them a false sense of security. Survivors should be encouraged to trust their own instincts regarding their safety, regardless of whether their abuser is in counseling.

Many factors, such as the abuser's history, the severity of the injuries, and the strength of the evidence weigh into the decision of whether or not to prosecute. In some cases, when the injuries are severe or repeated, the prosecutor may elect to go forward with the prosecution without the survivor's cooperation because the admissible evidence will support a conviction.

D. Trial Strategies

In preparing and presenting a domestic violence case for trial, it is critical for the prosecutor to keep in mind the complexities of the intimate relationship and the societal misconceptions regarding domestic violence. The misconceptions and preconceived ideas of how a domestic abuse survivor should behave need to be fleshed out and dispelled during the *voir dire* or jury selection process.

The jury selection process is the only time that the prosecutor and defense attorney have the opportunity to question the jurors. The prosecutor should discern whether the jurors have been exposed to domestic violence in the past and to what extent. Sometimes jurors are reluctant to talk openly about such personal topics and the prosecutor must question the jurors delicately while still eliciting the information that is necessary to determine a juror's ability to be fair to the state and the survivor. Obviously, a juror who has had a child killed by a drunk driver should not sit in judgment of one accused of drunk driving. By the same token, a juror's personal beliefs or experiences could color his/her ability to follow the law. Any juror who seems unwilling or unable to accept the law or who seems to harbor the belief that domestic abuse is a matter to be handled within the family should be struck from the panel. The jury should be educated about the realities of domestic abuse, including some of the reasons a person may not immediately leave following a violent episode.

A prosecutor developing a theme for a domestic violence trial may consider emphasizing the philosophy of criminal justice intervention. Some suggestions of themes are:

1. Domestic violence is a crime, not a family matter or private dispute between equal partners.

2. The state, through the prosecutor, has an affirmative duty to intervene in domestic violence cases. Its responsibility extends to protecting people unwilling or unable to protect themselves.
3. Persons who commit crimes must be held accountable.
4. Domestic violence affects people beyond the relationship involved: children, employers, the health care system, police and law enforcement, future partners, and family.
5. Domestic violence is a complex problem with criminal elements.

While the prosecution of domestic violence cases is tough and frustrating at times, it can also be one of the most rewarding experiences of a prosecutor's career. Providing a voice to a person who has been abused and silenced is a powerful experience. Seeing a person who has been abused regain his/her dignity and move forward in a positive direction is rewarding. Prosecuting domestic violence cases demonstrates and underscores the resilience of the human spirit.

References:

1. *Domestic Violence Manual*, published by the Arkansas Prosecutor Coordinators Office.
2. *Domestic Violence* published by American Prosecutors Research Institute, 1997.
3. *Community Costs of Domestic Violence*, published by the Advocates for Human Rights, Stop Violence Against Women, July 19, 2011.

Best Practices of Victim Witness Coordinators

Working with survivors of domestic violence can be both challenging and rewarding. Understanding the dynamics of domestic violence is crucial to helping survivors take steps to reclaim their lives. Survivors experience many emotions and need support, encouragement and non-judgmental interactions. When survivors become involved in the legal system, not only are they thrust into a world that is many times very frightening and intimidating, but also due to the victimization they have endured, survivors find it very difficult to trust. Outlined below are things to remember when working with a survivor:

1. Whether meeting with a survivor in person or speaking with him/her on the phone, acknowledge the difficulty he/she has been through.
2. Express admiration for his/her courage.
3. Explain your confidentiality policies. It is crucial to establishing trust that you follow your confidentiality policy to the best of your ability.

4. If you must report child abuse or are concerned due to suicidal/homicidal threats, explain that you are a mandated reporter and are required to report.
5. Empathize with his/her situation and acknowledge that he/she is an expert of his/her own life.
6. Encourage him/her to seek services. Ask the survivor questions regarding what types of services he/she may need and keep in mind that this situation is a continually changing one and needs monitoring to reassess.
7. Know your community resources and contact providers on the survivor's behalf. Provide emergency shelter information.
8. Express concern for both the survivor and the survivor's children. Behavior that they may have become accustomed to may need to be pointed out as concerning or dangerous. Behavior that may be insignificant to a survivor can be a red flag to you.
9. Help the survivor prepare a Safety Plan including an escape plan.
10. If a no contact order has been placed due to the arrest of the abuser, provide the survivor with a copy. Ask him/her to report violations of the no contact order to you after he/she notifies law enforcement. This will allow you to keep the prosecutor informed and determine if an order of protection is needed.
11. Make sure to have alternative contact information for the survivor.
12. Survivors may be angry and uncooperative. They resent the upheaval in their lives and are many times faced with challenges they are not prepared to deal with such as housing, paying for food, child care and medicine. Be mindful that the survivor's anger is not with you personally.
13. Help the survivor understand what you can and cannot do for him/her. It is important to set healthy boundaries.
14. Be true to your word. If you offer assistance, follow through. If you are unable to fulfill what you have offered, be honest and research alternatives. If possible, partner with your local shelter to provide advocacy and support.
15. Provide encouragement and empower a survivor in his/her decision-making.



JUDICIAL BEST PRACTICES

JUDICIAL BEST PRACTICES

The purpose of this section is to provide the Arkansas judiciary and its stakeholders with recommended practices to improve victim and child safety and offender accountability in cases involving domestic violence while ensuring a court system that is accessible and fair to all. This section is not meant to be an all-inclusive list of recommended practices but instead practices to consider when dealing with cases involving domestic violence, sexual assault, stalking and dating violence.

Included in this section are two judicial bench cards developed by the Domestic Violence Advisory Committee of the Arkansas Judicial Council. These cards provide at-a-glance guidance in courtroom safety and in the dynamics of domestic violence. While the recommended practices and the included bench cards are meant to be a helpful guide, readers are encouraged to gain additional knowledge regarding domestic violence by visiting the Administrative Office of the Courts Domestic Violence Program Website at www.arcourtsdvp.org, and by contacting the Director of the Domestic Violence Program to schedule a training.

Please note Recommended Practices 1, 2, 4, 5, 6, 7, and 9 were used with special permission of the North Carolina Administrative Office of the Courts from Part 1 Best Practices North Carolina Domestic Violence Best Practices Guide for District Court Judges and correspond with Best Practices 1, 2, 6, 7, 9, 10, and 12. Recommended Practices 8 and 10 (North Carolina Domestic Violence Best Practices Guide for District Court Judges Best Practices 11 and 14) were used in part and adapted in part to conform to specific practices in the Arkansas judiciary.

RECOMMENDED PRACTICES

Recommended Practice 1 – Provide Enhanced Courthouse and Courtroom Security for Cases Involving Domestic Violence.

Strong security measures not only enhance safety and deter violence but also make the court system more accessible to injured and fearful parties. Providing a degree of structure and predictability to persons who have experienced trauma can be an effective stabilizer and increase the likelihood that they will use the court system for protection and relief. Recommended procedures for safety and security in courtroom proceedings may be found on page 39.

Recommended Practice 2 – Schedule Court and Calendar Cases for Maximum Effectiveness and Efficiency.

The way in which domestic violence cases are calendared can affect the amount of time judges have to spend on each case, the victim's comfort level and willingness to testify, the time to disposition and outcome of the case. Through scheduling practices, the court can also encourage the involvement and participation of community partners. When community partners receive advance notice of domestic violence hearings, they are more likely to be able to make arrangements to be present or be available to the court during those times.

Recommended Practice 3 – All Judges and Court Personnel be Educated in the Dynamics of Domestic Violence.

To improve judicial response to domestic violence judges and court personnel and all those involved within the court system should be educated on the dynamics of domestic violence, the cycle of abuse and effective ways to intervene in order to improve operations and response. Those that should be educated include judges, bailiffs, clerks, court reporters, advocates, prosecutors, defense attorneys, probation officers, law enforcement, child welfare workers and ad litem. These are partners who should also be educated about each other’s roles and responsibilities, in order to effectively work together.

Recommended Practice 4 - Actively Coordinate with Community Resources and Constitute Local Domestic Violence Advisory Committees.

Community resources assist courts, victims and defendants in all stages of civil domestic violence cases, from completing applications to addressing concerns regarding minor children, and in criminal cases, from assisting the victim to providing treatment for the defendant. Community partners can have a positive impact on the victim’s experience, the defendant’s behavior and the efficiency and overall response of the court system. Linking victims with resources as soon as possible after an incident of domestic violence is a national best practice⁷ and requires a strong working partnership with effective communication between the court and all community partners. Convening local domestic violence advisory committees provides an ongoing forum to discuss problems and identify solutions.

Recommended Practice 5 – Establish Standard and Consistent Court Protocol that Provides Judges with all Pertinent Information.

Courts need a system in place to ensure that the judge has all pertinent information when issuing ex parte temporary orders, permanent orders of protection, pretrial release conditions and criminal sentences. Comprehensive and detailed orders that prioritize the victim safety and offender accountability are not possible unless judges have all relevant information at the time they enter a ruling.

Recommended Practice 6 – Prepare Clear and Comprehensive Orders and Ensure Proper Service.

Effective enforcement of orders of protection and victim safety depend on precise and comprehensive terms within the order. In addition, proper service of the order is paramount because “notice” is an element of a criminal violation. Problems arise when orders of protection are unclear as to the exact behavior that is prohibited. It is especially important that any orders addressing the exchange of a child or child-related contact be very specific and tailored to each family situation.

Recommended Practice 7 – Encourage Victims to Access the Courts for Protection.

This practice addresses the accessibility of the court to victims and plaintiffs, particularly those who have changed their decision to proceed with their case(s). Victims of domestic violence often make repeated attempts to end an abusive relationship and may seek relief from the court throughout what might be a long process of terminating the relationship. This can cause judges

⁷ Emily Sack, *Creating a Domestic Violence Court: Guidelines and Best Practices* (San Francisco, CA: Family Violence Prevention Fund, 2002), 13.

and other court personnel to feel frustrated. Victims who return multiple times to court are often the ones best remembered and might be perceived as abusing the system. However, it is important to remember that there are many factors that a victim must weigh when determining his/her safest course of action at any particular point in time. It is also important to note that many domestic violence victims use the courts for only one domestic violence incident, which is completely resolved with the assistance of the court. Therefore, it is important to establish consistent and user-friendly court procedures for victims as it increases their ability and willingness to access the court system – and return when necessary – in the event of future abuse.

Recommended Practice 8 – Maximize Court and Community Resources for Self-Represented Parties.

Litigants in actions involving domestic violence often appear pro se. Courts should ensure that self-represented litigants are able to easily move throughout the court system, both for the benefit of the pro se individual and increased court efficiency. Arkansas Access to Justice Commission is a valuable resource for the courts in ensuring a more pro se litigant friendly courtroom and process structure.

Recommended Practice 9 – Prioritize Victim Safety and Offender Accountability throughout the Criminal Process.

Along with ensuring the due process rights of the defendant in a criminal case, the court should also prioritize victim safety and offender accountability from the time of the defendant’s initial court appearance to the post-disposition phase. Criminal domestic violence cases need to be closely monitored by all courts because of the high rates of recidivism and the substantial risks to the victim. Judges should be actively involved in each case involving domestic abuse to ensure that cases are being resolved timely, defendants are in compliance with all court orders and dispositions are appropriate in each case.

