



THE REALITIES OF THE LEGAL SYSTEM FOR ADVOCATES

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WHY AREN'T PEOPLE'S EXPECTATIONS MORE IN LINE WITH LEGAL REALITY?



- Many simply don't have any experience with or education about the legal system
- Movies and TV often get legal issues wrong, due to time constraints or to facilitate drama
- Personal values/morality not reflected in the law



GENERAL CONSTITUTIONAL PROTECTIONS PROVIDED IN ARTICLE I, SECTION 24 OF THE ALASKA CONSTITUTION TO ALL CRIME VICTIMS:

BE TREATED WITH DIGNITY, RESPECT AND FAIRNESS;

PROTECTION FROM ACCUSED THROUGH THE IMPOSITION OF APPROPRIATE BAIL OR CONDITIONS OF RELEASE BY THE COURT;

CONFER WITH THE PROSECUTION;

TIMELY DISPOSITION OF THE CASE;

OBTAIN INFORMATION ABOUT AND BE ALLOWED TO BE PRESENT AT ALL PROCEEDINGS WHERE THE ACCUSED HAS THE RIGHT TO BE PRESENT;

RESTITUTION FROM THE ACCUSED;

*** BE HEARD, UPON REQUEST, AT SENTENCING, BEFORE OR AFTER CONVICTION AND AT ANY PROCEEDING WHERE THE ACCUSED'S RELEASE FROM CUSTODY IS CONSIDERED;**

*** BE INFORMED, UPON REQUEST, OF THE ACCUSED'S ESCAPE OR RELEASE FROM CUSTODY BEFORE OR AFTER CONVICTION.**

RIGHTS OF CRIME VICTIMS UPON INITIAL POLICE CONTACT:

RIGHT TO OBTAIN ACCESS TO IMMEDIATE MEDICAL ASSISTANCE;

TRANSPORTATION TO SAFE HOUSE OR SHELTER WHERE THE CRIME INVOLVES DOMESTIC VIOLENCE;

PROVIDE DOMESTIC VIOLENCE VICTIMS WITH INFORMATION ABOUT HOW TO OBTAIN A 72 HOUR PROTECTIVE ORDER;

THE RIGHT TO BE NOTIFIED OF THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE OFFICE OF VICTIMS' RIGHTS UPON INITIAL CONTACT WITH THE POLICE AND PROSECUTING ATTORNEY;

THE RIGHT OF DOMESTIC VIOLENCE VICTIMS TO BE NOTIFIED BY LAW ENFORCEMENT OF THE RIGHTS AND SERVICES AVAILABLE TO THEM;

PROVIDE ALL VICTIMS WITH INFORMATION ABOUT VIOLENT CRIMES COMPENSATION BOARD ASSISTANCE AND MAKE APPLICATION FORMS AVAILABLE;

*** ABILITY TO PARTICIPATE, UPON REQUEST, AT THE DEFENDANT'S INITIAL APPEARANCE BEFORE A MAGISTRATE WHEN BAIL CONDITIONS ARE SET**



Sexual assaults and domestic violence – medical concerns:

Sexual assault victims may not be charged for sexual assault exams;

*** In a crime involving sexual assault where penetration is an element of an offense, a victim may petition the court to order that the defendant submit to a blood test for presence of HIV and other STDs. The defendant need not be convicted, the court may order the testing as soon as the defendant is charged by complaint, indictment, presentment, or information filed with a magistrate or court, that alleges a sexual assault involving penetration. The court may not order such testing until seven days have passed since arrest nor after a disposition favorable to the defendant;**

*** If the results of a blood test conducted under AS 18.15.300 indicate exposure to or infection by HIV or other sexually transmitted diseases, the victim is entitled to free counseling, testing and referral to appropriate health care facilities and support services at the request of the victim.**



PRIVACY RIGHTS OF CRIME VICTIMS:

CONFIDENTIAL COMMUNICATIONS BETWEEN A SEXUAL ASSAULT OR DOMESTIC VIOLENCE VICTIM AND THE VICTIM'S COUNSELOR ARE PRIVILEGED;

IN A CRIME INVOLVING KIDNAPPING, SEXUAL ASSAULT, SEXUAL ASSAULT OF A MINOR, OR INDECENT EXPOSURE, THE NAME OF A VICTIM IS NOT PUBLIC RECORD AND MAY NOT BE USED IN COURT DOCUMENT; INSTEAD, THE VICTIM'S INITIAL WILL BE USED;

THE RESIDENCE AND BUSINESS ADDRESSES AND TELEPHONE NUMBERS OF A VICTIM OF A CRIME OR WITNESS TO A CRIME ARE CONFIDENTIAL;

