

WOMEN AND FAMILIES IN CRISIS

*A Guide for Victims of Domestic Violence and Other Facing
Separation, Divorce, Support and Custody Decisions*

Revised July 2007



**A Legal Education Publication
Provided by:**

Legal Services of Northern Virginia, Inc.

Justice for a better community

Printed with assistance from:
Arlington County Bar Foundation,
Alexandria Bar Foundation & Freddie Mac

IMPORTANT

Everyone's situation is different and most rules have exceptions. The information in this booklet is intended only for general informational purposes in the Commonwealth of Virginia. It may not apply to your individual situation. Therefore, it is advisable to discuss your particular situation with a lawyer.

Legal Services of Northern Virginia offers free legal assistance to financially eligible residents of Alexandria, the counties of Arlington, Fairfax, Loudoun, and Prince William, as well as independent cities within these areas. Eligibility guidelines will be explained to you when you call.

On behalf of the clients, board of directors, and staff of Legal Services of Northern Virginia, we would like to offer our sincere appreciation to the Arlington County Bar Foundation, the Alexandria Bar Foundation and Freddie Mac for their support. Their generosity makes the production of this publication possible.

Women and Families in Crisis
is written and updated by
Family Law Practice Group
Of Legal Services of Northern Virginia

TABLE OF CONTENTS

INTRODUCTION

- 1. What is the purpose of this handbook?**
- 2. How can I get legal help?**

ABUSIVE RELATIONSHIPS

- 3. What is battering?**
- 4. What if I am in pain or have been injured?**
- 5. I am afraid my children are being abused. What constitutes abuse?**
- 6. Who should I contact if I think my children are being abused?**
- 7. Who should I contact if I feel an elderly person or physically impaired adult is being abused, neglected, or injured?**

GETTING OUT

- 8. If I decide to leave, how do I get out?**
SAFETY PLAN WORKSHEET
- 9. Should I take the children?**
- 10. What should I take with me when I leave?**

11. What about my personal possessions, the children's property, the marital home and joint credit card debt?
12. How can I get things I left behind?
13. What do I do if I am locked out or I am afraid the abuser will be at home?

A PLACE TO STAY

14. If I decide to leave, where should I go?
15. What is an emergency shelter?
16. I want to stay in my house. Can I make the abuser leave?
17. How can I obtain permanent housing for myself and my children?

YOUR SAFETY

18. How can I protect myself?
19. Is domestic violence a crime?
20. Is stalking a crime?
21. How do I get a warrant?
22. What will happen after I get a warrant?
23. Why should I take criminal action?
24. What happens when we go to Court?
25. What is the difference between a Criminal Assault Warrant and a Petition for a Protective Order? What will happen if the abuser is found guilty?
26. What is a Protective Order?
27. How can I get a Protective Order?
28. What type of counseling and substance abuse treatment programs can the Judge order the abuser to attend?
29. What is an Emergency Protective Order?
30. Can I still get a Protective Order if I have sworn out a Criminal Assault Warrant?
31. What can I do if I have not been physically assaulted, but I am being stalked?
32. Is a Protective Order from another state valid in Virginia?
33. Can the abuser's gun be taken away?
34. How do I get a lawyer to help me get a Protective Order?

MONEY, FOOD AND CLOTHING

35. Can I get money from the Virginia Department of Social Services (Welfare Department)?
36. How long will it be before I start getting TANF payments?
37. How much money will I get?
38. Will the Department of Social Services contact the other parent of the children?
39. Where do I apply for TANF benefits?
40. What should I do if my application is turned down?
41. How do I get child support?
42. Do I need a lawyer?
43. How is child support determined and how much child support will I get?
44. What should I do if the court orders support, but the other parent doesn't pay it?
45. What should I do if I have been receiving support but it isn't enough?

46. Can I get child support if I am getting TANF?
47. Can I get money from Social Services if I don't have children?
48. Can I get support from my spouse for myself?

SEPARATION AND DIVORCE

49. What are the grounds for divorce in Virginia?
50. Can I get a legal separation?
51. What is a separation agreement or property settlement agreement?
52. Where do I file for divorce?

CUSTODY AND VISITATION

53. If my children are living with me, do I have custody of them?
54. How do I get court-ordered custody?
55. If both parents want custody of the children, how does the Judge decide?
56. Should I bring witnesses to testify for me?
57. I don't want the other parent to see the children. What can I do?
58. The other parent doesn't pay child support. Why should visitation be allowed?

IMMIGRATION

59. I am not a US Citizen or Legal Resident; can I be deported if I file for a Protective Order?
60. My abuser is not a US Citizen or Legal Resident; can he be deported if I get a Protective Order against him? Can he be deported if he is convicted of an assault and batter?

STAYING TOGETHER

61. If I decide to stay with the abuser, how can I make things better?62. I want to leave, but the children want the family to stay together. What should I do?

INTRODUCTION

Every 12½ minutes a victim of domestic violence in Virginia seeks help from a domestic violence program.

Cases involving family abuse or stalking are a priority for Legal Services of Northern Virginia (LSNV). In an effort to provide information and legal assistance for all victims of domestic violence, LSNV has been published and revised this handbook since 1992 to provide up-to-date information to victims of domestic violence. Also, in 1996 LSNV initiated a domestic violence law project, which provides free legal representation to victims of domestic violence seeking protective orders in Northern Virginia. If you are a victim of domestic violence, please call LSNV to determine if you are eligible for legal assistance and to find out about your rights.

1. WHAT IS THE PURPOSE OF THIS HANDBOOK?

This handbook was written to give you the information you may need to make decisions about your life. We hope it will answer some of your questions and tell you where to get answers to others. We also hope that this handbook will convince you that:

- * **You are not alone.** There are hundreds of people in our area who live in fear of being battered and abused; people of every age, race, education, and income. There are also people who have been battered in the past and have been able to change their lives. These people know about the emotional and physical pain of being battered and how hard it can be for you in such situations to change your life.
- * **You deserve to live a life free of abuse. Nobody deserves abuse.** If you grew up thinking that you are not worth very much and deserve what you get or cannot do any better, you may need time and help to learn about your strengths and abilities, and protection while you are learning. We hope that this handbook will guide you to whatever help you need.

2. HOW CAN I GET LEGAL HELP?

If you are a victim of domestic violence or are facing decisions about separation, divorce, support or child custody, you have many resources available. Social service agencies and court personnel can guide you through many of the procedures described in this handbook that will help you protect yourself, obtain public benefits, or end a marriage. However, in some cases your interests may be best served with the help of an attorney or you may not feel capable of taking the necessary actions without the assistance of an attorney. The answers to the questions in this handbook will help you decide if you need legal help.

If you live in Northern Virginia and need an attorney but cannot afford one, you should contact **Legal Services of Northern Virginia (LSNV)**. LSNV provides free legal assistance to low-income individuals in non-criminal matters. Eligibility for free legal assistance is based on income. If you have separated from the abuser, only your income will be counted to determine if you are eligible. Phone numbers for each LSNV branch are listed at the end of this handbook or visit our website, www.lsnv.org. Outside Northern Virginia, please call 866-534-5243 or visit the website, www.VaLegalAid.org. Income eligibility and guidelines for the types of services offered vary depending upon the local program.

When you call the legal services office, you will be asked questions about your income and resources. If it appears that you are eligible, you will be given an appointment with a lawyer or paralegal. The legal aid office may represent you in court or, if staff is not available, advise you how to represent yourself, or try to locate a private attorney to assist you without charging a fee. If you are not eligible for legal services assistance or would

like a private attorney, you should call the Lawyer Referral Service in your area. (See the Telephone Numbers section at the end of this handbook.)

ABUSIVE RELATIONSHIPS

3. WHAT IS BATTERING?

When we talk about battering in this handbook, we are talking about the abuse of one person by another. The abuser may be a friend, relative, current or former spouse, current or former boyfriend or girlfriend. (See Va. Code § 18.2-57.2) The abuse may be emotional or physical. It may be anything from threats, slaps, shoving, kicks or punches to choking, beating with a weapon, stabbing or shooting. It also includes unwanted sexual activity.

You should be aware that there can be sexual abuse within a marriage relationship. Since July 1986, Virginia has legally recognized that criminal sexual abuse can occur between married partners. (See Va. Code § 18.2-67.2:1) NOTE: Virginia also recognizes the crime of rape between two married partners. (See Va. Code § **18.2-61(B)**)

If you think the violence in your life might go away if you ignore it, you should know that once violence starts in a relationship it often becomes worse. Beatings become more frequent, more severe, or both. Don't take the chance that the violence will not happen again. You will certainly be taking a chance with your emotional well-being, and may be taking a chance with your life or your children's lives and well-being.

4. WHAT IF I AM IN PAIN OR HAVE BEEN INJURED?

If you have been abused or are in immediate danger of being abused, you should call the police at **911** for protection. For other injuries, see your own physician or go to any hospital emergency room. **See the physician alone, without the abuser present, and explain exactly how you were injured.**

Photographs of any visible injuries can be extremely useful at a later date in court. Most shelters and some police officers will take photographs of abused residents. Other organizations such as the Victim Assistance Network will also take pictures of your injuries to assist you in providing evidence for court. Anyone can take pictures and these will be admissible evidence in Court when they depict your injuries fairly and accurately.

5. I AM AFRAID MY CHILDREN ARE BEING ABUSED. WHAT CONSTITUTES ABUSE?

Child abuse consists of physical or mental injury or risk of injury to a child by other than accidental means. (See Va. Code § 16.1-228) Child abuse may include the following as well:

- * neglecting or refusing to provide adequate food, clothing, shelter, emotional nurturing or health care;
- * neglecting or refusing to provide adequate supervision;
- * committing or allowing to be committed any illegal sexual act upon a child, including incest, rape, indecent exposure, prostitution, or allowing a child to be used in any sexual explicit visual material. (See Va. Code § 18.2-370)

6. WHO SHOULD I CONTACT IF I THINK MY CHILDREN ARE BEING ABUSED?

If you suspect child abuse, you should make a complaint to your local Child Protective Services (CPS) office of the Department of Social Services or call the Virginia toll-free **Child Abuse Hot Line: 800-552-7096**. This complaint can be made anonymously. See the Phone Numbers Section of this booklet for the phone numbers of the local CPS hotlines.