Recommended Practice 10 – Remember Federal Domestic Violence Law Requirements in all Civil and Criminal Domestic Violence Cases.

Courts should be cognizant of federal domestic violence laws, particularly those that relate to firearms. The United States Attorney General’s Office is a resource for courts and victims when there is potential federal jurisdiction. Federal law requirements, including those contained in the VAWA, should be complied with throughout the civil and criminal process. Please contact the Director of the Domestic Violence Program at the Arkansas Administrative Office of the Courts for more information and to receive a bench guide outlining compliance with Federal full faith and credit laws.

SAFETY IN COURT PROCEEDINGS

A Judicial Guide to Safety in Domestic Violence Cases

Safety in Court Proceedings

Before:

- Consider a separate entrance for petitioners which respondents cannot access
- Provide security check points for all parties including weapons screening
- Consider a security escort for petitioner to and from courtroom. If not possible in all cases, provide in cases of highest threat as identified by petitioner and/or advocate
- Have court security present before hearing to interrupt any contact between petitioner and respondent. Remind all parties contact is a violation of the law
- Keep parties separate before each hearing, preferably in different locations
- Notify security as to expectations for behavior and when to make an arrest for violation of the temporary order of protection, and make sure all parties are aware
- Allow the petitioner to have someone accompany him or her for support and
- Provide information to petitioner and/or advocate at time of issuance of the temporary order of protection as to what security measures are possible and how to obtain them in your county

During:

- Provide seating arrangements to keep petitioner and respondent separated in the courtroom. For example, have court security between parties during hearing
- Seat petitioner and respondent such that respondent cannot make any eye contact with petitioner to minimize being stared at or intimidated by respondent
- Take control of courtroom behavior. Stop tactics such as asking irrelevant questions on cross, interrupting petitioner during testimony, accusing petitioner of behaviors irrelevant to hearing, begging petitioner to return to respondent or their child(ren), asking if petitioner still loves respondent, or revealing petitioner's private information
- Do not allow respondent to ask for petitioner's address or allow petitioner to provide address
- Educate petitioner to look at the judge or court commissioner while testifying
- Impress upon the parties that there are legal penalties for violation of the order of protection, whether those violations happen within the court or outside the courtroom

After:

- Stagger departures, with victim leaving first. Escort victim to vehicle in high-risk cases
- Have respondent, their family, and friends wait at least 15 minutes after hearing and
- Monitor respondent while he/she is waiting; inform respondent when he/she can leave.

DYNAMICS OF DOMESTIC VIOLENCE

A Judicial Guide to Safety in Domestic Violence Cases

Dynamics of Domestic Violence

Remember: Understanding the context of violence in the relationship is critical.

Are any of the following present?

- Entitlement to control
- Escalation of violence and coercive behavior over time
- Ability to achieve dominance over the victim
- Rulemaking and enforcement of rulemaking
- Monitoring the victim's behavior
- Separation and/or challenge to batterer's authority
- Isolation of the victim

Use of Power and Control Tactics

- Physical abuse
- Strangulation (choking)
- Sexual abuse
- Control of finances
- Emotional abuse
- Stalking
- Using the children
- Using the pets
- Using weapons or threatening to use weapons

Power and Control Wheel on reverse

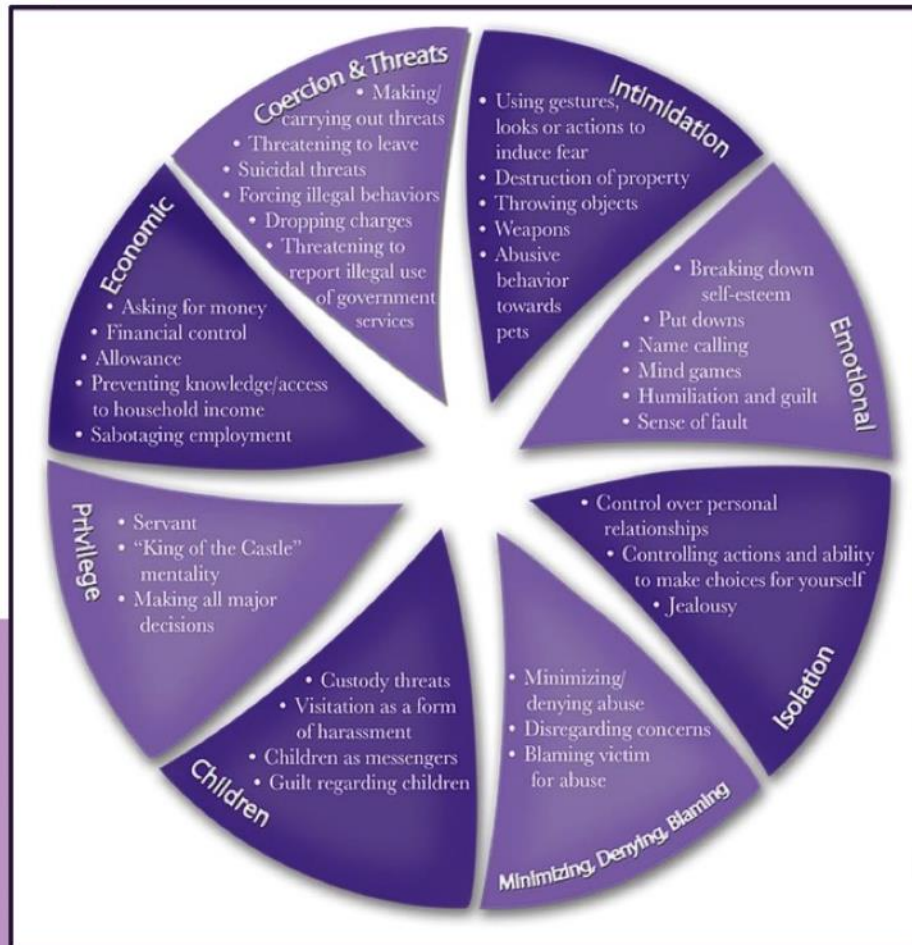
Other Considerations:

- Use of drugs or alcohol
- History of violence
- Existence of pattern of intimidation and threats
- Intent and meaning of violence to the victim (Is the victim afraid?)
- Risk assessment
- Prior conviction(s)
- Violation(s) of prior order of protection, no contact order
- Children witness the abuse
- Review of police reports and other documentation
- Other: _____

A Judicial Guide to Safety in Domestic Violence Cases

Dynamics of Domestic Violence

Power and Control Wheel



Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular uses of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of Battering/Coercive Control.

**APPENDIX:
RELEVANT DOMESTIC
VIOLENCE LEGISLATION**

Ark. Code Ann. § 5-26-302 -- Domestic Battering and Assault, Definitions
Ark. Code Ann. § 5-26-303 -- Domestic Battering in the First Degree
Ark. Code Ann. § 5-26-304 -- Domestic Battering in the Second Degree
Ark. Code Ann. § 5-26-305 -- Domestic Battering in the Third Degree
Ark. Code Ann. § 5-26-306 -- Aggravated Assault on a Family or Household Member
Ark. Code Ann. § 5-26-307 -- First Degree Assault on Family or Household Member
Ark. Code Ann. § 5-26-308 -- Second Degree Assault on Family or Household Member
Ark. Code Ann. § 5-26-309 -- Third Degree Assault on Family or Household Member
Ark. Code Ann. § 5-26-310 -- Domestic Battering and Assault, Costs
Ark. Code Ann. § 5-26-311 -- Residential Confinement in Home of Victim Prohibited
Ark. Code Ann. § 5-26-314 -- Distribution of Sexual Image/Recording (Revenge Porn)
Ark. Code Ann. § 5-53-134 -- Violation of a Order of Protection
Ark. Code Ann. § 9-15-103 -- Domestic Abuse, Definitions
Ark. Code Ann. § 9-15-201 -- Domestic Abuse, Petition Requirements
Ark. Code Ann. § 9-15-202 -- Domestic Abuse, Petition Filing Fees
Ark. Code Ann. § 9-15-203 -- Domestic Abuse, Petition Form
Ark. Code Ann. § 9-15-204 -- Domestic Abuse, Hearing
Ark. Code Ann. § 9-15-205 -- Domestic Abuse, Relief
Ark. Code Ann. § 9-15-206 -- Domestic Abuse, Temporary Order
Ark. Code Ann. § 9-15-207 -- Order of Protection, Enforcement and Penalties
Ark. Code Ann. § 9-15-208 -- Order of Protection, Law Enforcement Assistance
Ark. Code Ann. § 9-15-209 -- Order of Protection, Modification
Ark. Code Ann. § 9-15-210 -- Order of Protection, Contempt Proceedings
Ark. Code Ann. § 9-15-212 -- Order of Protection, Effect of No-Contact Order
Ark. Code Ann. § 9-15-214 -- Order of Protection, Time to Bring Petition
Ark. Code Ann. § 9-15-215 -- Factors in Determining Custody and Visitation
Ark. Code Ann. § 9-15-216 -- Prohibition of mutual orders of protection
Ark. Code Ann. § 9-15-217 -- Violations, Domestic violence surveillance, Global positioning devices
Ark. Code Ann. § 9-15-218. Commercial mobile radio service accounts—Transfer order
Ark. Code Ann. § 9-15-219. Order of protection—Course of control
Ark. Code Ann. § 12-12-215 -- Registry of Orders of Protection
Ark. Code Ann. § 9-15-302 -- Out-of-State Protection Orders, Full Faith and Credit
Ark. Code Ann. § 9-15-403 -- Spousal Abuse Safety Plan, Definitions
Ark. Code Ann. § 9-15-404 -- Spousal Abuse Safety Plans and Education
Ark. Code Ann. § 9-15-405 -- Spousal Abuse Safety Plans, Training Materials
Ark. Code Ann. § 12-12-107 -- Adult Abuse and Domestic Violence Reporting
Ark. Code Ann. § 12-12-108 -- Domestic Violence Investigation
Ark. Code Ann. § 12-12-109 -- Domestic Violence, Victimless Prosecution
Ark. Code Ann. § 16-81-113 -- Rights of Victims of Crimes
Ark. Code Ann. § 16-90-1107 -- Information from Law Enforcement Agencies

Ark. Code Ann. § 5-26-302 -- Domestic Battering and Assault, Definitions

As used in this subchapter:

(1)

(A) "Dating relationship" means a romantic or intimate social relationship between two (2) individuals that is determined by examining the following factors:

(i) The length of the relationship;

(ii) The type of the relationship; and

(iii) The frequency of interaction between the two (2) individuals involved in the relationship.

(B) "Dating relationship" does not include a casual relationship or ordinary fraternization between two (2) individuals in a business or social context;

(2) "Family or household member" means:

(A) A spouse;

(B) A former spouse;

(C) A parent;

(D) A child, including any minor residing in the household;

(E)

(i) Persons related by blood within the fourth degree of consanguinity.