- VICTIMS ARE NOT REQUIRED TO SPEAK WITH DEFENSE COUNSEL AND MAY REQUEST THE PRESENCE OF A PROSECUTING ATTORNEY OR OTHER PERSON PRESENT DURING AN INTERVIEW**
- IF A VICTIM OF SEXUAL ASSAULT OR DOMESTIC VIOLENCE, THE VICTIM MUST FIRST GIVE ORAL PERMISSION TO BE INTERVIEWED BY THE DEFENSE;**
- THE INTERVIEW MAY BE ELECTRONICALLY RECORDED (AT THE DISCRETION OF THE DEFENSE INVESTIGATOR) AND THE DEFENSE WILL FURNISH A COPY OF ANY ELECTRONIC RECORDINGS TO THE VICTIM UPON REQUEST. IF THE VICTIM IS A MINOR, THE PARENT OR GUARDIAN MUST PROVIDE WRITTEN CONSENT PRIOR TO THE INTERVIEW WHETHER OR NOT THE INTERVIEW IS RECORDED.**

ARTICLE I, SECTION 11. RIGHTS OF THE ACCUSED

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL HAVE THE RIGHT TO:

A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF TWELVE, EXCEPT THAT THE LEGISLATURE MAY PROVIDE FOR A JURY OF NOT MORE THAN TWELVE NOR LESS THAN SIX IN COURTS NOT OF RECORD.

THE ACCUSED IS ENTITLED TO:

**BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION;
TO BE RELEASED ON BAIL, EXCEPT FOR CAPITAL OFFENSES WHEN THE PROOF IS EVIDENT OR THE PRESUMPTION GREAT;**

TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM;

TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.



What is a protective order?

Protective orders, sometimes called restraining orders, are court orders that prohibit someone from threatening to commit or committing acts of domestic violence, stalking, and/or sexual assault against another person. Protective orders may

- limit communication and contact,
- grant temporary custody of children and child support,
- grant temporary possession of a residence and vehicle, and
- require payment for expenses associated with domestic violence.



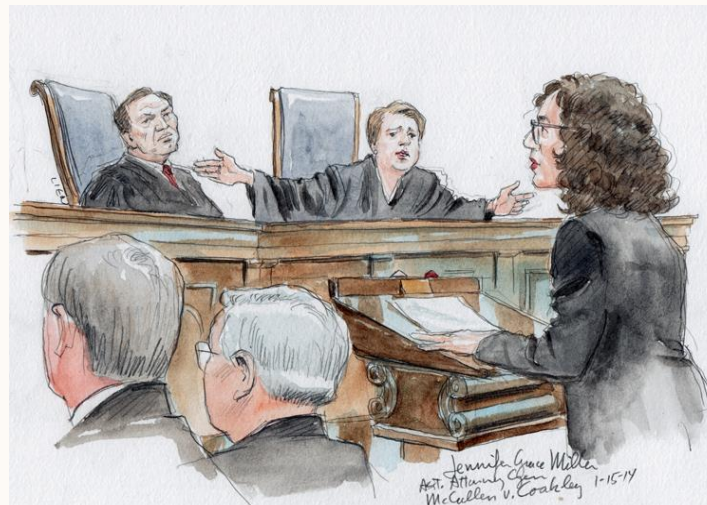
Protection orders: What are some important terms to understand?

Petitioner is the person who is asking the court for a protective order. Usually, the victim of domestic violence is the petitioner if he or she asks for the protective order.

Respondent is the person whom the protective order is against. Usually, the person who commits the domestic violence is the respondent.

Judges and Magistrate Judges work for the court system and preside over domestic violence court proceedings.

Ex parte is a legal term which in this context means that only the petitioner needs to be present to obtain a 20-day protective order. There is no requirement that the respondent be notified in advance of the 20-day hearing or that the respondent be present.



TO GET A DOMESTIC VIOLENCE PROTECTIVE ORDER, YOU MUST HAVE A SPECIFIC RELATIONSHIP WITH THE RESPONDENT

THE LAW STATES THAT THE VIOLENCE MUST HAVE BEEN COMMITTED BY A “HOUSEHOLD MEMBER.” THIS DOES NOT MEAN THAT YOU HAVE TO LIVE IN A HOUSE TOGETHER. A “HOUSEHOLD MEMBER” INCLUDES:

- **PEOPLE WHO ARE CURRENT OR FORMER SPOUSES;**
- **PEOPLE WHO LIVE TOGETHER CURRENTLY OR LIVED TOGETHER IN THE PAST (COVERS ROOMMATES, WHETHER OR NOT THEY ARE IN AN INTIMATE RELATIONSHIP);**
- **PEOPLE WHO ARE DATING OR WHO HAVE DATED;**
- **PEOPLE WHO HAVE OR HAD A SEXUAL RELATIONSHIP;**
- **PEOPLE WHO ARE RELATED TO EACH OTHER UP TO BEING FIRST COUSINS; ADULTS OR MINORS WHO ARE RELATED OR FORMALLY RELATED BY MARRIAGE; AND,**
- **PEOPLE WHO HAVE A CHILD TOGETHER.**