7. WHO SHOULD I CONTACT IF I FEEL AN ELDERLY PERSON OR PHYSICALLY IMPAIRED ADULT IS BEING ABUSED, NEGLECTED OR INJURED?

If you know of or suspect that an elderly or physically impaired adult is being abused, injured or neglected, you can make an anonymous complaint to your local Adult Protective Services Office (of the Department of Social Services).

An elderly person may also file a petition for a protective order if they have been abused by a family or household member. (See Va. Code §§ 16.1-228,16.1-253.1)

GETTING OUT

8. IF I DECIDE TO LEAVE, HOW DO I GET OUT? IS THIS DESERTION?

If you are exposed to violence and need to leave, the easiest way to get out is to leave when the abuser is not present. However, this is not always possible, especially if the abuser is threatening you and you need to get out before the abuser becomes physically violent.

If you can, call the police or sheriff, or send a child to alert a neighbor to call. The police will come and make sure you are able to leave without interference from the abuser. If the police or sheriff witness the abuse or threats, the abuser is very drunk, or they see enough evidence that an assault took place, the officer will arrest the abuser or otherwise remove the abuser from the house.

If you are unable to call the police, or don't have a telephone, you may need to use a signal to alert a neighbor who lives close by, such as flashing a porch light or banging on a wall. Be sure to discuss signals with your neighbors so that they know what you need.

There are times when it is impossible to get out before the violence begins. If this is true for you, all you can do is try to avoid serious injury and plan to leave as soon as you can. You can try to avoid serious injury by staying out of rooms that contain dangerous objects, such as the kitchen. Many people find that abuse is followed by a "honeymoon" period during which time they do not have to fear immediate violence and have time to plan. Make a safety plan for yourself and your children. Pack an emergency suitcase of clothes, set some money aside and a spare set of keys. Hide them in a safe place that is easily accessible so that you can leave in a hurry when necessary. See below and complete your own personal safety plan worksheet and also see Question 10 for a list of items you should take with you when you leave. Please take your safety planning seriously. The violence that an abuser is capable of after a separation or when they suspect that you want to separate cannot be predicted. **Following your safety plan may save your life if you have been in an abusive relationship.**

Desertion: Leaving the marital home due to abuse or fear of abuse is **not** desertion. You will need to prove to the judge that you were abused or in fear of abuse. Items helpful in proving physical abuse include copies of police reports, doctor and/or hospital records, pictures of injuries, prior assault and battery warrants and prior petitions for protective orders. Your life and well-being and that of your children are most important. See Question 27 for more information on proving abuse.

An alternative to leaving your home is available. You can petition the court for a protective order and request that the abuser be ordered out of the home. See Question 29 for more information.

SAFETY PLAN WORKSHEET

I. Safety during a violent incident.

- 1. Know all exits to your home and where the exit may lead, i.e. fire escapes, stairwell, windows, elevators). If I decide to leave, I will use**
- 2. Keep purse and keys ready for quick exit. I will put my keys _____**
- 3. If I expect an argument is developing, I will move to _____ room. Move to a room where you will be safest from injury. Avoid the kitchen, bathroom, garage, or rooms without easy access to the outdoors.**

4. Tell a friend, preferably a neighbor about the violence and ask them to call the police for help if they hear suspicious noises coming from the home. I will confide in _____ for help. If the abuser may cut off phone lines, plan a signal that a neighbor will recognize and know to call for help, i.e. flash the porch lights or knock on the wall. My emergency signal will be _____.

You may also need a code word to use with your children or a friend so that they know to call the police for help. My code word will be _____. If I have to leave the home, I will go to _____. If I cannot go there, then I will go to _____. Remember there are many shelters in the Northern Virginia area willing to help, the list of shelters is in the back of this handbook.

I. Safety when preparing to leave.

1. I will leave an extra copy of important keys (car and home keys), medication and money at (or with) _____. I will keep copies of important documents at _____.

2. I will open a savings account at _____ by _____ date.

3. The domestic violence hotline number and/or shelter number is _____.

4. Keep change in your pocket to use for phone calls. Do not use a telephone credit card billed to your home address, which the abuser may open and obtain information as to who you call following your departure from the home.

5. If planning to stay with family or friends temporarily, call to make arrangements by _____ date. Pack a bag of extra clothes for yourself and the children and leave extra clothes with family or friend by _____ date. Include important items such as jewelry, pictures, children's toys and favorite blankets, items of special sentimental value.

6. Revise your safety plan periodically to make sure it is up to date. I will sit down and revise my safety plan every _____ and have it reviewed by _____ (domestic violence shelter worker or knowledgeable friend).

III. Safety in my own residence (if staying in home and abuser leaves or is ordered out of the home).

1. I will change the locks on the doors by _____ date. I can obtain a personal security alarm from the shelter (available from some shelters).

2. I will secure my home by _____ date with additional locks, window bars, poles wedged against doors, alarm system, purchase rope ladders to escape from second floor, install outdoor lights etc.

3. I will teach children to use the phone to call me collect, a relative or friend or the police in case of emergency by _____ date.

4. I will inform the landlord that the abuser is not allowed in my apartment and request that the landlord issue a "no trespass notice" to the abuser. This remedy is available if the abuser is not a party to your lease.

IV. Safety with a protective order or after separation.

1. I will tell people who take care of my children which people have permission to pick up my children and who may not pick up the children. I will inform and provide copies of the court's order to:

School: _____

Phone Number:

Day Care Staff:

Phone Number:

Babysitter:

Phone Number:

Teacher:

Phone Number:

Relative:

Phone Number:

Other:

Phone Number:

2. I will keep a copy of my protective order and/or custody order in _____ place and one copy in my purse that I carry with me at all times. I will also give a copy of the protective order to the _____ police stations by my home, my work, my family and friends where I usually visit.

3. I will change my route home from work and alternate between three to five different routes each week.

Route 1:

Route 2:

Route 3:

Route 4:

Route 5:

4. When driving home I can go to the police station at _____ should the abuser be following me.

5. I will inform my friends and neighbors that the abuser no longer resides with me and they should call the police and call me if they observe the abuser near my residence or near their homes.

6. I will shop in new stores and use a different bank so that the abuser will not be able to locate me.

7. If I feel down, I will call _____ for support (family, friend, shelter worker, hotline worker).

8. I will talk to my children and make sure they understand as much as they can about the situation depending on their age. If my children need help, I will talk to _____ (family, school counselor, other counselor, therapist, coach, teacher) and ask them to support my children during this difficult time and maintain contact with me about my children.

9. If I have to communicate with my abuser related to visitation or the children, I will ask _____ to be a messenger.

10. I can read _____ or attend workshops or support groups at _____ if I need emotional support.

11. I can also _____.

9. SHOULD I TAKE THE CHILDREN?

If you are married or are living with someone and have children, and you want legal custody of your children after you separate, you should make every attempt to take your children with you. This is **not** kidnapping. Unless either you or the children's other parent has court-ordered custody, you both have equal rights to the children and are free to take them.

It is much easier to get court-ordered custody of children if you already have physical custody of them. If you leave the children and then try to get custody, you will have to prove to the court that the other parent is not a good caretaker. This can be very difficult if the other parent does not abuse the children and you have left them with that parent long enough for the other parent to show that he or she can care for them. Also, since you will have left the home, the other parent will have the advantage of having a place to live and of allowing the children to continue in the same schools and neighborhood; therefore, it is important to plan ahead. Please read Questions 53-58 for more information about custody.

10. WHAT SHOULD I TAKE WITH ME WHEN I LEAVE?

The most important items to take are the papers you will need to conduct your business, to apply for welfare benefits, or to take legal action. These papers include Social Security cards, green cards, birth certificates for you and the children, your marriage certificate, leases or deeds in your name or in both yours and your spouse's names, your checkbook, your charge cards, and your and your spouse's bank account statements and charge card statements, bank cards, insurance policies and cards, proof of your income, proof of your spouse's income (pay stubs, tax returns, W-2's, etc.), bills for which you are responsible, etc.

It is also helpful to obtain information about your spouse's place of employment, Social Security number, copies of any pay stubs or earnings statements and, if it applies, the branch of military service and the name of the commanding officer. Also take with you items helpful in proving abuse as listed in Question 27 below. All this information can be used to establish and enforce support obligations.

If you cannot take these items with you, don't prevent this from making the decision to leave. These items can be request during the legal proceedings in your case.

Also at this time, you should begin to keep a diary of past and present abusive events, if you have not started one already, in case you decide to seek the court's protection, record the events while they are fresh in your mind and include past abusive incidents and threats as well as current. The diary can be used to refresh your memory when you file for a protective order or testify in court.

If you are a legal alien, take your photo identification card or other documentation of your status in the United States.

11. WHAT ABOUT MY PERSONAL POSSESSIONS, THE CHILDREN'S PROPERTY, THE MARITAL HOME, AND JOINT CREDIT CARD DEBT?

You may take all of your personal property including your clothes and any items you brought into the marriage or relationship. If you take the children, you can also take their furniture, clothes, toys, gifts, and things they bought with their own money.

If you are married, both you and your spouse have rights to property which was purchased during your marriage. This includes the marital home. If you cannot agree on how to divide the property, a Circuit Court Judge can do so after a divorce action is filed. It is legal for you to take property including an automobile that is solely yours, but you should not take any property that belongs only to your spouse.

NOTE: You should call and write the credit card company of any joint credit cards you may have with the abuser and request that your name be taken off the account in order to limit your liability on those accounts. If the abuser is an authorized user of any of your cards call and write to the credit card company requesting that his name be taken off the account. You will still be liable to the credit card company for the balance existing on the card at the time you call but you will not be liable for any charges made by the abuser after you requested that your name be taken off the account. Keep a copy of the letter that you send to the credit card company and be sure to include the mailing date on the letter. See Questions 49-52 for more information on divorce and marital debt.