(ii) The degree of consanguinity is computed pursuant to § 28-9-212;

(F) Persons who presently or in the past have resided or cohabited together;

(G) Persons who have or have had a child in common; or

(H) Persons who are presently or in the past have been in a dating relationship together;

(3) "Harass" means an act of harassment as prohibited by § 5-71-208;

(4) "Intimidate" means to force into or deter from an action by inducing fear;

(5) "Sexual nature" means that an image, picture, video, or voice or audio recording depicts actual or simulated:

(A) Sexual intercourse;

(B) Deviate sexual activity;

(C) Bestiality;

(D) Masturbation;

(E) Sadomasochistic abuse for the purpose of sexual stimulation; or

(F) Lewd exhibition of the:

(i) Genitals or pubic area of any person; or

(ii) Breast of a female; and

(6) "State of nudity" means:

- (A) The appearance of a human anus, human genitals, or a female breast below a point immediately above the top of the areola; or
- (B) A state of dress that fails to opaquely cover a human anus, human genitals, or a female breast below a point immediately above the top of the areola.

Ark. Code Ann. § 5-26-303 -- Domestic Battering in the First Degree

(a) A person commits domestic battering in the first degree if:

- (1) With the purpose of causing serious physical injury to a family or household member, the person causes serious physical injury to a family or household member by means of a deadly weapon;
- (2) With the purpose of seriously and permanently disfiguring a family or household member or of destroying, amputating, or permanently disabling a member or organ of a family or household member's body, the person causes such an injury to a family or household member;
- (3) The person causes serious physical injury to a family or household member under circumstances manifesting extreme indifference to the value of human life;
- (4) The person knowingly causes serious physical injury to a family or household member he or she knows to be sixty (60) years of age or older or twelve (12) years of age or younger;
- (5) The person:
 - (A) Commits any act of domestic battering as defined in § 5-26-304 or § 5-26-305; and
 - (B) For conduct that occurred within the ten (10) years preceding the commission of the current offense, the person has on two (2) previous occasions been convicted of any act of battery against a family or household member as defined by the laws of this state or by the equivalent laws of any other state or foreign jurisdiction;
- (6) With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member by means of a firearm; or
- (7) The person knowingly causes serious physical injury to a family or household member who is four (4) years of age or younger under circumstances manifesting extreme indifference to the value of human life.

(b)

- (1) Domestic battering in the first degree is a Class B felony.
- (2) However, domestic battering in the first degree is a:
 - (A) Class Y felony under subdivision (a)(2) or subdivision (a)(7) of this section; or
 - (B) Class A felony under subsection (a) of this section if:
 - (i) Committed against a woman the person knew or should have known was pregnant; or

- (ii) The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic battering in the first degree:
 - (a) Domestic battering in the first degree;
 - (b) Domestic battering in the second degree, § 5-26-304;
 - (c) Domestic battering in the third degree, § 5-26-305; or
 - (d) A violation of an equivalent penal law of this state or of another state or foreign jurisdiction.

Ark. Code Ann. § 5-26-304 -- Domestic Battering in the Second Degree

(a) A person commits domestic battering in the second degree if:

- (1) With the purpose of causing physical injury to a family or household member, the person causes serious physical injury to a family or household member;
- (2) With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member by means of a deadly weapon;
- (3) The person recklessly causes serious physical injury to a family or household member:
 - (A) By means of a deadly weapon; or
 - (B) Who is four (4) years of age or younger; or
- (4) The person knowingly causes physical injury to a family or household member he or she knows to be sixty (60) years of age or older or twelve (12) years of age or younger.

(b)

- (1) Domestic battering in the second degree is a Class C felony.
- (2) However, domestic battering in the second degree is a Class B felony if:
 - (A) Committed against a woman the person knew or should have known was pregnant; or
 - (B) The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic battering in the second degree:
 - (i) Domestic battering in the first degree, § 5-26-303;
 - (ii) Domestic battering in the second degree;
 - (iii) Domestic battering in the third degree, § 5-26-305; or
 - (iv) A violation of an equivalent penal law of this state or of another state or foreign jurisdiction.

Ark. Code Ann. § 5-26-305 -- Domestic Battering in the Third Degree

(a) A person commits domestic battering in the third degree if:

- (1) With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member;
- (2) The person recklessly causes physical injury to a family or household member;
- (3) The person negligently causes physical injury to a family or household member by means of a deadly weapon; or
- (4) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to a family or household member by administering to the family or household member, without the family or household member's consent, any drug or other substance.

(b)

- (1) Domestic battering in the third degree is a Class A misdemeanor.
- (2) However, domestic battering in the third degree is a Class D felony if:
 - (A) Committed against a woman the person knew or should have known was pregnant;
or
 - (B) The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic battering in the third degree:
 - (i) Domestic battering in the first degree, § 5-26-303;
 - (ii) Domestic battering in the second degree, § 5-26-304;
 - (iii) Domestic battering in the third degree;
 - (iv) Aggravated assault on a family or household member, § 5-26-306; or
 - (v) A violation of an equivalent penal law of this state or of another state or foreign jurisdiction.

Ark. Code Ann. § 5-26-306 -- Aggravated Assault on a Family or Household Member

- (a) A person commits aggravated assault on a family or household member if, under circumstances manifesting extreme indifference to the value of human life, the person purposely:
 - (1) Engages in conduct that creates a substantial danger of death or serious physical injury to a family or household member;
 - (2) Displays a firearm in a manner that creates a substantial danger of death or serious physical injury to a family or household member; or
 - (3) Impedes or prevents the respiration of a family or household member or the circulation of a family or household member's blood by applying pressure on the chest, throat, or neck or by blocking the nose or mouth of the family or household member.
- (b) Aggravated assault on a family or household member is a Class D felony.

Ark. Code Ann. § 5-26-307 -- First Degree Assault on Family or Household Member

(a) A person commits first degree assault on a family or household member if the person recklessly engages in conduct that creates a substantial risk of death or serious physical injury to a family or household member.

(b) First degree assault on a family or household member is a Class A misdemeanor.

Ark. Code Ann. § 5-26-308 -- Second Degree Assault on Family or Household Member

(a) A person commits second degree assault on a family or household member if the person recklessly engages in conduct that creates a substantial risk of physical injury to a family or household member.

(b) Second degree assault on a family or household member is a Class B misdemeanor.

Ark. Code Ann. § 5-26-309 -- Third Degree Assault on Family or Household Member

(a) A person commits third degree assault on a family or household member if the person purposely creates apprehension of imminent physical injury to a family or household member.

(b) Third degree assault on a family or household member is a Class C misdemeanor.

Ark. Code Ann. § 5-26-310 -- Domestic Battering and Assault, Costs

(a) The abused in any misdemeanor or felony domestic violence offense shall not bear the costs associated with the filing of a criminal charge against the domestic violence offender or the costs associated with the issuance or service of a warrant and witness subpoena, except as provided in subsection (b) of this section.

(b) Nothing in this section shall be construed to prohibit a judge from assessing costs if an allegation of abuse is determined to be false.

(c)

(1) Upon entering a plea of guilty or nolo contendere or being found guilty, a defendant violating §§ 5-26-303--5-26-305 or §§ 5-26-307--5-26-309 may be required to reimburse any abuse shelter or other entity providing a service to the victim under a provision of the Arkansas Crime Victims Reparations Act, § 16-90-701 et seq., if some proof of expense is provided in conjunction with the Arkansas Crime Victims Reparations Act, § 16-90-701 et seq.

(2)

(A) If the defendant maintains the home in which the abuse occurred and the victim will continue to incur lodging costs, the defendant may be ordered to continue to provide remuneration for the victim's lodging under a provision of the Arkansas Crime Victims

Reparations Act, § 16-90-701 et seq., until an action is commenced in a court of competent jurisdiction.

(B) Nothing in this section conflicts with or preempts any order of a judge in a divorce, custody, separate maintenance, or other related action to dissolve a marriage.

(d) Nothing in this section conflicts with or preempts a provision of § 16-90-703.

Ark. Code Ann. § 5-26-311 -- Residential Confinement in Home of Victim Prohibited

In a case involving domestic or family violence, a court shall not order residential confinement as a condition of bond or probation for a defendant in any household shared by the defendant and the alleged victim.

Ark. Code Ann. § 5-26-314 -- Distribution of Sexual Image/Recording (Revenge Porn)

(a) A person commits the offense of unlawful distribution of sexual images or recordings if, being eighteen (18) years of age or older, with the purpose to harass, frighten, intimidate, threaten, or abuse another person, the actor distributes an image, picture, video, or voice or audio recording of the other person to a third person by any means if the image, picture, video, or voice or audio recording:

(1) Is of a sexual nature or depicts the other person in a state of nudity; and

(2) The other person is a family or household member of the actor or another person with whom the actor is in a current or former dating relationship.

(b) The fact that an image, picture, video, or voice or audio recording was created with the knowledge or consent of the other person or that the image, picture, video, or voice or audio recording is the property of a person charged under this section is not a defense to prosecution under this section.

(c) Unlawful distribution of sexual images or recordings is a Class A misdemeanor.

(d)

(1) Upon the pretrial release of a person charged under this section, the court shall enter an order consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the person charged under this section of the penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(2) An order under subdivision (d)(1) of this section remains in effect during the pendency of any appeal of a conviction under this section.

Ark. Code Ann. § 5-53-134 -- Violation of a Order of Protection

(a)

(1) A person commits the offense of violation of an order of protection if:

(A) A circuit court or other court with competent jurisdiction has issued a temporary order of protection or an order of protection against the person pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.;

(B) The person has received actual notice or notice pursuant to the Arkansas Rules of Civil Procedure of a temporary order of protection or an order of protection pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.; and

(C) The person knowingly violates a condition of an order of protection issued pursuant to the Domestic Abuse Act of 1991, § 9-15-101 et seq.

(2) A person commits the offense of violation of an out-of-state order of protection if:

(A) The court of another state, a federally recognized Indian tribe, or a territory with jurisdiction over the parties and matters has issued a temporary order of protection or an order of protection against the person pursuant to the laws or rules of the other state, federally recognized Indian tribe, or territory;

(B) The person has received actual notice or other lawful notice of a temporary order of protection or an order of protection pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory;

(C) The person knowingly violates a condition of an order of protection issued pursuant to the laws or rules of the other state, the federally recognized Indian tribe, or the territory; and

(D) The requirements of § 9-15-302 concerning the full faith and credit for an out-of-state order of protection have been met.

(3)

(A) A service member commits the offense of violation of a military order of protection if:

(i) The commanding general, a military judge, or a special courts-martial convening authority as authorized by § 12-64-406(b) issues a military order of protection against the service member;

(ii) The service member receives actual notice or other lawful notice of the military order of protection as authorized under United States Department of Defense Instruction 6400.06, as it existed on January 1, 2017; and

(iii) The service member knowingly violates a condition of the military order of protection.

(B) A prosecution against a service member for the offense of violation of a military order of protection does not prohibit the commanding general or military commander who

issued the military order of protection from pursuing appropriate disciplinary action against the service member under the Military Code of Arkansas.

(b)

(1) Except as provided in subdivision (b)(2) of this section, violation of an order of protection under this section is a Class A misdemeanor.

(2) Violation of an order of protection under this section is a Class D felony if:

(A) The offense is committed within five (5) years of a previous conviction for violation of an order of protection under this section; and

(B) The order of protection was issued after a hearing of which the person received actual notice and at which the person had an opportunity to participate.