YOU MAY BE ABLE TO GET A PROTECTIVE ORDER EVEN IF THE RESPONDENT HAS NOT PHYSICALLY HIT YOU, BECAUSE NOT ALL OF THESE CRIMES INVOLVE ACTUAL PHYSICAL INJURY. THE FOLLOWING IS A LIST OF THE DOMESTIC VIOLENCE CRIMES

- **HOMICIDE** IS WHEN SOMEONE CAUSES THE DEATH OF ANOTHER.
- **ASSAULT** IS ANY KIND OF PHYSICAL HARM, LIKE HITTING. IT ALSO INCLUDES THREATS TO DO PHYSICAL INJURY IF THE THREATS ARE CAPABLE OF BEING CARRIED OUT RIGHT THEN.
- **RECKLESS ENDANGERMENT** OCCURS WHEN SOMEONE ACTS TO CREATE THE DANGER OF ANOTHER BEING INJURED. AN EXAMPLE IS WHEN THE ABUSER PUNCHES THE WALL NEXT TO THE VICTIM'S HEAD, CREATING THE DANGER THAT ABUSER MIGHT PUNCH THE VICTIM IN THE FACE.
- **STALKING** OCCURS WHEN SOMEONE ENGAGES IN REPEATED ACTS OF NON-CONSENSUAL CONTACT WITH THE VICTIM OR A FAMILY MEMBER THAT PLACES THAT PERSON IN FEAR OF PHYSICAL INJURY OR DEATH.
- **KIDNAPPING** OCCURS WHEN SOMEONE RESTRAINS THE VICTIM WITH THE INTENT TO INFLICT PHYSICAL INJURY UPON OR SEXUALLY ASSAULT THE VICTIM OR PLACES THE VICTIM IN APPREHENSION THAT HE OR SHE WILL BE INJURED. IT ALSO OCCURS WHEN SOMEONE MOVES THE VICTIM AGAINST THE VICTIM'S WILL TO A PLACE WHERE HE OR SHE IS UNLIKELY TO BE FOUND. IT ALSO OCCURS WHEN AN ADULT WHO IS NOT A RELATIVE OF A CHILD TAKES THAT CHILD AND KEEPS HIM OR HER AWAY FROM HIS OR HER NORMAL GUARDIANS.

➤ **CUSTODIAL INTERFERENCE** OCCURS WHEN A PARENT OR RELATIVE OF THE CHILD TAKES THE CHILD KNOWING HE/SHE HAS NO LEGAL RIGHTS, OR IN VIOLATION OF A COURT ORDER AND KEEPS THAT CHILD FOR AN EXTENDED PERIOD OF TIME. RETURNING A CHILD AN HOUR OR TWO LATE FROM VISITATION IS NOT CONSIDERED CUSTODIAL INTERFERENCE.

➤ **SEXUAL OFFENSES** INCLUDE ALL FORMS OF SEXUAL ASSAULT, INCEST, UNWANTED SEXUAL CONTACT, AND RAPE. SEXUAL OFFENSES CAN OCCUR EVEN IF THE PARTIES ARE MARRIED.

➤ **ROBBERY** OCCURS IF SOMEONE HOLDING A WEAPON TAKES AN ITEM OF PROPERTY FROM THE VICTIM'S PRESENCE.

➤ **EXTORTION AND COERCION** ARE CRIMES THAT WE COMMONLY CONSIDER BLACKMAIL. THIS IS WHEN SOMEONE THREATENS A VICTIM WITH PHYSICAL HARM OR THREATENS SOMEONE KNOWN TO THE VICTIM WITH PHYSICAL HARM, FORCING THE VICTIM TO DO SOMETHING THE VICTIM DOES NOT WANT TO DO. AN EXAMPLE IS IF AN ABUSER CALLS A VICTIM AND THREATENS TO BEAT HIM OR HER UNLESS HE OR SHE AGREES TO HAVE SEXUAL RELATIONS.

➤ **BURGLARY** OCCURS WHEN SOMEONE ENTERS OR REMAINS UNLAWFULLY IN A BUILDING INTENDING TO COMMIT A CRIME IN THE BUILDING.

➤ **CRIMINAL TRESPASS** OCCURS WHEN SOMEONE ENTERS OR REMAINS UNLAWFULLY ON LAND, IN A DWELLING, OR A VEHICLE.