12. HOW CAN I GET THINGS I LEFT BEHIND?

If you want to pick up items you either forgot or were not able to take when you left, you may want to call your Police Department or the Sheriff's Office and ask if they will send an officer to go with you. Some police departments in our area are willing to do this. The officer will not go into the house with you and will not help you take anything if the abuser is at home and objects. The officer will stand by to make sure you are not injured.

If you petition for a Protective Order as explained in Questions 26-28, you can request to the court that you be permitted to return to the home to retrieve your belongings and those of the children without the abuser being present.

13. WHAT DO I DO IF I AM LOCKED OUT OR I AM AFRAID THE ABUSER WILL BE AT HOME?

If you are locked out or the abuser refuses to let you back into the home, there are options available to you. If you are abused, you may want to see an Intake Officer at the Juvenile and Domestic Relations Court to file a Protective Order. You may request in the Protective Order that you be allowed to enter the home at a certain time and date to retrieve your belongings. Please read Questions 27-28 on Protective Orders for more information. The authority of the police is strictly limited in this situation. You have an absolute right to enter the residence if you are married. If you are not married, but your name is on the lease or the deed to the property, you also have the right to enter the residence. Although the police may be available to stand by to prevent possible violence at the residence, **they do not have the authority to force your spouse/partner to allow you to enter.** If any criminal offenses are committed, the officer will take the appropriate enforcement action.

You can also retrieve your property by filing what is called a detinue warrant. (See VA. Code § 8.01-114) This warrant is only for property which belongs to you alone. You must see a magistrate or go to the Clerk of the **General District Court** in your city or county to get this warrant. In the warrant you ask that either your belongings be returned,

or that you be given their value. You must provide a list of all the items you want, along with the value of each. When you get to court, the Judge will consider only the items on the list. If you forget anything, you will need to get an additional warrant. You will also have to prove the items belong to you, unless it is something very obvious, like your clothing. If you are considering getting a detinue warrant, you may want to get more information from an attorney (although you do not need an attorney to take this action).

A PLACE TO STAY

14. IF I DECIDE TO LEAVE, WHERE SHOULD I GO?

Your top priority should be to get to a place where you will be safe. This means a place where the abuser cannot find you or would be afraid to bother you. If you do not have a safe place to go, you may want to consider staying in an emergency shelter. See the list at the end of this handbook. You can seek support and refuge from family, friends, neighbors, domestic violence shelters and organizations, and religious organizations. Other helpful resources include public and private social workers and counselors, support groups and hospitals.

15. WHAT IS AN EMERGENCY SHELTER?

An emergency shelter is generally a place where a victim of abuse and their children can stay in an emergency when they have no other safe place to go. Shelter locations are kept confidential to protect the people staying there; and many restrict occupancy to women with minor children. The women and children live together while they try to make changes in their lives and offer emotional support to one another. The shelter staff have information about resources and opportunities for battered women. They can help you plan what you want to do with your life, help you find housing and assist you through court to get a Protective Order, custody and support.

16. I WANT TO STAY IN MY HOUSE. CAN I MAKE THE ABUSER LEAVE?

Possibly. Virginia law allows a court to order an abuser out of a jointly owned or rented home. It is not necessary to file for a divorce or criminal charges to obtain this protection.

The Intake Unit of the Juvenile and Domestic Relations District Court in your city or county can assist you in filing a petition for a Protective Order and the Judge may order the abuser to leave the home or provide alternate housing as part of a protective order. In order to convince the Judge to make such an order, you will have to prove you have a "reasonable fear that you will be injured." (See Va. Code §§ 16.1-253.1(A)(4); 16.1-279.1(3)). For more information see Questions 26-28.

The court can also order an abusive spouse to leave the marital home during the pendency of a divorce case. (See Va. Code § 20-103(A)(V)(I)). For more information, refer to Questions 49-52 of this handbook on Separation and Divorce.

17. HOW CAN I OBTAIN PERMANENT HOUSING FOR MYSELF AND MY CHILDREN?

If you are at a shelter with your children you should immediately apply for transitional housing programs, public housing and/or Section 8 housing with the county's department or office of housing immediately. A shelter worker will help you to fill out the necessary application. Persons who are in an abuse shelter with their children receive priority on the housing list.

If you are not at a shelter, you should still apply for housing with the county's department or office of housing. If you and your children are about to be evicted or are living with a friend temporarily to avoid homelessness, your application for housing will receive priority on the housing list. See the Emergency Housing list of phone numbers located at the end of this handbook.

YOUR SAFETY

18. HOW CAN I PROTECT MYSELF?

If you are the victim of threatening or abusive behavior by your current or former partner, you can seek protection for yourself and your children from the court. Questions 26-28 describe the alternatives available to you. Social service agencies, court personnel or legal professionals can help you determine which alternative is appropriate for you. You can obtain a warrant for an Assault and Battery from the Magistrate, (see Questions 21-24) or you can petition for a Protective Order (see Questions 26-28), or preferably **both** (see Question 30).

19. IS DOMESTIC VIOLENCE A CRIME?

Yes. No one has the right to touch or threaten to touch another person without that person's permission. If you have been threatened or struck, you may want to start a criminal action by getting a warrant. Here are the most common types of warrants in abuse situations:

- * **ASSAULT & BATTERY**- the other person threatened you with bodily injury and you believed you would be hurt and/or the other person touched you without your permission. Battery may be anything from a slap with an open hand to punching, kicking, choking, etc. If a weapon was involved, the charge may be a felony. (See Va. Code § 18.2-57.2).
- * **PHONE HARASSMENT** - the other person used obscene or vulgar language, or threatened an illegal or immoral act with the intent to coerce intimidate, or harass you over the telephone. (See Va. Code § 18.2-427)

20. IS STALKING A CRIME?

In 1992, the General Assembly of Virginia passed a new statute, which makes stalking a crime. Stalking occurs when a person on more than one occasion engages in conduct with the intent to cause emotional distress to another person by placing that person or that person's family or household member in reasonable fear of death, criminal sexual assault, or bodily injury. (See Va. Code § 18.2-60.3) For more information on stalking, see Question 31.

21. HOW DO I GET A WARRANT?

Warrants are issued by Magistrates. Magistrates are available 24 hours a day. The Magistrates are listed in the Telephone Numbers section of this handbook. You can seek a criminal warrant for assault, battery, public cursing, abusing, stalking, phone threats, and, in some cases, trespassing.

NOTE: In all cases of abuse, you should call the police and make a police report. You are entitled to a written summary of the police report by requesting it from the police department. (See Va. Code § 19.2-81.3.C) In your city or county, the police may assist you in obtaining a warrant or direct you to the Magistrate's office.

The Magistrate does not have to issue a warrant and makes a decision based on the facts and how you present them. Some of the things the Magistrate will consider are:

- * How soon after the violence occurred did you ask for a warrant?
- * Were the police called and a police report filed?
- * Do you have any witnesses or other evidence that an assault occurred or that there were injuries, such as medical reports, police reports, phone tapes?
- * Was either person drinking?

You may want to bring a friend with you to give you support and help explain the circumstances in case you become nervous. The sooner you go to swear out a warrant after the violent incident, the more likely you will be successful in obtaining the warrant. If the Magistrate refuses to issue a warrant, you may want to get legal advice. See Question 2 on Legal Assistance. If the Magistrate issues the warrant, the Magistrate may also issue an Emergency Protective Order valid for 72 hours so that you may seek further assistance while under protection.

22. WHAT WILL HAPPEN AFTER I GET THE WARRANT?

The Magistrate will issue a warrant for the abuser's arrest. The police will be on notice and will arrest the abuser upon obtaining information as to the abuser's whereabouts. The abuser will be taken to the magistrate's office for booking. Unless the abuser is drunk or threatening, they will probably not be held after the arrest. Usually a bond (an amount of money the abuser will forfeit if he does not show up on his court date) will be set by a Magistrate at the police substation or the local Adult Detention Center. In some cases the defendant may be released immediately on personal recognizance. The Magistrate may make as a condition of the bond that the abuser have no contact with you until the trial. The abuser will be told when to go to court, to stay out of trouble, and that if he gets into trouble he will be re-arrested and may be charged with violation of his bond conditions.

NOTE: You should call the magistrate's office to find out the conditions placed upon the abuser when released. If the abuser contacts you after release, you should call the police or go to the magistrate's office to inform the magistrate so that the abuser can be taken into custody for violating the conditions of his release.

If the abuser is held after arrest, he will be taken before a Judge. The Judge will usually set bond and then release him until the trial if (1) the bond is paid, and (2) other conditions imposed by the Judge are met, such as that the abuser have no contact with you until the trial.

If you file an assault warrant or other criminal charges against your abuser, the Magistrate, court or Commonwealth's Attorney's office will notify you of the date when you will need to go to court. You will be required to testify in court as to how the assault and battery took place. **Do not ignore the notice of the court date. You must appear in court, or you may face charges for your failure to appear.**

23. WHY SHOULD I TAKE CRIMINAL ACTION?

Many people decide not to take criminal action against the abuser either because they think the court will not do anything, or they are afraid of what the abuser will do if they press charges. It is generally true that the courts will not send a person to jail for a first misdemeanor offense; however, this depends on the severity of the abuse. Here are some reasons why you may still want to consider taking court action:

- * Following through on a warrant will tell the abuser that you are serious about stopping the abuse;
- * The court will be made aware of the situation and will be more likely to take serious action if the abuse happens again;
- * The court may order the abuser into counseling, order the abuser to leave the home, or order the abuser to pay for your shelter if you have to leave the home.