(c)

(1) A law enforcement officer may arrest and take into custody without a warrant a person whom the law enforcement officer has probable cause to believe:

(A) Is subject to an order of protection issued under the laws of this state; and

(B) Has violated the terms of the order of protection, even if the violation did not take place in the presence of the law enforcement officer.

(2) Under § 9-15-302, a law enforcement officer or law enforcement agency may arrest and take into custody without a warrant a person whom the law enforcement officer or law enforcement agency has probable cause to believe:

(A) Is subject to:

(i) An order of protection issued under the laws or rules of another state, a federally recognized Indian tribe, or a territory; or

(ii) A military order of protection; and

(B) Has violated the terms of the order of protection issued under the laws or rules of the other state, federally recognized Indian tribe, or territory, or the military order of protection, even if the violation did not take place in the presence of the law enforcement officer.

(3)

(A) If a service member is in the custody of a law enforcement agency as authorized in subdivision (c)(2) of this section, the law enforcement agency shall notify the office of the Adjutant General of the Arkansas National Guard within twenty-four (24) hours from the time the service member was placed in the custody of the law enforcement agency.

(B)

(i) The Arkansas National Guard shall take custody of the service member within forty-eight (48) hours from the time the service member was placed in the custody of the law enforcement agency.

(ii) However, if the Arkansas National Guard does not take custody of the service member as required by subdivision (c)(3)(B)(i) of this section, the law enforcement agency shall release the service member.

(d) It is an affirmative defense to a prosecution under this section if:

- (1) The parties have reconciled prior to the violation of the order of protection;
- (2) The petitioner for the order of protection:
 - (A) Invited the defendant to come to the petitioner's residence or place of employment listed in the order of protection; and
 - (B) Knew that the defendant's presence at the petitioner's residence or place of employment would be in violation of the order of protection;
- (3) The petitioner for the order of protection arranged or invited the defendant into meeting at a location or took affirmative steps to communicate with the defendant with the promise that the petitioner would not report the defendant to law enforcement for violating the order of protection; or
- (4) The petitioner for the order of protection visited the residence or place of employment of the defendant on his or her own accord and without any threat, duress, or coercion on the part of the defendant.

(e) Any law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse in an effort to comply with this subchapter shall have immunity from civil or criminal liability.

(f) As used in this section:

- (1) "Military order of protection" means an official command directed at a service member for the purpose of preventing violent and threatening acts against a person who:
 - (A) Is the current or former spouse of the service member;
 - (B) Is or was a child, step-child, parent, step-parent, sibling, guardian, or ward of the service member;
 - (C) Is residing or cohabitating or in the past has resided or cohabitated with the service member;
 - (D) Has or had a child in common with the service member;
 - (E) Is or has been in a dating relationship with the service member as defined by § 9-15-103;
 - (F) Has had an intimate sexual relationship with the service member; or
 - (G) Has made allegations against the service member of violations of the punitive article of sexual assault as defined by § 12-64-852; and
- (2) "Service member" means a person serving in:
 - (A) Any branch or reserve component of the United States Armed Forces; or

(B) The National Guard of any state.

Ark. Code Ann. § 9-15-103 -- Domestic Abuse, Definitions

As used in this chapter:

- (1) "Commercial mobile radio service" means commercial mobile service as defined in 47 U.S.C. § 332;
- (2) "County where the petitioner resides" means the county in which the petitioner physically resides at the time the petition is filed and may include a county where the petitioner is located for a short-term stay in a domestic violence shelter;
- (3)
 - (A) "Dating relationship" means a romantic or intimate social relationship between two (2) individuals that shall be determined by examining the following factors:
 - (i) The length of the relationship;
 - (ii) The type of the relationship; and
 - (iii) The frequency of interaction between the two (2) individuals involved in the relationship.
 - (B) "Dating relationship" does not include a casual relationship or ordinary fraternization between two (2) individuals in a business or social context;
- (4) "Domestic abuse" means:
 - (A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or
 - (B) Any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state;
- (5) "Family or household members" means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, in-laws, any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together;
- (6) "In-laws" means persons related by marriage within the second degree of consanguinity; and
- (7) "Wireless telephone service provider" means a commercial mobile radio service provider or reseller.

Ark. Code Ann. § 9-15-201 -- Domestic Abuse, Petition Requirements

- (a) All petitions under this chapter shall be verified.

(b) The petition shall be filed in the county where the petitioner resides, where the alleged incident of abuse occurred, or where the respondent may be served.

(c)

(1) A petition for relief under this chapter may be filed in the circuit court.

(2) A petition for relief under this chapter may be filed in a pilot district court if the jurisdiction is established by the Supreme Court under Arkansas Constitution, Amendment 80, § 7, and if the cases are assigned to the pilot district court through the administrative plan under Supreme Court Administrative Order No. 14.

(d) A petition may be filed by:

(1) Any adult family or household member on behalf of himself or herself;

(2) Any adult family or household member on behalf of another family or household member who is a minor, including a married minor;

(3) Any adult family or household member on behalf of another family or household member who has been adjudicated an incompetent; or

(4) An employee or volunteer of a domestic-violence shelter or program on behalf of a minor, including a married minor.

(e)

(1) A petition for relief shall:

(A) Allege the existence of domestic abuse;

(B) Disclose the existence of any pending litigation between the parties; and

(C) Disclose any prior filings of a petition for an order of protection under this chapter.

(2) The petition shall be accompanied by an affidavit made under oath that states the specific facts and circumstances of the domestic abuse and the specific relief sought.

(f) The petition may be filed regardless of whether there is any pending litigation between the parties.

(g) A person's right to file a petition, or obtain relief hereunder shall not be affected by his or her leaving the residence or household to avoid abuse.

Ark. Code Ann. § 9-15-202 -- Domestic Abuse, Petition Filing Fees

(a)

(1) The court, clerks of the court, and law enforcement agencies shall not require any initial filing fees or service costs.

(2) A claim or counterclaim for other relief, including without limitation divorce, annulment, separate maintenance, or paternity shall not be asserted in an action brought under this subchapter except to the extent permitted in this subchapter.

(b)

- (1) Established filing fees may be assessed against the respondent at the full hearing.
- (2) Filing fees under this section shall be collected by the county official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in circuit court and shall be remitted on or before the tenth day of each month to the office of county treasurer for deposit to the county administration of justice fund.
- (3) The county shall remit on or before the fifteenth day of each month all sums received in excess of the amounts necessary to fund the expenses enumerated in § 16-10-307(b) and (c) during the previous month from the uniform filing fees provided for in § 21-6-403, the uniform court costs provided for in § 16-10-305, and the fees provided for in this section to the Administration of Justice Funds Section of the Department of Finance and Administration for deposit into the State Administration of Justice Fund.

(c)

- (1) The abused in a domestic violence petition for relief for a protection order sought under this subchapter shall not bear the cost associated with its filing or the costs associated with the issuance or service of a warrant and witness subpoena.
- (2) This subsection does not prohibit a judge from assessing costs against a petitioner if the allegations of abuse are determined after a hearing to be false.

(d)

- (1) An additional court cost of twenty-five dollars (\$25.00) shall be assessed and remitted to the Administration of Justice Funds Section by the court clerk for deposit as special revenues into the Domestic Violence Shelter Fund if a person is a convicted perpetrator of domestic abuse or is the respondent on a permanent order of protection entered by a court under this chapter.
- (2) The court clerk shall disburse all court costs collected each month under subdivision (d)(1) of this section to the Administration of Justice Funds Section by the fifteenth working day of the following month.

Ark. Code Ann. § 9-15-203 -- Domestic Abuse, Petition Form

- (a) The circuit clerk shall provide simplified forms and clerical assistance to help petitioners with the writing and filing of a petition under this chapter if the petitioner is not represented by counsel.
- (b) The petition form shall not require or suggest that a petitioner include his or her Social Security number or the Social Security number of the respondent in the petition.

(c)

(1)

- (A) A petitioner may omit his or her home address or business address from all documents filed with the court.

(B) If a petitioner omits his or her home address, the petitioner shall provide the court with a mailing address.

(2) If disclosure of a petitioner's home address is necessary to determine jurisdiction or consider venue, the court may order the disclosure of the petitioner's home address:

(A) After receiving the petitioner's consent;

(B) Orally and in chambers, out of the presence of the respondent, and a sealed record to be made; or

(C) After a hearing, if the court takes into consideration the safety of the petitioner and finds the disclosure in the interest of justice.

(d) The petition may be in substantially the following form:

"Petition for Order of Protection

Case No. _____

Petitioner's home address:

Petitioner

Date of Birth

Petitioner's work address:

vs.

Respondent's home address:

Respondent

Date of Birth, if known

Respondent's work address:

I am the petitioner and at least 18 years of age under 18 but emancipated.

I am filing on behalf of myself.

I am filing on behalf of a family or household member who is:

a minor(s): (list)

an adjudicated incompetent person: (list)

The respondent is at least 18 years of age under 18 but emancipated.

I am an employee or volunteer of a domestic violence shelter or program, and I am filing on behalf of a minor.

The respondent and petitioner (or victim if filing on behalf of a minor or incompetent person): (check all that apply)

Are spouses;

Are related by blood;

Are parent and child;

Currently reside together or cohabit;

Are former spouses;

- Formerly resided together or cohabited;
- Have or have had a child in common; or
- Are presently or in the past have been in a dating relationship.

If order of protection of children is requested:

Relationship

Children

Date of Birth

Address

to Parties

The respondent has committed domestic abuse to the petitioner or victim by the following acts: (describe)

I am afraid of the respondent and: (describe)

(1) There is an immediate and present danger of domestic abuse to me; or

(2) The respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and present danger of domestic abuse to me.

The reasons are as follows: (describe)

Petitioner requests that the court issue an ex parte order of protection with the following provisions:
(check all that apply)

Excluding the respondent from a shared residence or from the residence of the petitioner or victim.

Address of residence:

Excluding the respondent from the place of business, employment, school, or other location of the petitioner or victim. Address of residence:

Excluding the respondent from the place of business, employment, school, or other location of the petitioner or victim. Address of:

Place of business:

Employment:

School:

Other (identify):

Prohibiting the respondent, directly or through an agent, from contacting the petitioner or victim, except under the following conditions:

Awarding temporary custody of minor children as follows:

Child's Name and Name of Person to Receive Custody

Requiring the respondent to pay child support in the amount of \$___ per child per month

Requiring the respondent to pay spousal support in the amount of \$_____ per month

Excluding the petitioner's address from notice to the respondent

It is further requested that upon hearing, the court issue a full order of protection with the following provisions: (check all that apply)

___ Excluding the respondent from the shared residence or from the residence of the petitioner or victim.

Address of the residence:

___ Excluding the respondent from the place of business, employment, school, or other location of the petitioner or victim. Address of:

Place of business:

Employment:

School:

Other (identify):

___ Awarding temporary custody of minor children as follows:

Child's Name and Name of Person to Receive Custody

___ Requiring the respondent to pay child support in the amount of \$___ per child per month

___ Requiring the respondent to pay spousal support in the amount of \$___ per month

___ Requiring the respondent to pay filing fees, service fees, court costs and petitioner's attorney fees.

___ I am involved in pending litigation with the respondent in the case of:

Case No.:

Circuit or District Judge:

County or City:

___ I have previously filed a petition for an order of protection against the respondent in the following case or cases:

Case No.:

Circuit Judge:

County:

The petitioner under oath states that the facts stated in the above petition are true according to the petitioner's best knowledge and belief.