24. WHAT HAPPENS WHEN WE GO TO COURT?

Your case will be heard in the Juvenile and Domestic Relations Court. You should bring medical records with you and any photos you might have of your injuries, copies of police reports, prior assault and battery warrants, and prior Protective Order petitions. You will need to inform the Assistant Commonwealth's Attorney of the name, address and telephone number of helpful witnesses. If you know of helpful witnesses to the incident, you should contact the local Victim Witness Services Office for help to get those witnesses to court. See the Telephone Numbers section for phone numbers to the Victim Witness Services Office in your area.

NOTE: In Arlington, Alexandria, Prince William and Loudoun counties, an attorney from the Commonwealth Attorney's office will prosecute the warrant. In Fairfax County, an attorney from the Commonwealth's Attorney's office will prosecute the warrant only when the defendant has an attorney. The victim may still prosecute the warrant him/herself when no defense attorney or Commonwealth Attorney is involved. If you need assistance, call the Victim Witness Unit in your area. They will accompany you to court. Also call Legal Services of Northern Virginia. See Question 2.

On the day of court, the Judge will listen to testimony from you and the abuser about the abuse, review pictures of injuries, police reports, medical records, etc., and listen to the testimony of your witnesses. Then the Judge will make a decision. While you testify, you should make sure you tell the Judge what you want to have happen if the abuser is found guilty so the Judge can take your concerns into consideration when making a decision. Do you want the abuser to be sent to jail? Do you want the abuser ordered into counseling or into an alcohol treatment program? Do you want the Judge to order that the abuser have no contact with you?

People accused of Assault and Battery are entitled to an attorney because they have been accused of a crime for which they might go to jail. If the abuser cannot afford an attorney, he may request that the court appoint him an attorney.

25. WHAT IS THE DIFFERENCE BETWEEN A CRIMINAL ASSAULT WARRANT AND A PETITION FOR A PROTECTIVE ORDER? WHAT WILL HAPPEN IF THE ABUSER IS FOUND GUILTY?

A criminal Assault and Battery conviction is a Class 1 misdemeanor offense punishable by a maximum of one year in jail and/or a \$2,500.00 fine. (See Va. Code §§ 18.2-57.2 & 18.2-11) If found guilty of committing the act charged, the defendant may be jailed, fined or have fines or jail time suspended conditioned upon having no contact with the victim, completion of substance abuse treatment or other counseling programs. The Judge can also issue a Protective Order for you and your children even if you did not Petition for a protective order. (See Va. Code § 16.1-278.14). For more information see Questions 26-28. Some courts assign a probation officer to monitor the abuser's compliance with the court's order.

Unlike an assault warrant, which is a criminal procedure usually prosecuted by the Assistant Commonwealths Attorney, a petition for a Protective Order is a civil action, which is prosecuted by you or an attorney you retain. The abuser is not arrested and is not fined or sent to jail when you file for a protective order. If the court makes a finding of abuse, the Judge will enter a Protective Order that will contain certain provisions to protect you that the abuser must follow which may include ordering the abuser to leave the home, have no contact with you and other household members, give possession of a jointly owned car or a car owned solely by the victim to the victim and order temporary custody, visitation and support of the children, all of which are remedies not available under a criminal assault warrant. See Question 26-30 for more information on Protective Orders.

26. WHAT IS A PROTECTIVE ORDER?

A Protective Order is a legal document issued by a court to protect one person from the behavior of another and requires a 2-step process to be issued. A Protective Order can be valid for a period of up to 2 years. In an abuse situation, the Juvenile and Domestic Relations District Court in your city or county can order that the abuser be prohibited from harassing, committing an assault or battery, or visiting your home. The court can also order abuser to have no contact with you or limit the amount of contact you do have. (See Va. Code § 16.1-279.1) The court has the power to issue an order to remove the abuser from a home being bought, owned, rented, or occupied by the parties, or to require the abuser to provide suitable alternative housing for the petitioner and the children. (See Va. Code §§ 16.1-253.1(A)(4) & (6); 16.1-279.1(A)(3) & (5)) The court can also grant the petitioner temporary possession or use of a motor vehicle owned by you or jointly owned by you and the abuser to the exclusion of the abuser; however, this grant will not affect title. (See Va. Code §§ 16.1-253.1(A)(5); 16.1-279.1(A)(4)). As of July 2004, the court can also order the abuser to pay temporary child support.

A Protective Order may help stop abuse in one of the following ways:

- * It tells the abuser that certain behavior is not acceptable and that you are serious about stopping the abuse.
- * It requires the police to enter the abuser's name into the Virginia Criminal Information Network so that all law enforcement officers in Virginia are aware of the Protective Order and its terms.
- * It requires the police to take action in a future abuse situation because a court has already said that the abuse is serious. Action by the police may prevent future abuse.
- * If the abuser violates a Protective Order, he can be found guilty of a Class 1 misdemeanor and/or found in contempt of court and sentenced to jail. (See Va. Code § 16.1-253.2)

The Court's Protective Order powers allow Protective Orders to be issued against a family or household member who has committed family abuse. The definition of a family or household member is broad. It includes a spouse, former spouse, or someone with whom you have a child in common, parents, stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren, whether or not you reside together.

A family or household member also includes in-law relatives who reside in the same home with you. Family or household members may also be unrelated, such as boyfriends/girlfriends or gay couples and they must currently reside together or have resided together in the last twelve months. Family abuse means any act involving violence, force or threat including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and is committed against a family or household member. (See Va. Code §§ 16.1-228, 16.1-241(J)).

27. HOW CAN I GET A PROTECTIVE ORDER?

This is a 2 step process –

STEP 1: The Preliminary Protective Order

In order to petition for a Protective Order, you must go to the Intake Office at the Juvenile and Domestic Relations District Court in your city or county. A Petition form is also available on our website, www.lsnv.org, under Public Forms (<http://www.lsnv.org/Family.pdf>). Petitions filed in the Juvenile and Domestic Relations District Court do not require a fee and can be done without an attorney. The intake worker will assist you in filing your petition. The intake worker will request that you write down a description of past abuse and threats that you have been subjected to from the most recent incident of abuse of the first incident. This detailed list of recent and past abuses will be in the form of an Affidavit and you will be required to sign it under oath. This Affidavit will be presented to the Judge. The abuser will not be present at this hearing. After reviewing your Affidavit, the Judge will decide whether to issue a Preliminary Protective Order if you have been subjected to family abuse within a reasonable period of time.

The court can order any of the following provisions as part of the Preliminary Protective Order:

- (1) Prohibit acts of family abuse;
- (2) Prohibit further contact between the abuser and you and/or the family or household members;
- (3) Grant you exclusive possession of the home or require that the abuser provide you (and any other family or household member) with alternative housing,
- (4) Grant you temporary, exclusive possession or use of a motor vehicle owned by you or jointly owned by you and the abuser.
- (5) Prohibit the abuser from terminating utility services to your home or require that the abuser restore the utility services, if necessary.
- (6) Require the abuser to provide you and your children with suitable alternative housing. (See Va. Code § 16.1-253.1(A)(1-6))

A Preliminary Protective Order is effective for up to **15 days**. A second hearing must be held within the 15 days from the date the Preliminary Protective Order is granted to allow the abuser an opportunity to come to court to respond to your petition. (See Va. Code § 16.1-253.1). You will be given a copy of the Preliminary Protective Order after the Judge has signed it. The Preliminary Protective Order will state the date and time of the second hearing that must be held within 15 days. If the abuser cannot be served with the Preliminary Protective Order and the notice of the hearing date, commencing in July 2007, the Judge may extend the Preliminary Protective Order for six months to provide

for the protection of the victim while the Sheriff attempts to locate the abuser and serve him with the order and notice. Va. Code 17.1-253.1.

Once you have a Preliminary Protective Order, the police in your jurisdiction should, if requested, intervene to keep the abuser away from your home should the abuser appear. The court clerk will forward a copy of the Preliminary Protective Order to the local police department or sheriff's office which will enter the name of the abuser into the Virginia Crime Information Network System, making that information available to all police officers. (See Va. Code § 16.1-253.1)

You should carry a copy of the Preliminary Protective Order with you at all times so that you can show it to the police in case you are approached by the abuser.

STEP 2: The Protective Order

A Protective Order is effective for up to 2 years. After a Preliminary Protective Order is Issued, the court will specify a date for a full hearing, which must be held within 15 days of the grating of the preliminary order. This hearing is to determine whether the court will issue a Protective Order for a period of **up to two years**. On the date of the hearing, you should bring with you to court witnesses, picture of injuries, and copies of police and medical records which can be obtained from the local police station and the hospital or doctor that treated you. Although witnesses, pictures, police and medical records of past abuse are helpful, they are not necessary. Many Protective Order are issued based solely on the victim's testimony.

A Protective Order is issued incases of family abuse to protect the health and safety of the abused person and their family or household members. The Protective Order may include the same conditions as in the Preliminary Protective Order and, in addition, allows the court to order the abusing person to participate in treatment, counseling or other programs as deemed appropriate. The victim of the abuse does not have to participate in this counseling or treatment but may do so if desired. The Protective Order may also include any other relief necessary for the protection of you and any family/household members, including temporary custody or visitation of a child. In addition, the Judge may also order the abuser to pay child support. A Petition and Affidavit for a Protective Order can also be downloaded from LSNV's website at: <http://www.lsnv.org/Family.pdf>

You should carry a copy of the Protective Order with you at all times so that you can show it to the police in case you are approached by the abuser.

As with the Preliminary Protective Order, the court clerk will forward a copy of the Protective Order to the local police department or sheriff's office which will enter he name of the abuse into the Virginia Crime Information Network System. If the abuser

violates the Protective Order and this is proven in a subsequent hearing, he will be held in contempt of court or found guilty of a Class 1 misdemeanor and may be sent to jail. (See Va. Code § 16.1-253.2)

28. WHAT TYPE OF COUNSELING AND SUBSTANCE ABUSE TREATMENT PROGRAMS CAN THE JUDGE ORDER THE ABUSER TO ATTEND?

As part of the condition of a conviction of an Assault and Battery warrant or as a condition of a Protective Order, the Judge can order that the abuser attend counseling and substance abuse treatment programs available in your local community.