Date

Petitioner's signature

STATE OF ARKANSAS

COUNTY OF _____

Subscribed and sworn to before me this ___ day of _____, 20____.

Notary Public

My Commission Expires: ”.

Ark. Code Ann. § 9-15-204 -- Domestic Abuse, Hearing

(a)

(1) When a petition is filed pursuant to this chapter, the court shall order a hearing to be held on the petition for the order of protection not later than thirty (30) days from the date on which the petition is filed or at the next court date, whichever is later.

(2) A denial of an ex parte temporary order of relief does not deny the petitioner the right to a full hearing on the merits.

(b)

(1) Service of a copy of the petition, the ex parte temporary order of protection, if issued, and notice of the date and place set for the hearing described in subdivision (a)(1) of this section shall be made upon the respondent:

(A) At least five (5) days before the date of the hearing; and

(B) In accordance with the applicable rules of service under the Arkansas Rules of Civil Procedure.

(2) If service cannot be made on the respondent, the court may set a new date for the hearing.

(c) This section does not preclude the court from setting an earlier hearing.

Ark. Code Ann. § 9-15-205 -- Domestic Abuse, Relief

(a) At the hearing on the petition filed under this chapter, upon a finding of domestic abuse as defined in § 9-15-103, the court may provide the following relief:

(1) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

(2) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

(3)

(A) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties.

(B)

(i) If a previous child custody or visitation determination has been made by another court with continuing jurisdiction with regard to the minor children of the parties, a temporary child custody or visitation determination may be made under subdivision (a)(3)(A) of this section.

(ii) The order shall remain in effect until the court with original jurisdiction enters a subsequent order regarding the children;

- (4) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;
- (5) Allow the prevailing party a reasonable attorney's fee as part of the costs;
- (6) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order;
- (7) Direct the care, custody, or control of any pet owned, possessed, leased, kept, or held by either party residing in the household; and
- (8)

- (A) Order other relief as the court deems necessary or appropriate for the protection of a family or household member.

- (B) The relief may include, but not be limited to, enjoining and restraining the abusing party from doing, attempting to do, or threatening to do any act injuring, mistreating, molesting, or harassing the petitioner.

(b) Any relief granted by the court for protection under the provisions of this chapter shall be for a fixed period of time not less than ninety (90) days nor more than ten (10) years in duration, in the discretion of the court, and may be renewed at a subsequent hearing upon proof and a finding by the court that the threat of domestic abuse still exists.

Ark. Code Ann. § 9-15-206 -- Domestic Abuse, Temporary Order

(a) When a petition under this chapter alleges an immediate and present danger of domestic abuse or that the respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and present danger of domestic abuse, the court shall grant a temporary order of protection pending a full hearing if the court finds sufficient evidence to support the petition.

(b) An ex parte temporary order of protection may:

- (1) Include any of the orders provided in §§ 9-15-203 and 9-15-205; and

- (2) Provide the following relief:

- (A) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

- (B) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

- (C) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties;

- (D) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;

(E) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order; and

(F)

(i) Order such other relief as the court considers necessary or appropriate for the protection of a family or household member.

(ii) The relief may include without limitation enjoining and restraining the abusing party from doing, attempting to do, or threatening to do an act injuring, mistreating, molesting, or harassing the petitioner.

(c) An ex parte temporary order of protection is effective until the date of the hearing described in § 9-15-204.

(d) Incarceration or imprisonment of the abusing party shall not bar the court from issuing an ex parte temporary order of protection.

Ark. Code Ann. § 9-15-207 -- Order of Protection, Enforcement and Penalties

(a) Any order of protection granted under this chapter is enforceable by a law enforcement agency with proper jurisdiction.

(b) An order of protection shall include a notice to the respondent or party restrained that:

(1) A violation of the order of protection is a Class A misdemeanor carrying a maximum penalty of one (1) year's imprisonment in the county jail or a fine of up to one thousand dollars (\$1,000), or both;

(2) A violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony;

(3) It is unlawful for an individual who is subject to an order of protection or convicted of a misdemeanor of domestic violence to ship, transport, or possess a firearm or ammunition under 18 U.S.C. § 922(g)(8) and (9) as it existed on January 1, 2019;

(4) A conviction of violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony;

(5) A person who is a respondent or an enjoined party is restrained from harassing, stalking, or threatening a person named in an order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party; and

(6) A person who is a respondent or an enjoined party is restrained from engaging in other conduct that would place a person named in an order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party in reasonable fear of bodily injury.

(c) For respondents eighteen (18) years of age or older or emancipated minors, jurisdiction for the criminal offense of violating the terms of an order of protection is with the circuit court or other courts having jurisdiction over criminal matters.

(d)

(1) In the final order of protection, the petitioner's home or business address may be excluded from notice to the respondent.

(2) A court shall also order that the petitioner's copy of the order of protection be excluded from any address where the respondent happens to reside.

(e) A law enforcement officer shall not arrest a petitioner for the violation of an order of protection issued against a respondent.

(f) When a law enforcement officer has probable cause to believe that a respondent has violated an order of protection and has been presented verification of the existence of the order of protection, the officer may arrest the respondent without a warrant whether or not the violation occurred in the presence of the officer if the order of protection was obtained according to this chapter and the Arkansas Rules of Criminal Procedure.

(g) An order of protection issued by a court of competent jurisdiction in any county of this state is enforceable in every county of this state by any court or law enforcement officer.

(h) An order of protection shall include either:

(1) A finding that the respondent presents a credible threat to the physical safety of a person named in an order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party; or

(2) An explicit prohibition against the use, attempted use, or threatened use of physical force against the person named in the order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party which would reasonably be expected to cause bodily injury.

Ark. Code Ann. § 9-15-208 -- Order of Protection, Law Enforcement Assistance

(a) When an order of protection is issued under this chapter, upon request of the petitioner the circuit court may order a law enforcement officer with jurisdiction to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence or to otherwise assist in execution or service of the order of protection.

(b) The court may also order a law enforcement officer to assist the petitioner in returning to the residence and getting personal effects.

Ark. Code Ann. § 9-15-209 -- Order of Protection, Modification

Any order of protection issued by the circuit court pursuant to a petition filed as authorized in this chapter may be modified upon application of either party, notice to all parties, and a hearing thereon.

Ark. Code Ann. § 9-15-210 -- Order of Protection, Contempt Proceedings

When a petitioner or any law enforcement officer files an affidavit with a circuit court that has issued an order of protection under the provisions of this chapter alleging that the respondent or person restrained has violated the order, the court may issue an order to the respondent or person restrained requiring that person to appear and show cause why he or she should not be found in contempt.

Ark. Code Ann. § 9-15-212 -- Order of Protection, Effect of No-Contact Order

A no contact order shall prohibit the person from making contact, directly or through an agent, except under such conditions as may be provided in the order.

Ark. Code Ann. § 9-15-214 -- Order of Protection, Time to Bring Petition

The circuit court shall not deny a petitioner relief solely because the act of domestic or family violence and the filing of the petition did not occur within one hundred twenty (120) days.

Ark. Code Ann. § 9-15-215 -- Factors in Determining Custody and Visitation

(a) In addition to other factors that a circuit court shall consider in a proceeding in which the temporary custody of a child or temporary visitation by a parent is at issue and in which the court has made a finding of domestic or family violence, the court shall consider:

- (1) As primary the safety and well-being of the child and of the parent who is the plaintiff of domestic or family violence; and
- (2) The defendant's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.

(b) If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

(c) There shall be a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that a pattern of abuse has occurred.

Ark. Code Ann. § 9–15–216 -- Prohibition of mutual orders of protection

(a) Except as provided in subsection (b) of this section, a circuit court shall not grant a mutual order of protection to opposing parties.

(b) Separate orders of protection restraining each opposing party may only be granted in cases in which each party:

- (1) Has properly filed and served a petition for an order of protection;
- (2) Has committed domestic abuse as defined in § 9-15-103;
- (3) Poses a risk of violence to the other; and
- (4) Has otherwise satisfied all prerequisites for the type of order and remedies sought.

Ark. Code Ann. § 9–15–217 -- Violations, Domestic violence surveillance, Global positioning devices

(a)

(1)

(A) A person who is charged with violating an ex parte order of protection under § 5-53-134 may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.

(B) A person who is charged with violating a final order of protection under § 5-53-134 may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.

(2) The court having jurisdiction over the charge may order the defendant released from electronic surveillance before the adjudication of the charge.

(b) A person who is found guilty of violating an order of protection may be placed under electronic surveillance at his or her expense as part of his or her sentence for a minimum of four (4) months but not to exceed one (1) year.

(c) As used in this section, “electronic surveillance” means active surveillance technology worn by or attached to a person that is a single-piece device that immediately notifies law enforcement or other monitors of a violation of the distance requirements or locations that the defendant is barred from entering and may also include technology that:

- (1) Immediately notifies the victim of any violation;

- (2) Allows law enforcement or monitors to speak to the offender in some manner through or in conjunction with the device;
- (3) Has a loud alarm that can be activated to warn the potential victim of the offender's presence in a place he or she is barred from entering;
- (4) Is waterproof; and
- (5) Can be tracked by either satellite or cellular phone tower triangulation.

Ark. Code Ann. § 9-15-218 -- Commercial mobile radio service accounts—Transfer order

(a) Commencing July 1, 2017, at an initial or subsequent hearing on a petition filed under this subchapter, to ensure that the petitioner may maintain his or her existing wireless telephone number and the wireless numbers of minor children in the petitioner's care, the court may issue an order directing a wireless telephone service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the petitioner if the petitioner:

- (1) Is not the account holder; and
- (2) Proves by a preponderance of the evidence that the petitioner and any minor children in the petitioner's care are the primary users of the wireless telephone numbers that will be ordered transferred by a court under this subsection.

(b)

(1) An order transferring the billing responsibility for and rights to the wireless telephone number or numbers to a petitioner under subsection (a) of this section shall be a separate order that is directed to the wireless telephone service provider.

(2) The order shall list:

- (A) The name and billing telephone number of the account holder;
- (B) The name and contact information of the petitioner to whom the telephone number or numbers will be transferred; and
- (C) Each telephone number to be transferred to the petitioner.

(3) The court shall ensure that the petitioner's contact information is not provided to the account holder in proceedings held under this subchapter.

(4) The order shall be served on the wireless telephone service provider's agent for service of process listed with the Secretary of State.

(5) The wireless service provider shall notify the requesting party if the wireless telephone service provider cannot operationally or technically effectuate the order due to certain circumstances, including when:

- (A) The account holder has already terminated the account;

(B) Differences in network technology prevent the functionality of a device on the network; or

(C) There are geographic or other limitations on network or service availability.

(c)

(1) Upon a wireless telephone service provider's transfer of billing responsibility for and rights to a wireless telephone number or numbers to a petitioner under subsection (b) of this section, the petitioner shall assume:

(A) Financial responsibility for the transferred wireless telephone number or numbers;

(B) Monthly service costs; and

(C) Costs for any mobile device associated with the wireless telephone number or numbers.

(2) A transfer ordered under subsection (a) of this section does not preclude a wireless telephone service provider from applying any routine and customary requirements for account establishment to the petitioner as part of the transfer of billing responsibility for a wireless telephone number or numbers and any devices attached to that number or numbers, including without limitation identification, financial information, and customer preferences.

(d) This section does not affect the ability of the court to apportion the assets and debts of the parties, or the ability to determine the temporary use, possession, and control of personal property under § 9-12-301 et seq.

(e) Notwithstanding any other provision of the law, a wireless telephone service provider, or an officer, employee, assign, or agent of the wireless telephone service provider is not civilly liable for action taken in compliance with an order issued under this subchapter or for a failure to process an order issued under this subchapter.

Ark. Code Ann. § 9-15-219 -- Order of protection—Course of control

(a) As used in this section:

(1)

(A) "Course of control" means a pattern of behavior that in purpose or effect unreasonably interferes with the free will and personal liberty of a person.

(B) "Course of control" includes without limitation the following:

(i) Unreasonably isolating a person from his or her friends, relatives, or other sources of support;

(ii) Unreasonably depriving a person of basic necessities;

(iii) Unreasonably controlling, regulating, or monitoring a person's movements, communications, daily behavior, finances, economic resources, or access to resources; and

(iv) Unreasonably compelling a person by intimidation, force, threat of force, or threat based on actual or suspected immigration status to engage in conduct from which the person has a right to abstain or to abstain from conduct in which the person has a right to engage; and

(2)

(A) "Disturbing the peace" means a pattern of behavior that unreasonably destroys the mental or emotional calm of a family or household member based on the totality of the circumstances.

(B) "Disturbing the peace" includes without limitation course of control.

(b) A court may enter an ex parte order enjoining a party from engaging in course of control or disturbing the peace, including without limitation through one (1) or more of the following acts:

- (1) Molesting the other party;
- (2) Attacking the other party;
- (3) Striking the other party;
- (4) Stalking the other party;
- (5) Threatening the other party;
- (6) Sexually assaulting the other party;
- (7) Battering the other party;
- (8) Credibly impersonating the other party;
- (9) Falsely impersonating the other party;
- (10) Harassing the other party;
- (11) Telephoning the other party with the intent to harass the other party;
- (12) Destroying the personal property of the other party;
- (13) Directly or indirectly contacting the other party with the intent to harass the other party;
- (14) Coming within a specified distance of the other party;
- (15) Disturbing the peace of the other party;
- (16) Disturbing the peace of a family member or household member of the other party; or
- (17) Any other act that the court determines should be enjoined.

(c)

(1) Upon a showing of good cause, an order of protection may include an order granting the petitioner the exclusive care, possession, or control of an animal owned, possessed, leased, kept or held by:

(A) The petitioner;

- (B) The respondent; or
 - (C) A minor residing in the residence or household of either the petitioner or respondent.
- (2) The court may order the respondent to refrain from:
- (A) Coming into contact with the animal; or
 - (B) Taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.
- (d) This section does not limit any other remedy available to a petitioner by another provision of law.

Ark. Code Ann. § 12-12-215 -- Registry of Orders of Protection

(a) In addition to other duties as provided, the Arkansas Crime Information Center shall maintain a registry of all orders of protection and temporary orders of protection issued by a court of this state or registered in this state.

(b)

(1) Upon receipt of an authorized order of protection, temporary order of protection, or any modification or cancellation of such orders, a court clerk shall immediately forward a copy to the county sheriff of the county for service.

(2) The county sheriff shall immediately enter or cause to be entered such orders and any subsequent modifications or cancellations into the center system.

(3) If the county sheriff does not have a center terminal and entries are made by another agency that does have a center terminal, that agency shall make such entries immediately upon receipt of information from the county sheriff.

(4) Only orders which are consistent with § 9-15-302(b) may be entered into the center system.

(c) Information contained in the registry shall be determined by the Supervisory Board for the Arkansas Crime Information Center. Orders of protection and temporary orders of protection required to be entered into the center system shall include, at a minimum, the full name and date of birth of the subject of the order for proper identification.

(d) Information contained in the registry shall be deemed confidential and shall be available at all times only to courts, law enforcement, and prosecuting attorneys.

Ark. Code Ann. § 9-15-302 -- Out-of-State Protection Orders, Full Faith and Credit

(a) An order of protection shall be afforded full faith and credit by the courts of this state and shall be enforced by law enforcement as if it were issued in this state if the order of protection:

(1) Meets the requirements of subsection (b) or subsection (c) of this section and is issued by a court of another state, a federally recognized Indian tribe, or a territory; or

(2) Is a military order of protection as defined under § 5-53-134(f)(1).

(b) An order of protection issued by a court of another state, a federally recognized Indian tribe, or a territory meets the requirements of this section if:

(1) The court had jurisdiction over the parties and matters under the laws of the other state, the federally recognized Indian tribe, or the territory; and

(2)

(A) Reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right to due process.

(B) In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the laws or rules of the other state, the federally recognized Indian tribe, or the territory and, in any event, within a reasonable time after the order is issued sufficient to protect the due process rights of the party against whom the order is enforced.

(c) An order of protection issued against both the petitioner and the respondent by a court of another state, a federally recognized Indian tribe, or a territory shall not be enforceable against the petitioner unless:

(1) The respondent filed a cross or counter petition, complaint, or other written pleading seeking an order of protection;

(2) The issuing court made specific findings against both the petitioner and the respondent; and

(3) The issuing court determined that each party was entitled to an order.

(d)

(1) A person seeking recognition and enforcement of an out-of-state order of protection under this section may present a copy of the order of protection to the local law enforcement office in the city or county where enforcement of the order may be necessary.

(2) After receiving a copy of the order of protection, the local law enforcement office shall enter the order into the Arkansas Crime Information Center's protection order registry file.

(3) There shall be no fee for entering the out-of-state order of protection.

(4) The law enforcement office shall not notify the party against whom the order has been issued that an out-of-state order of protection has been entered in this state.

(5) Entry of the out-of-state order of protection into the center's protection order registry file shall not be required for enforcement of the order of protection in this state.

(e)

(1)

(A) When enforcing an out-of-state order of protection, a law enforcement officer shall determine if there is probable cause to believe that an out-of-state order of protection exists.

(B) A law enforcement officer may rely upon:

(i) An out-of-state order of protection that has been provided to the officer by any source; or

(ii)

(a) The statement of any person protected by an out-of-state order of protection that the order exists; and

(b) Verification by the clerk of the court of the other state, the federally recognized Indian tribe, or the territory in writing, by telephone, or by facsimile transmission or other electronic transmission.

(2)

(A) When enforcing an out-of-state order of protection, a law enforcement officer shall determine if there is probable cause to believe that the terms of the order have been violated.

(B) The law enforcement officer may rely upon:

(i) Any events he or she witnessed;

(ii) The statement of any person who claims to be a witness; or

(iii) Any other evidence.

(3) A law enforcement officer shall not refuse to enforce the terms of the order of protection on the grounds that the order has not been filed with the local law enforcement office or entered into the center's protection order registry file unless the law enforcement officer has a reasonable belief that the order is not authentic on its face.

Ark. Code Ann. § 9-15-403 -- Spousal Abuse Safety Plan, Definitions

As used in this subchapter:

(1) "Emotional abuse" means any of the following acts:

(A) Verbally attacking or threatening a spouse by yelling, screaming, or name-calling;

(B) Using criticism, social isolation, intimidation, or exploitation to dominate a spouse;

(C) Criminally harassing a spouse;

(D) Stalking a spouse;

(E) Threatening a spouse or his or her loved ones;

(F) Damaging a spouse's possessions; or

(G) Harming the pet of a spouse;

(2)

(A) "Physical abuse" means any of the following acts:

(i) Using physical force in a way that injures a spouse or puts him or her at risk of being injured; or

(ii) Beating, hitting, shaking, pushing, choking, biting, burning, kicking, or assaulting a spouse with a weapon.

(B) "Physical abuse" may consist of one (1) or more incidents described under subdivision (2)(A) of this section;

(3)

(A) "Sexual abuse" means any of the following acts:

(i) Forcing a spouse to participate in unwanted, unsafe, or degrading sexual activity; or

(ii) Using ridicule or other tactics to try to denigrate, control, or limit a spouse's sexuality or reproductive choices.

(B) "Sexual abuse" includes rape, sexual assault, or sexual harassment; and

(4)

(A) "Spousal abuse" means an act of violence or mistreatment that a woman or a man may experience at the hands of his or her marital partner, regardless of the timing of the act in terms of the stage of the relationship.

(B) "Spousal abuse" includes any of the following committed by a spouse against his or her spouse:

(i) Emotional abuse;

(ii) Physical abuse; or

(iii) Sexual abuse.

Ark. Code Ann. § 9-15-404 -- Spousal Abuse Safety Plans and Education

The purpose of this subchapter is to:

(1) Develop increased and improved security measures that provide greater protection for victims of spousal abuse, especially those who have orders of protection;

(2) Help victims create a safety plan to keep them and their children as safe as possible by developing publications as described under § 9-15-405 on what to do and where to go if danger occurs;

(3) Make safety plan publications as described under § 9-15-405 available in public health centers and for distribution to victims by police officers when responding to spousal abuse calls;

(4) Create special training initiatives regarding the dynamics of spousal abuse for police intake officers, health officials, and social workers in order to help ensure a continuously improving response to spousal abuse;

- (5) Encourage the development of community-based, civic-based, and faith-based healthy relationship courses to teach to both adolescent boys and adolescent girls as they begin to date:
- (A) The elements of healthy relationships;
 - (B) Acceptable and unacceptable behavior in relationships;
 - (C) The concept of respect;
 - (D) Conflict resolution techniques;
 - (E) Antiviolence; and
 - (F) The prevention of sexual assault and sexual harassment;
- (6) Help raise awareness about the devastating impact that spousal abuse has on children and families; and
- (7) Assist with the development of increased protection of victims of spousal abuse by establishing standards for protection and response by convening a committee of relevant experts in the field of health care and law enforcement to recommend standards to the General Assembly.

Ark. Code Ann. § 9-15-405 -- Spousal Abuse Safety Plans, Training Materials

- (a) The Arkansas Child Abuse/Rape/Domestic Violence Commission, in consultation with experts on spousal abuse prevention and intervention, shall develop educational material and training material to address the issues under this subchapter.
- (b) The educational material and training material shall be published and distributed around the state.

Ark. Code Ann. § 12-12-107 -- Adult Abuse and Domestic Violence Reporting

- (a) As used in this section:
- (1) "Adult" means an individual eighteen (18) years of age or older who is not a maltreated adult under the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq.; and
 - (2) "Health care provider" means a person, corporation, facility, or institution licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.
- (b) A health care provider may report to a law enforcement agency an injury to an adult that the health care provider has reason to believe is the result of a battery or other physically abusive conduct, including physical injuries resulting from domestic violence, if the:
- (1) Injured adult agrees; or
 - (2) Health care provider determines that the report is necessary to prevent serious harm to the injured adult.