The most common counseling program that the abuser will be ordered to attend is an Anger Management Program, several of which have been certified with the state of Virginia. The programs provide counseling to men and women on anger management skills specific to relationship/family violence. Other counseling is available through private counselors and psychologists paid by medical insurance. Substance abuse programs frequently ordered by the court include Alcohol and Narcotics Anonymous. See the Telephone Numbers section at the end of this handbook for other counseling and in-patient and out-patient substance abuse treatment agencies that are available.

29. WHAT IS AN EMERGENCY PROTECTIVE ORDER?

An Emergency Protective Order is occasionally issued upon request by a police officer after responding to a domestic violence or stalking call if the police officer believes the victim of abuse is in serious danger. The police officer can obtain an Emergency Protective Order by calling the Magistrate or the court. If the court or a Magistrate approves the Emergency Protective Order, the officer will put the terms of the order in writing and then give a copy to the victim of the abuse. You may also go directly to a Magistrate for an Emergency Protective Order. A Magistrate will issue the Emergency Protective Order if: (1) A Magistrate or Judge has issued a warrant for assault and battery and there is probable danger that the respondent will commit further acts of family abuse against a family or household member; or (2) reasonable grounds exist to believe that the respondent has committed family abuse, and there is probable danger that the respondent will commit further acts of family abuse against a family or household member. (See Va. Code § 16.1-253.4)

The Emergency Protective Order extends protection for 72 hours (3 days) so that a victim will have protection and time to file for a 2 year Protective Order. Prior to the expiration of the Emergency Protective Order, you should go to the Juvenile and Domestic Relations District Court in your city or county and file a Petition for a Protective Order as described in Question 27 above.

30. CAN I STILL GET A PROTECTIVE ORDER IF I HAVE SWORN OUT A CRIMINAL ASSAULT WARRANT?

Yes. You should file for both. A conviction for a criminal assault and battery allows the Judge to punish for past actions of the abuser. Under the criminal assault conviction, the Judge may order that the abuser to jail or suspend the sentence on the condition that he does not harass or abuse you for one year.

If you have filed a Petition for a Protective Order, the Judge **must** make a decision on your petition and can issue a protective order to prevent future abuse. The advantage of filing for both a criminal assault and a Protective Order is that the Judge and the abuser will get the message that you are serious about protecting yourself and stopping the abuse. Also, additional remedies are available under the Protective Order as set forth in Question 26.

If you are married and filing for divorce based on cruelty, you can ask the Judge to issue a Restraining Order until the divorce is final. The Restraining Order might then become a part of your final divorce decree. If the abuser violates a Protective Order or Restraining Order, the abuser is "in contempt" of court and may be sent to jail.

31. WHAT CAN I DO IF I HAVE NOT BEEN PHYSICALLY ASSAULTED BUT I AM BEING STALKED?

As of July 1, 1997, the court may also issue a Preliminary Protective Order and Protective Orders against a stalker in order to protect you and any family or household member from danger. If the stalker is a family or household member as defined in Question 31 above, you must file a petition in the Intake Office of the Juvenile and Domestic Relations Court of your city or county alleging that you are or have been, within a reasonable period of time, subject to stalking, and a warrant has been issued for the arrest of the alleged stalker. "Stalking" occurs when a person on more than one occasion engages in conduct with the intent to cause emotional distress to another person by placing that person or person's family or household member in reasonable fear of death, sexual assault or bodily injury. (See Va. Code § 18.2-60.3) If the stalker is not a family or household member as defined in Question 31 (i.e. you have never been married to the stalker, you have not lived with the stalker within the last 12 months nor do you have any children in common with the stalker), then you must file a petition for a Stalking Protective Order in the General District Court of your city or county.

The court may order any one or more of the following conditions:

- (1) Prohibit acts of stalking;
- (2) Prohibit other contact by the alleged stalker with you or your family or household members;

(3) Any other relief necessary to prevent further acts of stalking. (See Va. Code § 19.2-152.9)

The Preliminary Protective Order in cases of stalking is effective for up to 15 days. A second hearing must be held within the 15 days to allow the alleged stalker an opportunity to come to court and respond to your petition. At this hearing, the Judge may issue a Protective Order containing any one or more of the above restrictions to protect the health and safety of the petitioner and family or household members of the petitioner from the stalker. The Protective Order is valid for up to 2 years. (See Va. Code § 19.2-152.10) The violation of a Protective Order under the stalking statute constitutes contempt of court. (See Va. Code § 19.2-152.10)

32. IS A PROTECTIVE ORDER FROM ANOTHER STATE VALID IN VIRGINIA?

Yes. Virginia courts and police will enforce protective orders from other states. If the abuser comes near you, you should call the police immediately and show a copy of your Protective Order from another state to the officer. The officer must rely on your statement that the order is still valid. In order to prevent confusion or delay in enforcing the order by the police, you should file a certified copy of your order with the Juvenile and Domestic Relations District Court in the city or county where you live. This can be done by contacting the intake office or Domestic Relations office of your local court. (See Va. Code § 16.1-279.1)

NOTE: If you have custody and support order from another state, you should also register those orders with the Juvenile and Domestic Relations District Court in your city or county by filing a certified copy of the orders with the court.

33. CAN THE ABUSER'S GUN BE TAKEN AWAY?

Yes. It is a federal crime (violation of a U. S. law as opposed to a Virginia law) to possess or transport firearms if you are subject to a family abuse protective order or have been convicted of assault and battery for domestic violence. (See 18 U.S.C. § 922 (g) (8) & 924 (a)(2)) If you obtain a protective order against your abuser, he is in violation of U.S. law if he owns a firearm. You should notify the Bureau of Alcohol, Tobacco, and Firearms at 800-800-3855 to have the abuser's firearms removed.

It is also a crime under Virginia law to purchase or transport firearms while subject to any family abuse protective order. (See Va. Code § 18.2-308.1:4) You should contact your local police or magistrate to request a warrant for violation of this state law.

Any person who is subject to a protective order is also prohibited from receiving a permit to carry a concealed weapon. If a person is subject to a protective order and they

currently have a concealed weapons permit, they shall turn it in to the police for the duration of the protective order. (See Va. Code § 18.2-308 (E)) Contact your local police or magistrate to have your abuser prosecuted under this state law.

34. HOW DO I GET A LAWYER TO HELP ME GET A PROTECTIVE ORDER?

If you are financially eligible you may qualify for an attorney through Legal Services of Northern Virginia (LSNV). LSNV has a domestic violence project, which provides direct legal representation for victims of domestic violence. Call the intake unit in the county in which your action is pending (see the phone numbers on the back of this pamphlet) to find out if you qualify for our services.

You should first contact your local Juvenile and Domestic Relations District Court to schedule an appointment to get the Preliminary Protective Order. Once you have obtained the Preliminary Protective Order from the court call our intake unit to find out if you qualify for representation at the hearing on the Protective Order.

MONEY, FOOD, CLOTHING & HEALTH CARE

35. CAN I GET MONEY FROM THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES (WELFARE DEPARTMENT)?

If you have children under the age of 18 who live with you, you may be eligible for money from the TANF (Temporary Assistance for Needy Families, formerly AFDC) program. (Note: If your child is between the ages of 18 and 19 you may still be eligible if he or she is a full time student who expects to finish high school, or its equivalent, before his or her nineteenth birthday.) TANF is a temporary payment for children of needy families, including families with a parent who is not providing financial support for them due to absence, physical or mental incapacity or death, or two parents who are both unemployed. You must be a U.S. citizen or a qualified legal immigrant to obtain this benefit.

If you are in need of immediate emergency cash assistance and not longer term aid, the welfare department has a Diversionary Cash Assistance program which provides a one-time payment to meet a one-time crisis, such as transportation, day care or housing emergency. You can receive up to 120 days worth of benefits at one time. However, you will give up your right to receive TANF benefits for up to 160 days.

You may also be eligible to receive Food Stamps in addition to TANF. If you are pregnant or have children under 5 years old, you may be eligible for WIC benefits (Women Infants & Children). Even if you receive TANF you do not automatically qualify for Medicaid. You must apply for Medicaid separately. You can apply for Medicaid at the same time you fill out your TANF application. If you do not qualify for TANF you may still be eligible for Medicaid and/or for General Relief Benefits. (See Question 47)

Additionally, a new law went into effect in 1998 which significantly expands access to health insurance from children from birth until they reach 19 years of age. The new law created the Children's Medical Insurance Plan (CMSIP) and is available to families whose income is at or below 185% of the federal poverty guidelines after deductions for work expenses and child care (e.g. \$30,432 for a family of four), then these children can qualify for free comprehensive health insurance, regardless of their parent's immigration status. You can contact the Legal Services of Northern Virginia for more information or the Department of Social Services to apply for these benefits. Applications can be submitted by mail.

If you were forced to leave your home without your clothes, contact the Shelter in your area or the Department of Social Services in your county or city.

36. HOW LONG WILL IT BE BEFORE I START GETTING TANF PAYMENTS?

You have the right to receive an application the day you request it. The Department of Social Services then has 45 days from the time you complete the application to make a decision on your application. It usually takes the entire 45 days. If you need financial help while your application is pending, ask the eligibility worker (the person who interviews you) for help. If agency funds are not available, often a referral to a non-profit community organization is possible.

37. HOW MUCH MONEY WILL I GET AND FOR HOW LONG?

The amount of TANF you receive will be the difference between your monthly income after deductions and the amount allowed by State standards. The average payment is between \$220 and \$354 per month for a parent with no income. The maximum payment is \$518 per month for a family with any number of children. You are eligible to keep all of your earnings from your job and still receive TANF benefits up to the federal poverty level.

You are only eligible to receive TANF benefits for 24 months (2 years) within any 60-month (5 year) period and for a maximum of 60 months (5 years) in your lifetime. There are hardship exemptions to the 24-month rule but they are few.