(c) A health care provider that makes a report under subdivision (b)(2) of this section shall promptly inform the injured adult that the report has been or will be made.

(d) A report under this section shall state the name of the injured adult and the character and extent of the adult's injuries.

(e) A report under this section shall be made to one (1) or more of the following law enforcement agencies:

- (1) The county sheriff;
- (2) Within a city of the first class, the municipal law enforcement agency; or
- (3) The Department of Arkansas State Police.

(f) A health care provider making or deciding not to make a report in good faith under this section is immune from criminal or civil liability for making or deciding not to make the report.

Ark. Code Ann. § 12-12-108 -- Domestic Violence Investigation

(a) When a law enforcement agency responds to a report of domestic violence, the first law enforcement officer to interview a victim of domestic violence shall assess the potential for danger by asking a series of questions provided on a lethality assessment form.

(b) The lethality assessment form shall be completed with the following information from the victim:

- (1) Whether the offender ever used a weapon against the victim or threatened the victim with a weapon;
- (2) Whether the offender threatened to kill the victim or victim's children;
- (3) Whether the victim believes the offender will try to kill him or her;
- (4) Whether the offender ever tried to choke the victim;
- (5) Whether the offender is violently or constantly jealous;
- (6) Whether the offender controls most of the victim's daily activities;
- (7) The victim's current living situation and if he or she has recently left or separated from the offender after living together or being married;
- (8) The victim's employment status;
- (9) Whether the offender has ever attempted suicide to the best of the victim's knowledge;
- (10) Whether the victim has a child that the offender believes is not the offender's biological child;
- (11) Whether the offender follows, spies on, or leaves threatening messages for the victim; and
- (12) Any other pertinent information, including any other conditions or circumstances that concern the victim regarding his or her safety.

(c) Based on the results of the lethality assessment under this section, the law enforcement officer compiling the information required by this section from the victim may refer the victim to an available shelter or domestic violence intervention program and shall comply with § 16-90-1107.

Ark. Code Ann. § 12-12-109 -- Domestic Violence, Victimless Prosecution

(a) A law enforcement agency that investigates a complaint or accusation of domestic violence shall do so in a manner that allows the prosecuting attorney to prosecute the offense if the prosecuting attorney has probable cause an offense was committed and achieve a guilty verdict based on evidence independent of the testimony of the victim of the offense.

(b) Compliance with this section may be achieved through the collection of evidence, including without limitation:

- (1) Witness statements;
- (2) Properly obtained statements from the alleged offender;
- (3) Medical records;
- (4) Photographs or other media;
- (5) Other physical evidence; and
- (6) Statements from the victim that are exclusions or exceptions to Rule 802 of the Arkansas Rules of Evidence.

Ark. Code Ann. § 16-81-113 -- Rights of Victims of Crimes

(a)

(1)

(A) Except as provided in subdivision (a)(3) of this section, when a law enforcement officer has probable cause to believe a person has committed acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined in subdivision (b)(1) of this section against a family or household member, the officer may arrest the person without a warrant if the law enforcement officer has probable cause to believe the person has committed those acts within the preceding four (4) hours or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102, even if the incident did not take place in the presence of the law enforcement officer.

(B) The arrest of the person shall be considered the preferred action by the law enforcement officer when evidence indicates that domestic abuse has occurred in addition to a violation of the Arkansas Criminal Code, § 5-1-101 et seq.

(2)

(A) When a law enforcement officer receives conflicting accounts of an act of domestic abuse involving family or household members, the law enforcement officer shall evaluate each account separately to determine if one (1) party to the act of domestic abuse was the predominant aggressor.

(B)

(i) When determining if one (1) party to an act of domestic abuse is the predominant aggressor, a law enforcement officer shall consider the following factors based upon his or her observation:

(a) Statements from parties to the act of domestic abuse and other witnesses;

(b) The extent of personal injuries received by parties to the act of domestic abuse;

(c) Evidence that a party to the act of domestic abuse acted in self-defense; or

(d) Prior complaints of domestic abuse if the history of prior complaints of domestic abuse can be reasonably ascertained by the law enforcement officer.

(ii) A law enforcement officer may consider any other relevant factors when determining if one (1) party to an act of domestic abuse is the predominant aggressor.

(3)

(A) When a law enforcement officer has probable cause to believe a person that is a party to an act of domestic abuse is the predominant aggressor and the act of domestic abuse would constitute a felony under the laws of this state, the law enforcement officer shall arrest the person who was the predominant aggressor with or without a warrant if the law enforcement officer has probable cause to believe the person has committed the act of domestic abuse within the preceding four (4) hours, or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102, even if the incident did not take place in the presence of the law enforcement officer.

(B)

(i) When a law enforcement officer has probable cause to believe a person who is a party to an act of domestic abuse is the predominant aggressor and the act of domestic abuse would constitute a misdemeanor under the laws of this state, the arrest with or without a warrant of the person who was the predominant aggressor shall be considered the preferred action by the law enforcement officer if there is reason to believe that there is an imminent threat of further injury to any party to the act of domestic abuse and the law enforcement officer has probable cause to believe the person has committed the act of domestic abuse within the preceding four (4) hours or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102, even if the incident did not take place in the presence of the law enforcement officer.

(ii) When a law enforcement officer has probable cause to believe a person who is a party to an act of domestic abuse is the predominant aggressor and the act of domestic abuse would constitute a misdemeanor under the laws of this state, the law enforcement officer may arrest the person without a warrant if the law enforcement officer has probable cause to believe the person has committed those acts within the preceding four (4) hours, or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102, even if the incident did not take place in the presence of the law enforcement officer.

(4) Any law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse shall have immunity from civil liability.

(b) As used in this section:

(1)

(A) "Dating relationship" means a romantic or intimate social relationship between two

(2) individuals which shall be determined by examining the following factors:

(i) The length of the relationship;

(ii) The type of the relationship; and

(iii) The frequency of interaction between the two (2) individuals involved in the relationship.

(B) "Dating relationship" shall not include a casual relationship or ordinary fraternization in a business or social context between two (2) individuals;

(2) "Domestic abuse" means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(B) Any sexual conduct between family or household members, whether minors or adults, which constitutes a crime under the laws of this state; and

(3) "Family or household member" means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, any child residing in the household, persons who have resided or cohabited together presently or in the past, persons who have or have had a child in common, and persons who have been in a dating relationship together presently or in the past.

(c)

(1) Any person arrested under the provisions of this section shall be taken before a judicial officer without unnecessary delay.

(2) The judicial officer shall conduct a pretrial release inquiry of the person.

(d) The inquiry should take the form of an assessment of factors relevant to the release decision such as:

(1) The person's employment status, history, and financial condition;

- (2) The nature and extent of his or her family relationships;
 - (3) His or her past and present residence;
 - (4) His or her character and reputation;
 - (5) Persons who agree to assist him or her in attending court at the proper times;
 - (6) The nature of the charge and any mitigating or aggravating factors that may bear on the likelihood of conviction and the possible penalty;
 - (7) The person's prior criminal record, if any, and if he or she previously has been released pending trial, whether he or she appears as required;
 - (8) Any facts indicating the possibility of violations of law if the person is released without restrictions; and
 - (9) Any other facts tending to indicate that the person has strong ties to the community and is not likely to flee the jurisdiction of the court.
- (e) The judicial officer may impose one (1) or more of the following conditions of release:
- (1) Placing the person under the care of a qualified person or organization agreeing to supervise the person and assist him or her in appearing in court;
 - (2) Imposing reasonable restrictions on the activities, movements, associations, and residences of the person; and
 - (3) Imposing any other reasonable restrictions to ensure the appearance of the person at future judicial hearings.

Ark. Code Ann. § 16-90-1107 -- Information from Law Enforcement Agencies

- (a)
- (1) After initial contact between a victim or a victim's family and a law enforcement agency responsible for investigating a crime, the law enforcement agency shall promptly give the victim and, if applicable, the victim's family, a preprinted document to be known as "Laura's Card" that clearly states the following:
 - (A) An explanation of the victim's rights under this subchapter; and
 - (B) Information concerning the availability of:
 - (i) Assistance to victims, including medical, housing, counseling, financial, social, legal, and emergency services;
 - (ii) Compensation for victims under the Arkansas Crime Victims Reparations Act, § 16-90-701 et seq., and the name, street address, and telephone number of the agency to contact;
 - (iii) Protection of the victim, including protective court orders; and
 - (iv) Access by the victim and the defendant to public records related to the case.

(2) The law enforcement officer who provides the Laura's Card to a victim is required to provide the law enforcement officer's badge number and contact information on the Laura's Card.

(b) As soon as practicable, the law enforcement agency shall give to the victim, as relevant, the following:

(1) Information as to the suspect's identity, unless inconsistent with law enforcement purposes;

(2) Information as to whether the suspect has been taken into custody, has escaped, or has been released, and any conditions imposed on the release when such information has been made known to the law enforcement agency;

(3) The file number of the case and the name, office address, and office telephone number of a law enforcement officer assigned to investigate the case; and

(4) The prosecuting attorney's name, office address, and office telephone number.

(c) As used in this section, "law enforcement agency" includes without limitation a college or university police department.

RESOURCES

SHELTERS

Note: Shelters are alphabetized by city. They will not turn you away just because you do not live within a certain geographic area. Any shelters containing an asterisk (*) after the name is both a Rape Crisis Shelter and a Domestic Violence Shelter.

-A-

Courage House

P.O. Box 924
Arkadelphia, AR 71923
Hotline: 870-246-2587
Office: 870-246-3122

The Haven of Northeast Arkansas

P.O. Box 1062
Blytheville, AR 72316
Hotline: 800-474-1064
Office: 870-532-6669
Email: Phyllis.Mcclendon@att.net

-B-

Taylor House for Men

P.O. Box 2943
Batesville, AR 72503
Hotline: 870-569-8024
Office: 870-569-8024
Email: thetaylorhouse2015@gmail.com

-C-

Dove House

P.O. Box 806
Clinton, AR 72031
Office: 501-745-5657

Family Violence Prevention, Inc.*

P.O. Box 2943
Batesville, AR 72503
Hotline: 800-894-8821
Office: 870-793-4011
Email: fvp2943@gmail.com

Lonoke County Safe Haven

P.O. Box 414
Cabot, AR 72023
Hotline: 501-941-4357
Office: 501-941-0899
Email: director@lcs.org

Batesville Rape Crisis Center*

P.O. Box 2944
Batesville, AR 72504
Hotline: 800-894-8821
Office: 870-793-4011
Email: fvp2943@gmail.com

Women's Crisis Center of South Arkansas*

P.O. Box 1149
Camden, AR 71701
Hotline: 888-836-0325
Office: 870-836-0375
Email: acadv6@sbcglobal.net

Saline County Safe Haven, Inc.

P.O. Box 1100
Benton, AR 72018
Hotline: 501-315-7233
Office: 501-315-7233
Email: s.c.safehaven@sbcglobal.net

Women's Shelter of Central Arkansas

P.O. Box 2557
Conway, AR 72033
Hotline: 866-358-2265
Office: 501-329-7405
Email: wsca@conwaycorp.net

-D-

Samaritan Outreach

P.O. Box 183
Dardanelle, AR 72834
Hotline: 479-229-3300
Office: 479-229-3300
Email: pjoglee@hotmail.com

Southwest Arkansas Crisis Center

P.O. Box 87
De Queen, AR 71832
Hotline: 870-584-3441
Office: 870-642-2141

-E-

Turning Point Violence Intervention Program*

900 E. First St.
El Dorado, AR 71730
Hotline: 800-980-0929
Office: 870-862-3672
Email: turningpointvip@suddenlinkmail.com

-F-

Peace at Home Family Shelter

P.O. Box 10946
Fayetteville, AR 72703
Hotline: 877-442-9811
Office: 479-444-8310
Email: tmills@peaceathomeshelter.com

Donald W. Reynolds Crisis Intervention Center*

5603 S. 14th St.
Ft. Smith, AR 72901
Hotline: 800-359-0056
Office: 479-782-1821
Email: Kathleen@fscic.org

-H-

Sanctuary

P.O. Box 762
Harrison, AR 72601
Hotline: 870-741-2121
Office: 870-204-5980
Email: sanctuary1981@windstream.net

Margie's Haven House

P.O. Box 954
Heber Springs, AR 72543
Hotline: 501-362-6757
Office: 501-362-6757
Email: margieshavenhouse@att.net

Spring River Adult and Child Services

52 Highland Cove Drive
Highland, AR 72542
Office: 870-856-3500

Angels of Grace*

406 Pecan St.
Helena, AR 72342
Hotline: 877-572-9530
Office: 870-338-8447
Email: ggonner0614@yahoo.com

Anna's Place (Forrest City)*

406 Pecan St.
Helena, AR 72342
Hotline: 877-572-9530
Office: 870-338-8447
Email: rosieburton71@yahoo.com

The Potter's Clay Women and Children in Crisis Shelter

110 Crescent Ave.
Hot Springs, AR 71901
Hotline: 501-624-1366

-J-

Family Crisis Center, Inc.

P.O. Box 721
Jonesboro, AR 72403
Hotline: 870-933-9449
Office: 870-972-9575
Email: vcrego@nefamilycrisiscenter.org

**Women's Crisis Center of Northeast
Arkansas**

P.O. Box 721
Jonesboro, AR 72043
Hotline: 800-332-4443
Office: 870-972-9575

-L-

The Dorcas House

823 S. Park
Little Rock, AR 72202
Hotline: 501-374-4022
Office: 501-374-4022

Women and Children First

P.O. Box 1954
Little Rock, AR 72203
Hotline: 800-332-4443
Office: 501-376-3219
Email: amcgraw@wcfarkansas.org

-M-

Living Water

P.O. Box 1734
Magnolia, AR 71754
Hotline: 870-235-1414
Office: 870-235-1415
Email: cflivingwater@yahoo.com

Safe Passage*

P.O. Box 755
Melbourne, AR 72556
Hotline: 870-368-3222
Office: 870-368-3236
Email: safepassage72556@yahoo.com

Options, Inc.*

P.O. Box 554
Monticello, AR 71657
Hotline: 870-367-3488
Office: 870-460-0684
Email: options.inc1989@gmail.com

The Safe Place

P.O. Box 364
Morrilton, AR 72110
Hotline: 888-554-2501, 501-354-1884
Office: 501-354-1884
Email: thesafeplace@suddenlinkmail.com

Serenity, Inc.

P.O. Box 1111
Mountain Home, AR 72654
Hotline: 870-424-7233
Office: 870-424-7576
Email: niki@serenityinc.org

Stone County Abuse Prevention, Inc.

P.O. Box 689
Mountain View, AR 72560
Hotline: 800-924-5356
Office: 870-269-9941
Email: scap@mvtel.net

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White River Battered Women's Shelter

P.O. Box 304
Newport, AR 72112
Hotline: 870-523-5000
Office: 870-523-5403
Email: wrbws@hotmail.com

-P-

CASA Women's Shelter

P.O. Box 6705
Pine Bluff, AR 71601
Hotline: 870-535-2955
Office: 870-535-2955
Email: Kap64@yahoo.com

-R-

Northwest Arkansas Women's Shelter*

P.O. Box 1059
Rogers, AR 72757
Hotline: 800-775-9011
Office: 479-246-0353
Email: jmcgee@nwaws.org

**River Valley Shelter for Battered Women
and Children**

P.O. Box 2066
Russellville, AR 72811
Hotline: 800-690-4219
Office: 479-968-3110
Email: river000@centurytel.net

-S-

**White County Domestic Violence
Prevention**

P.O. Box 1196
Searcy, AR 72145
Hotline: 501-278-4673
Office: 501-278-5130
Email: wcdvp@sbcglobal.net

Keeping the Faith

P.O. Box 323
Sheridan, AR 72150
Hotline: 870-942-9994
Office: 870-942-7373
Email: ucrcinc@windstream.net

Restoration of Hope

P.O. Box 812
Stuttgart, AR 72160
Hotline: 866-884-4637
Office: 870-672-4341
Email: restofhope@centurytel.net

-T-

**Domestic Violence Prevention and Sexual
Assault Services***

P.O. Box 712
Texarkana, AR 75504
Hotline: 903-793-4357
Office: 903-794-4000
Email: pam@dvptxk.org

-W-

Families in Transition

P.O. Box 15
West Memphis, AR 72303
Hotline: 870-732-4077
Office: 870-732-4077
Email: fitfamilies@comcast.net

Additional Resources

Arkansas Coalition Against Domestic Violence

1401 West Capitol Avenue, Suite 170
Little Rock AR 72201
Phone: 501-907-5612
Hotline: 800-269-4668
Fax: 501-907-5618
www.domesticpeace.com

Louisiana Coalition Against Domestic Violence

P.O. Box 77308
Baton Rouge, LA 70879-7308
Phone: 225-752-1296
Fax: 225-751-8927
www.lcadv.org

Texas Council on Family Violence

PO Box 161810
Austin, Texas 78716
Phone: 512-794-1133
www.tcfv.org

Mississippi Coalition Against Domestic Violence

P.O. Box 4703
Jackson, MS 39296
Phone: 1-800-898-3234
www.mcadv.org

Missouri Coalition Against Domestic Violence

415 East McCarty Street
Jefferson City, MO 65101
Phone: 573-634-4161
Fax: 573-636-3728
www.mocadv.org

Tennessee Coalition to End Domestic and Sexual Violence

2 International Plaza Drive, Suite 425
Nashville, TN 37212
Office: 615-386-9406
Fax: 615-383-2967
Toll Free Information Line: (800) 289-9018
(8 a.m. - 5 p.m. M-TR)
Statewide Domestic Violence and Child Abuse Hotline: (800) 356-6767
www.tncoalition.org

Oklahoma Coalition Against Domestic Violence and Sexual Assault

3815 N. Santa Fe
Oklahoma City, OK 73118
Phone: 405-524-0700
Hotline: 1-800-522-7233
Fax: 405-524-0711
<http://ocadvsa.org>

Arkansas Online Resources

Arkansas Coalition Against Sexual Assault

www.acasa.us

Arkansas Commission on Child Abuse, Rape and Domestic Violence

<http://www.accardv.uams.edu/>

Arkansas Crime Information Center

www.acic.org

Arkansas Crisis Center

www.arcrisis.org

Arkansas Administrative Office of the Courts: Domestic Violence Program

<http://www.arcourtsdvp.org/>

Arkansas Sexual Predatory Registry

www.acic.org/Registration/index.htm

Arkansas Victim Notification Program (VINE)

www.vinelink.com

Partners for Inclusive Communities, University of Arkansas

<http://uofapartners.uark.edu/>

Peace at Home Family Shelter

www.peaceathomeshelter.org

Serenity, Inc.

<http://www.serenityinc.org/>

Southwest Arkansas Domestic Violence Center, Inc.

<http://www.swadv.org/>

National Online Resources

A.A.R.D.V.A.R.C. - An Abuse, Rape, and Domestic Violence Aid and Resource Collection

<http://www.aardvarc.org/dv/states/arkdv.shtml>

American Bar Association - Commission on Domestic and Sexual Violence

http://www.americanbar.org/groups/domestic_violence.html

Americans Overseas Domestic Violence Crisis Center

www.866uswomen.org

Domesticshelter.org

www.domesticshelters.org

National Center on Domestic and Sexual Violence

www.ncdsv.org

The National Center for Victims of Crime

www.victimsofcrime.org

National Child Abuse Hotline/ChildHelp

www.childhelp.org

National Coalition Against Domestic Violence

<http://www.ncadv.org/>

National Coalition for the Homeless

www.nationalhomeless.org

National Council of Juvenile and Family Court Judges

www.ncjfcj.org

Love is Respect (formerly the National Dating Abuse Helpline)

www.loveisrespect.org

National Domestic Violence Hotline

<http://www.thehotline.org/>

National Network to End Domestic Violence (NNEDV)

www.nnedv.org

National Organization for Victim Assistance

www.try-nova.org

Rape, Abuse & Incest National Network (RAINN)

www.rainn.org

National Suicide Prevention Lifeline

www.suicidepreventionlifeline.org

The Stalking Victim's Sanctuary

www.stalkingvictims.com

Cultural Online Resources

Alianza: National Latino Alliance for the Elimination of Domestic Violence

www.dvalianza.org

Asian and Pacific Islander Institute on Domestic Violence

www.apiidv.org

Casa de Esperanza

www.casadeesperanza.org

INCITE! Women, Gender Non-Conforming and Trans people of Color Against Violence

www.incite-national.org

The National Immigrant Women's Advocacy Project

<http://www.niwap.org/>

Women of Color Network

www.wocninc.org

Elder Online Resources

Department of Health and Human Services: National Center on Elder Abuse Administration on Aging

<http://www.ncea.aoa.gov/>

National Clearinghouse on Abuse in Later Life

www.ncall.us

Gender Specific Online Resources

A Call to Men

www.acalltomen.org

Men Stopping Violence

www.menstoppingviolence.org

National Clearinghouse for the Defense of Battered Women

www.ncdbw.org

Womenslaw.org

www.womenslaw.org

LGTB Online Resources

National Coalition of Anti-Violence Programs

<http://www.avp.org/about-avp/coalitions-a-collaborations/82-national-coalition-of-anti-violence-programs>

Legal Online Resources

American Bar Association Commission on Domestic Violence

http://www.americanbar.org/groups/domestic_violence.html

Arkansas Legal Services Partnership

<http://www.arlegalservices.org/domesticviolence>

Battered Women's Justice Project

www.bwjp.org

Child Welfare League of America

www.cwla.org

Legal Momentum: The Women's Legal Defense and Education Fund

www.legalmomentum.org

U.S. Department of Justice - Office of Violence Against Women

<http://www.justice.gov/ovw>

Special Services Online Resources

Deaf Abused Women's Network (DAWN)

<http://deafdawn.org/>

Teen Online Resources

Break the Cycle

www.breakthecycle.org

Domestic Violence Initiative

www.dviforwomen.org

Love is respect

www.loveisrespect.org