38. WILL THE DEPARTMENT OF SOCIAL SERVICES CONTACT THE OTHER PARENT OF THE CHILDREN?

In Virginia, a parent has a legal obligation to support his or her children (See Va. Code § 20-61). The Department of Social Services, Division of Child Support Enforcement (DCSE) will contact the absent parent to ask him or her to contribute to the children's support. However, sometimes a woman does not want the Department of Social Services to contact the father. For a battered woman, this may be because she does not want the father to know in what city or county she is living, or if he already knows where she lives, she is afraid that if he is asked to support the children he will become angry. If you feel that helping the Department of Social Services get support from the father may be dangerous for you and the children, you should tell the person who is assigned as your eligibility worker and this requirement may be waived.

39. WHERE DO I APPLY FOR TANF BENEFITS?

You should apply for benefits at the Virginia Department of Social Services office in the city or county where you and the children live. The telephone numbers for the local social services offices in northern Virginia are listed in the Telephone Numbers section at the end of this handbook.

40. WHAT SHOULD I DO IF MY APPLICATION IS TURNED DOWN?

If you are denied benefits you have a right to a hearing. To exercise your right to a hearing, you must appeal the social services' decision in writing within 30 days of the original denial. After you request a hearing, you may request a conference with your eligibility worker. At this conference you can determine the reasons for your denial and possibly straighten out, before the hearing, any misunderstandings or misinformation which caused the denial. If you are unhappy with the outcome of your conference with the eligibility worker you can appeal to the worker's superior, asking him/her to reexamine your application before your hearing. Here are some of the most common reasons people request a hearing after being denied benefits:

- * Social services claims you did not submit required documents;
- * Social services did not make a decision within 45 days;
- * Social services claims you have too much income or your automobile is too valuable;
- * Any other reason why you disagree with the decision.

You may either file an appeal at your local social services office or you may mail your appeal to challenge TANF or Food Stamps denials to:

**Department of Social Services
Manager of Appeals and Fair Hearings
730 East Broad Street
Richmond, Virginia 23219-1649**

If you have questions about your TANF benefits, if you need information about filing an appeal, or if you have questions about the hearing procedures, you may want to call the legal services office nearest to you (See **Question 2** on Legal Assistance and the Telephone Numbers section). Legal services can answer questions about the TANF program. Even if you are denied TANF, you and/or your children may be eligible for Food Stamps or Medicaid. If you are denied Medicaid, you have to contact a different agency to request a hearing. Medicaid hearings are requested by sending a letter to:

**Department of Medical Assistance Services
Client Appeals Division
600 East Broad Street, Suite 1300
Richmond, Virginia 23219-1849**

41. HOW DO I GET CHILD SUPPORT?

There are two methods through which you may obtain child support: through court or through the Department of Social Services Division of Child Support Enforcement (DCSE). If you receive TANF benefits, you have assigned your legal right to seek support to the Department of Social Services. You may still use the court process to obtain and/or enforce an existing child support order, however, you **must** contact DCSE to inform them of your court date. You should talk to your eligibility worker before filing a court petition.

NOTE: If the parent from whom you seek child support does not reside in Virginia, you may only obtain or enforce a child support order through DCSE.

DCSE PROCESS:

For Assistance from the DCSE, you must apply for their services by calling or going to their office listed by jurisdiction below. Applications can also be downloaded from the Internet on the DCSE website:

www.dss.state.va.us/division/dcse

For Fairfax:

**Division of Child Support Enforcement
3953 Pender Drive
Fairfax, Virginia 22030
877-822-4612**

For Alexandria/Arlington:

**Division of Child Support Enforcement
2900 South Quincy Street, Suite 320
Arlington, Virginia 22206
866-488-2591**

For Manassas:

**Division of Child Support Enforcement
9309 Center Street, Ste. 101
Manassas, Virginia 20110
800-762-9970**

For Loudoun:
Division of Child Support Enforcement
24 Ricketts Drive
Winchester, Virginia 22601
800-486-6440

There is no fee to apply for DCSE services. DCSE is empowered to direct the non-supporting parent to pay support and is authorized to enforce the support obligations through a variety of mechanisms if the parent fails to comply, including payroll deduction orders, driver's license suspension, tax refund intercepts and bank account seizures. Other helpful services provided by DCSE include locating the non-supporting parent, establishing paternity, assistance in increasing an existing child support order, and obtaining orders for health insurance coverage of the children if such insurance is available from the non-supporting parent. DCSE publishes a helpful handbook on child support that explains DCSE's services.

DCSE will need you to supply as much of the following information as possible: The non-supporting parent's name, address(es), Social Security number, date of birth, place of birth, schools attended, present employment, military service record, make and model of vehicle, vehicle license plate number, driver's license number, places of social contact, names and addresses of family and friends, banks where he transacts business and gross earnings statements or any other known resources (deeds to property, bank statements, etc.).

NOTE: If you are a victim of abuse by the non-supporting parent, you may request that DCSE keep your location confidential.

You will need to cooperate with DCSE to receive the best available service. The more accurate the information that you give DCSE, the faster they will be able to assist you.

DCSE will contact the non-supporting parent, request income information, calculate support and hold a hearing at the DCSE office if necessary to establish or enforce a support order. DCSE calculates support using the same law and support guidelines as the court. See Question 43 for information on how support is calculated. The proceedings at DCSE are informal. Most people participate without the assistance of an attorney.

COURT PROCESS:

To get court-ordered child support for your children, when both parents reside in Virginia, you may go to the Juvenile and Domestic Relations Court Intake Unit in the city or county where the children live. The Juvenile Court Intake Unit can help you complete and file the necessary papers. See the Telephone Number section of the handbook for the phone numbers of the Court Intake Unit in your area to make an appointment. You may file petitions for paternity, child support, custody, child visitation, and spousal support (support for yourself if married) at the same time. The court can also order a provision for health care for yourself and your children. There is no cost for filing such petitions. Sometimes the Intake Unit will refer a child support problem to the Division of Child Support Enforcement. A Petition for Support can also be downloaded from the LSNV's website at <http://www.lsnv.org/Family.pdf>

You will be given a date to come to court so that the Judge can make a decision. **If you have applied for services from the Division of Child Support Enforcement (DCSE), you should inform your case worker of your court date so that a DCSE attorney can represent you in court.** See Question 43 for information on how child support is determined. The intake office also offers mediation services to assist you and the other parent to reach a voluntary agreement.

The court will order paternity testing upon request of either party. If paternity is proven, the court will order the father to pay the birth expenses, unreimbursed medical expenses over \$250, and child support as of the date the petition was filed. (See Va. Code §§ 20-49.8 and 20-108.1) If you cannot afford to pay for the blood test fees, the state of Virginia will pay for it. (See Va. Code § 20-49.3(B))

Once an order of support is issued, the court can also order that the payor's employer withhold support from the payor's paycheck to be paid directly to the parent caring for the children or through DCSE. (See Va. Code § 20-79.2) This is called an Income Deduction Order.

42. DO I NEED A LAWYER?

The judges must follow legal procedures, however the Juvenile and Domestic Relations District Courts are user-friendly. The court personnel will help you fill out and file petitions. Many people go to court without a lawyer, **however, if you have applied for services from the Division of Child Support Enforcement (DCSE), you should inform your case worker of your court date so that a DCSE attorney can represent you in court on the issue of support.** However, if the other parent has a lawyer, you will be better off if you have one too.

Whenever you go to court, it is best to be as prepared as possible.

1. Write out points you want to make and questions to ask your child's other parent;
2. Have someone present who can tell the Judge that you are the primary caretaker (friends, child's teachers, child's day care provider, etc.); and
3. Have all your financial information and financial information about the other parent (income and expenses) in court and organized.

If you are receiving public assistance you have assigned your rights to support to the Division of Child Support Enforcement (DCSE). The DCSE court representative will help you to establish and enforce a child support order.

43. HOW IS CHILD SUPPORT DETERMINED AND HOW MUCH CHILD SUPPORT WILL I GET?

The Judge has support guidelines that are usually followed to determine a support award. (See Va. Code § 20-108.2) The Judge may deviate from the guideline child support amount if there is good cause to deviate. (See Va. Code § 20-108.1) If the other parent has other dependent children that he/she actually supports, the Judge can take this into consideration to deviate from the guideline amount of child support. (See Va. Code § 20-108.1(B)) The lowest amount of child support that a judge can order is \$65.00 per month.

A child or spousal support order must contain an order for health care coverage for dependent children if available at a reasonable cost. (See Va. Code § 20-60.3(7)) All child support orders require a provision stating that payments may be immediately withheld from the payer's paycheck through an Income Deduction Order and sent by the employer directly to the Division of Child Support Enforcement (DCSE), who will then forward it to you. (See Va. Code § 20-79.2)

The amount of support ordered by the Judge depends on the number of children living with you under age 19 and who are still in high school, your monthly income and the other parent's monthly income, any work-related child care costs and monthly medical insurance expenses and any other extraordinary medical/dental expenses of the children not covered by medical insurance that are in excess of \$250. (See Va. Code § 20-108.2) The Judge can order support for a child over age 19 who is mentally or physically disabled. (See Va. Code § 16.1-278.15)

When you go to court, you should bring a list of all your monthly expenses so you can show the Judge how much money you need, information regarding your income and the other parent's income, your child care expenses and the medical insurance expenses for the children.

- (1) To prove your monthly gross income bring to court on the day of trial:
 - (a) Current paystub,
 - (b) Paystub showing year to date gross income,

- (c) tax return and/or
- (d) W-2
- (2) To prove the other parent's monthly gross income bring to court on the day of trial their:
 - (a) Current paystub,
 - (b) A paystub showing year to date gross income,
 - (c) Any paystub you may have of theirs,
 - (d) tax return and/or
 - (e) W-2

Other useful information to bring to court is the opposing party's employer name, address, and phone number, and the opposing party's social security number.

- (3) To prove the monthly child care costs you may testify to the weekly or monthly amount paid for child care and bring a receipt or note from your child care provider as to the amount you pay for child care on a weekly or monthly basis.
- (4) To prove the cost of monthly health insurance premium for the children use the following:
 - (a) The health insurance premium costs will usually be noted on the paystub of the party providing insurance for the children. The Judge can obtain this amount from your paystub or the paystub of the opposing party. Or, bring a copy of your employee benefit's manual indicating the employee cost for health insurance.
 - (b) If you have a contract that you signed to provide insurance for the children, bring the contract to court.
 - (c) If the opposing party provides the health insurance for the children through their employer or through an individual contract, but you do not have a copy of their pay stub or the contract, you can subpoena these documents. (See Subpoenaing Documents below)
- (5) To prove the cost of extraordinary medical/dental expenses of the children not covered by insurance, bring a copy of the bill to court. You can obtain a copy of the bill from the doctor, hospital or dentist.

You should anticipate defenses and arguments that the other parent may make and prepare to respond. The other parent may claim a disability or unemployment, understate their income, or claim to actually support other minor children. You should write down important points of your case to present to the judge in an orderly and organized manner. Prepare to present documents to the Judge and prepare questions for your witnesses and opposing witnesses, if witnesses will be called to testify.

As of July 1996, the child support amount ordered shall be effective back to the date you **filed** the petition for child support. (See Va. Code § 20-108.1)

If you feel the Judge has not awarded you enough support, you have the right to appeal the decision to the Circuit Court. You must file the appeal **within 10 days** of the decision. Before you do this, you may want to discuss your case with a lawyer.

SUBPOENAING DOCUMENTS IN PREPARATION FOR THE SUPPORT HEARING

Go to the courthouse and request a form called a **Subpoena *Duces Tecum*** form from the Clerk's Office. Using the Subpoena *Duces Tecum*, you can request that the other parent's employer send copies of the other parent's paystubs and/or earnings statement to the court. You must have the name and address of the employer and, if available, the other parent's Social Security Number. Be sure to specify a time period for which paystubs are being requested (for example from December 1, 2004 to present). The Court will take care of filing and serving the Subpoena on the abuser employer. If the other parent is self-employed, you can request documents showing their income directly from them and name the other parent as the custodian.

Subpoena *Duces Tecum* forms must be filled out and filed **at least 15 days** prior to the date of the hearing or trial to allow enough time for the Sheriff to serve the Subpoena *Duces Tecum* and for the documents to be gathered and sent to the court. There is no fee for filing or serving subpoenas. To ensure that the documents requested arrive at the courthouse on time for the hearing or trial, it is best to file the Subpoena *Duces Tecum* at least 1 month prior to the hearing or trial date.

44. WHAT SHOULD I DO IF THE COURT ORDERS SUPPORT BUT THE OTHER PARENT DOESN'T PAY IT?

If you have a support order which requires payments to be made directly to you and the other parent doesn't pay anything, you should contact the Juvenile and Domestic Court Services Unit or the court and make an appointment to file a Rule to Show Cause and a Motion for an Income Deduction Order. See the Telephone Number section of this handbook for the phone number of the Court Services Unit in your area. The court will contact the other parent and notify him/her of a day and time that he or she must appear in court to explain to the Judge why support payments are not being made. The non-paying parent must show why he/she should not be held in contempt for failing to pay support.

Non-payment of support can be a criminal offense, which may result in a jail sentence. The delinquent payer may also be assessed interest and attorney's fees. (See Va. Code §§ 20-78.2 & 20-71.1)

Alternatively, you can apply to the Department of Social Services, Division of Child Support Enforcement (DCSE) to enforce the court order through an administrative

proceeding. See Question 41. DCSE enforcement services include entry of payroll deduction orders, suspension of driver's license, of bank account funds and tax refunds and liens on personal and real property to satisfy the child support debt.

NOTE: If the parent required to pay support lives in another state, you must apply for assistance from DCSE to enforce your support order.

45. WHAT SHOULD I DO IF I HAVE BEEN RECEIVING SUPPORT, BUT IT IS NOT ENOUGH?

If you need more child support because your expenses or income have changed or the income of the other parent has changed, you can petition the court to increase the amount. You will have to show the Judge that there has been some change in circumstances which makes an increase in support necessary. (See Va. Code §20-108) You can also apply with the Division of Child Support Enforcement (DCSE) for an increase in support.

46. CAN I GET CHILD SUPPORT IF I AM GETTING TANF?

One of the conditions of receiving TANF is that you cooperate with the Division of Child Support Enforcement in getting the other parent to financially support the child. If the amount you receive in child support is less than the monthly TANF, you will continue to receive TANF plus you will receive the first \$50.00 of any support award paid. The rest will be paid to the Department of Social Services to reimburse them for TANF payments to you. If the other parent is required to pay more than you receive in TANF, then you will no longer receive TANF benefits. DCSE will forward all current support paid by the other parent to you.

47. CAN I GET MONEY FROM SOCIAL SERVICES IF I DON'T HAVE CHILDREN?

You cannot get TANF if you do not have children, but you may be eligible for General Relief. The requirements for General Relief are different in every city and county. You need to check with your local Department of Social Services to find out if you are eligible.

A simple explanation for the program in Northern Virginia is that assistance may be provided for people who are unable to work due to a disability. For example, if you are pregnant and unable to work, you may initially qualify for General Relief. With General Relief, you also get Food Stamps for a limited time. General Relief benefits are very limited.

48. CAN I GET SUPPORT FOR MYSELF FROM MY SPOUSE?

Yes, if you are married. This is called spousal support. There are two ways to get support for yourself:

1. You can file a petition in Juvenile and Domestic Relations District Court for spousal support. To do this, you use the same procedure as you do to petition for child support. (See Va. Code §§ 16.1-241(L), 16.1-278.15(E)). See Question 43.
2. If you are involved in a divorce case, you can ask the Circuit Court to award you support as described in Question 43. You will probably need help from an attorney if you wish to follow this procedure in Circuit Court.

The court may order lump sum amount of support (i.e. an amount to be paid in one installment) or periodic payment of support for a definite period of time (i.e. spousal support that will end on a certain date or upon the happening of an event) or periodic payment of support for an indefinite period of time (i.e. support that continues on a monthly basis that does not end unless modified or terminated by subsequent court order, remarriage of the person receiving the support or death of either party). (See Va. Code § 20-107.1). A party may request that the court reserve the party's right to receive support in the future.

SEPARATION AND DIVORCE

49. WHAT ARE THE GROUNDS FOR DIVORCE IN VIRGINIA?

A divorce can be granted in Virginia based upon the six grounds listed below. (See Va. Code § 20-91)

1. **SEPARATE AND APART FOR ONE YEAR:** This is the most common ground for divorce. It is often referred to as a "no fault" divorce. It means that the wife and husband have been continuously living apart, without cohabitation at any time, for at least one year.
2. **ADULTERY:** The adultery must have occurred within the past five years. You must not have continued to live with your spouse after you found out about the adultery. Adultery is difficult to prove.
3. **CONVICTION OF A FELONY:** The conviction must have resulted in confinement in a state or federal penitentiary for more than one year. There must be no subsequent cohabitation.
4. **DESERTION:** The husband or wife left the home without a good reason and did not intend to return, and they have been separated for at least one year. (If you leave the home because of abuse it will not be considered desertion because you had "good cause" to leave.)
5. **CRUELTY:** The marriage was abusive and the husband and wife have not lived together for at least one year. If your husband has been found guilty of abusing you, or you have witnesses to the abuse, this will be an indication to the Judge that you have grounds for a divorce based on cruelty.
6. **SEPARATE AND APART FOR SIX MONTHS:** This ground can only be used if there are no children of the marriage under 18 and the parties have entered into a written separation agreement.

The grounds of adultery, conviction of a felony, desertion and cruelty are considered "fault" grounds. Filing for a "no fault" divorce, or a divorce based on adultery or conviction of a felony results in a final decree of divorce. Filing for divorce based on desertion or cruelty results in a non-final divorce. You can request that the non-final divorce be made final after you have been separated over a year. (See Va. Code § 20-91)

If you leave your spouse due to abuse, this is not considered to be desertion or abandonment.

The court costs for filing for a divorce is between \$69 - \$81.

50. CAN I GET A LEGAL SEPARATION?

There is no such thing as a legal separation in Virginia. In Virginia, when you are no longer living with your spouse and intend to remain permanently separated, you are considered "legally separated."

If you do separate and have joint credit cards, immediately write to the companies, return the card and cancel the account. Explain to the companies that you are separated and will no longer be responsible for any charges from this date forward made by your spouse. Copy the letter and mail it to the companies requesting a return receipt to prove they received it.

51. WHAT IS A SEPARATION AGREEMENT OR PROPERTY SETTLEMENT AGREEMENT?

A separation agreement (also called a Property Settlement Agreement) is a written agreement between you and your spouse on how matters related to your marriage will be resolved. The agreement might discuss things like how you will divide property, who will pay which bills, spousal support, child support, custody, visitation, etc. A separation agreement is only good if both you and your spouse sign it.

In a separation agreement you and your spouse can agree on the amount of payments for spousal support and division of property and debts. Once you and your spouse agree on the amount of spousal support and the division of property and debts, the amount can be modified only if the separation agreement allows modification. **If you waive spousal support in writing, you will forego your right to request from your spouse forever.**

No one can be forced to sign a separation agreement. If you are considering separating and you think you and your spouse might not be able to agree on some of these matters, you may want to talk with an attorney. If you are considering signing a separation agreement, you should contact an attorney to have the agreement reviewed. You may be waiving rights to property and spousal support unknowingly. If the parties are unable to reach an agreement, the court will resolve financial issues, such as child and spousal support and division of property and other issues if either party so requests. (See Va. Code §§ 20-107.1 - 20-107.3) The court can also order a spouse out of the marital home during the pendency of the suit, if there has been domestic violence. (See Va. Code § 20-103)

52. WHERE DO I FILE FOR DIVORCE?

If you have lived in Virginia for at least six months prior to filing the divorce, you may file for a divorce in a Circuit Court of this state, regardless of where your spouse lives, or even if your spouse's address is unknown. (See Va. Code § 20-97)

CUSTODY AND VISITATION

53. IF MY CHILDREN ARE LIVING WITH ME, DO I HAVE CUSTODY OF THEM?

If the children are living with you, you have physical possession of them, however, without a court order for custody of the children, you do not have legal custody. Without a custody order, both parents have equal rights to possession and the other parent can take the children at any time. Once you secure a court award of custody, a person who withholds a child from the custodial parent can be found guilty of parental abduction. (See Va. Code § 18.2-49.1)

54. HOW DO I GET COURT-ORDERED CUSTODY?

You must file a petition with the Juvenile and Domestic Relations Court Intake Unit in the city or county where the children live. You do not have to be married to file for custody of a child. The intake worker will help you file the right papers. There is a twenty-five dollars (\$25) filing fee per family to file the petition, however, this fee may be waived if you have a low income.

You will be given a date to come to court. If the other parent also wants custody, the Judge may schedule a trial date and may order both parents to attend a seminar on the effects of separation on children, parenting responsibilities, options for resolving conflicts, and financial responsibility. At trial, the Judge will listen to what both of you say regarding the children's needs and your ability to care for the children. The Judge may also order court employees or the Department of Social Services to do studies of both your homes. You are not required to have a lawyer, however, if the other parent has a lawyer, it is a good idea for you to get one too.

]In some areas, the Intake Officer at the court will contact the other parent to see if you both can agree on custody. If you live in such an area, and if you and the other parent agree, it may not be necessary to go to court.

If you are awarded custody, the Judge will include a requirement that 30 days advance written notice be given to the court and the other party of any intended change of address, unless good cause is shown why your address should not be disclosed (See Va. Code §

20-124.5); If you have been a victim of severe domestic violence, you may request that your address not be disclosed.

55. IF BOTH PARENTS WANT CUSTODY OF THE CHILDREN, HOW DOES THE JUDGE DECIDE?

A Judge looks at many factors to make a custody decision. (See Va. Code § 20-124.3) Most importantly, the Judge will want to hear evidence about each parent's ability to meet the needs of the children:

- * Which parent has been taking care of the children prior to and after the parents=separation?
- * Will the children have an adequate place to live with a bed and space for each child?
- * Will the children be clean, properly clothed and well-fed?
- * Will the children have adequate supervision?
- * Will the children's need for affection and emotional support be met?
- * Does either parent try to alienate or withhold the children from the other parent? Which parent will better support the relationship that each child has with the other parent and work to resolve disputes regarding the child?
- * Does either parent abuse the children?
- * Has there been a history of family abuse?

The Judge is also required to consider the reasonable preference of a mature, intelligent child as an additional factor when determining custody and visitation of a minor child.

Even though you may have been forced to leave your home because of abuse, if you do not have a place for the children, the parent staying in the family home will have an advantage. You should bring witnesses who can testify as to your parenting ability. You should make sure you tell the Judge about any plans you have made to get adequate housing. The Judge will also want to know whether either parent has a problem that would affect parenting abilities, such as alcohol or drug abuse, mental illness, or any situation affecting the children's moral environment, such as the presence of a parent's boyfriend or girlfriend in the house.

Based on the factors listed in Va. Code § 20-124.3, the Judge may award **sole legal custody** to one parent or **joint legal custody** of the child(ren) to both parents. Under a sole legal custody order, the sole legal custodian of the children has all decision-making rights, responsibility and authority relating to major decisions affecting the children, such as decisions about health, education, religion and the general welfare of the children. The Judge can also award joint legal custody to both parents. This means that both parents have joint responsibility for making major decisions in the children's lives, however, the children may still reside primarily in one parent's home. (See Va. Code § 20-124.1)

Whether or not a parent has sole or joint custody, both parents must comply by the terms of the court-ordered visitation, or else risk being found in contempt of court. Also, neither parent may be denied access to the academic, medical, hospital or other health records of that parent's minor child, (See Va. Code § 20-124.6), nor the opportunity to participate in the children's school or daycare activities, unless there is a court order denying such participation. (See Va. Code § 22.1-279.5) If the non-custodial parent's participation is restricted in any way, it is the responsibility of the custodial parent to provide a copy of the court order to the school or daycare.

56. SHOULD I BRING WITNESSES TO TESTIFY FOR ME?

Yes. You should be thinking about people who can testify for you even before you file for custody. The people you choose should be able to give the court information about your relationship with the children and your ability to meet their physical and emotional needs. You should ask your witnesses to come and, if necessary, ask the Clerk of the Court to subpoena them (you must do this **at least 10 days** before your court date) to make sure they show up. Day care workers, teachers, counselors, other parents who have seen you with your children, and mental health care workers are some people who may be able to provide helpful testimony on your behalf.

57. I DON'T WANT THE OTHER PARENT TO SEE THE CHILDREN. WHAT CAN I DO?

Unless the other parent has abused the children or has other major problems such as a severe drug or drinking problem, or criminal record, the Judge will probably let the other parent visit with the children. If you are afraid of the abuser or afraid of what the other parent will do to the children, you can ask that visitation be restricted. This usually is referred to as "supervised visitation." If you want supervised visitation (some other adult present when the visitation takes place at some protected location), you should think, before you go to court, about who could do this and where you would like visitations to take place. There are organizations that provide this service, usually for a fee. Please see the listing at the end of this handbook. The local Division of Social Services office can be ordered by the court to provide supervision of visitation, however they will also charge a fee. (See Va. Code § 16.1-274(B))

If one parent has a drinking or drug problem, the Judge can order that parent can only visit if the parent is clean and sober and regularly attending AA/NA meetings or successfully completes a treatment program. If you do not want the other parent to come to your house to pick up the children, the court can order that you meet the parent with the children at some other place, such as a relative or friend's home, a police station or a McDonald's playland.

58. THE OTHER PARENT DOESN'T PAY CHILD SUPPORT. WHY SHOULD VISITATION BE ALLOWED?

In Virginia, visitation and support are considered two separate matters. Even if a person has been ordered to pay support and is behind on payments, he or she still has the right to visit. Only in very rare situations will the Judge deny a parent visitation because of non-payment of support. If the other parent does not pay the full amount of support, your remedy is to go back to court on a "Rule to Show Cause" and have the non-paying parent held in contempt of court. For more information see Question 44. You should know that denial of visitation can constitute a material change of circumstances sufficient to allow a change of custody. (Va. Code § 20-108)

IMMIGRATION

59. I AM NOT A US CITIZEN OR LEGAL RESIDENT. CAN I BE DEPORTED IF I FILE FOR A PROTECTIVE ORDER?

No. You cannot be deported for filing for a protective order. In fact, if you are not a US Citizen or Legal Resident, you may qualify to self-petition for residency under the Violence Against Women Act. Filing for a Protective Order will help your chances of obtaining legal residency under this act. You need to show:

- a. That you are married to your abuser;
- b. That your abuser is a US Citizen or Legal Resident; and
- c. That you have been a victim of battery or extreme cruelty at the hands of your spouse;

60. MY ABUSER IS NOT A US CITIZEN OR LEGAL RESIDENT, CAN HE BE DEPORTED IF I GET A PROTECTIVE ORDER AGAINST HIM? CAN HE BE DEPORTED IF HE IS CONVICTED OF AN ASSAULT AND BATTERY?

Yes. If your abuser is not a citizen or a legal resident, then he can be deported if he has a Protective Order entered against him or if he is convicted of assault and battery.

STAYING TOGETHER

61. IF I DECIDE TO STAY WITH THE ABUSER, HOW CAN I MAKE THINGS BETTER?

You can use many of the options we have discussed in this handbook even if you do not leave the abuser. You can get a Protective Order requiring that the abuser not commit further acts of violence and attend counseling.

You can pursue criminal charges. You can use the court process to have the abuser ordered into counseling. You and the abuser, or you alone, can make use of the many types of counseling available in your area. This counseling can help you decide whether or not you want to continue your relationship with the abuser and, if you do, whether you can do anything to stop the violence in the relationship. See the Phone Numbers section of the Handbook for Counseling centers.

Remember, it may be possible for the abuser to change, but it will not happen overnight. Abusers may promise to change if you stay with them and give them another chance. Unfortunately, abusive people usually learn violent behavior over a period of years. An abusive person may have seen their father beat their mother, or may have been beaten as a child. They may think violence is the only way to solve their problems or that violence is an acceptable way to "discipline" a spouse or family member. In the last analysis only the abuser can change himself.

62. I WANT TO LEAVE, BUT THE CHILDREN WANT THE FAMILY TO STAY TOGETHER. WHAT SHOULD I DO?

It is important to trust your own judgment. You are the adult and responsible for making decisions that affect your children. Sometimes, after people have been battered for a long time, they start thinking they aren't worth very much and aren't capable of making decisions. Sometimes, they start depending on their children to make decisions because they don't trust themselves. Children who grow up seeing violence between their parents often have violence in their lives when they become adults either as future abusers or future victims. Even if it is more comfortable for the children at home, think about the long-term effect the violence in the home will have on them. Even if it makes the children unhappy for a while, you have to decide what is best for you. This is usually the best thing for the children too.

RESOURCES (SEE RESOURCE LIST)

Alcohol/Drug Treatment
Child Protective Services Hotlines
Commonwealth's Attorneys
Community Mental Health Centers
Counseling
Courts
Crisis Intervention Hot Lines
Division of Child Support Enforcement
Emergency Needs-Food & Other Goods
Emergency Needs-Housing
Lawyer Referral Services
Legal Services of Northern Virginia
Police Departments
Sheriff's Offices
Salvation Army
Shelters
Social Services
Supervised Visitation Centers
Support Enforcement
Victim Witness Units
Women's Issues