➤ **ARSON** OCCURS WHEN SOMEONE INTENTIONALLY DAMAGES ANY PROPERTY BY STARTING A FIRE OR EXPLOSION THAT PLACES ANOTHER IN DANGER OF SERIOUS PHYSICAL INJURY.



- **CRIMINAL MISCHIEF** OCCURS WHEN SOMEONE RECKLESSLY OR INTENTIONALLY DAMAGES THE PROPERTY OF ANOTHER.
- **TERRORISTIC THREATENING** OCCURS WHEN SOMEONE KNOWINGLY MAKES A FALSE REPORT THAT A CIRCUMSTANCE DANGEROUS TO HUMAN LIFE EXISTS AND PLACES ANOTHER IN FEAR OF PHYSICAL INJURY.
- **DV HARASSMENT** OCCURS WHEN SOMEONE
 - CALLS AND WILL NOT HANG UP SO THAT THE OTHER PERSON CANNOT MAKE OR RECEIVE PHONE CALLS;
 - MAKES REPEATED TELEPHONE CALLS AT EXTREMELY INCONVENIENT HOURS;
 - MAKES AN ANONYMOUS OR OBSCENE PHONE CALL; OR
 - MAKES A CALL THAT THREATENS PHYSICAL INJURY.
- **CRUELTY TO ANIMALS** IF THE ANIMAL IS A PET.






EX PARTE ORDER

What is an *ex-parte* protective order?


An *ex parte* protective order prohibits the respondent from threatening to commit or committing domestic violence against the petitioner and lasts for approximately 20 days. This order may:

- 
- prohibit or limit the respondent from contacting the petitioner,
 - give the petitioner temporary custody of children, and
 - give the petitioner temporary possession of the residence and vehicle.



EX PARTE ORDER

The Petitioner does not have to notify the Respondent that they are seeking an *ex parte* protective order. In fact, that may increase the risk of danger. To get an *ex parte* order, one must fill out a petition form which is available at the court, on the internet, at most shelters and possibly through the local police or VPSO.



If a person requests a long-term order, the judge will set a date approximately twenty days later for a hearing. The *ex parte* order will contain information about the date, time, and location of the long-term order hearing. The *ex parte* order is valid at the time the judge signs it. However, the Respondent must be served with a copy of the order from the police to know it is in effect.

WHAT SHOULD BE EXPECTED AT THE LONG-TERM PROTECTIVE ORDER HEARING?

THE JUDGE HOLDS THE LONG-TERM PROTECTIVE ORDER HEARING TO DETERMINE WHETHER TO GRANT AN ORDER THAT LASTS FOR ONE YEAR. THE RESPONDENT IS GIVEN NOTICE OF THE HEARING. PEOPLE CAN WATCH ONE OF THE HEARINGS BEFORE THEIR OWN TO FAMILIARIZE THEMSELVES WITH THE COURT PROCESS. THE HEARINGS ARE OPEN TO THE PUBLIC. THERE MAY BE OTHER DOMESTIC VIOLENCE CASES SCHEDULED AT THE SAME TIME, SO PARTICIPANTS SHOULD BE PREPARED FOR MANY OTHER PEOPLE TO BE PRESENT.

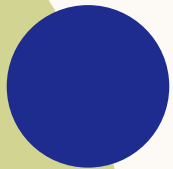
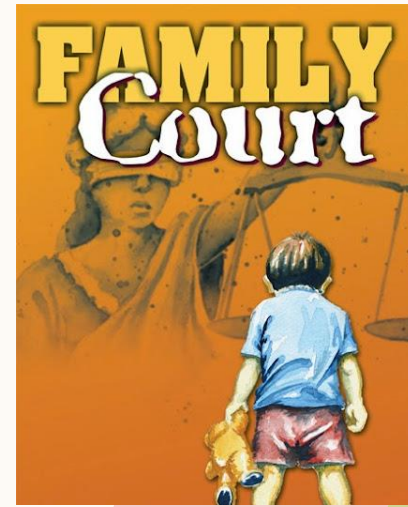
PEOPLE MAY USE MANY TYPES OF EVIDENCE, DEPENDING ON THE SPECIFICS OF THEIR SITUATION. EVIDENCE MAY INCLUDE TESTIMONY, WITNESS TESTIMONY, PHOTOGRAPHS, MEDICAL RECORDS, DAMAGED ITEMS, POLICE REPORTS, BILLS OR ESTIMATES.

AFTER BEING SWORN IN BY THE JUDGE, THE PETITIONER WILL USUALLY SPEAK FIRST. PARTICIPANTS SHOULD BE SPECIFIC AND TELL WHAT HAPPENED BY ANSWERING THESE QUESTIONS:

- WHAT HAPPENED?**
- WHEN?**
- WHERE?**
- WHO WAS PRESENT?**



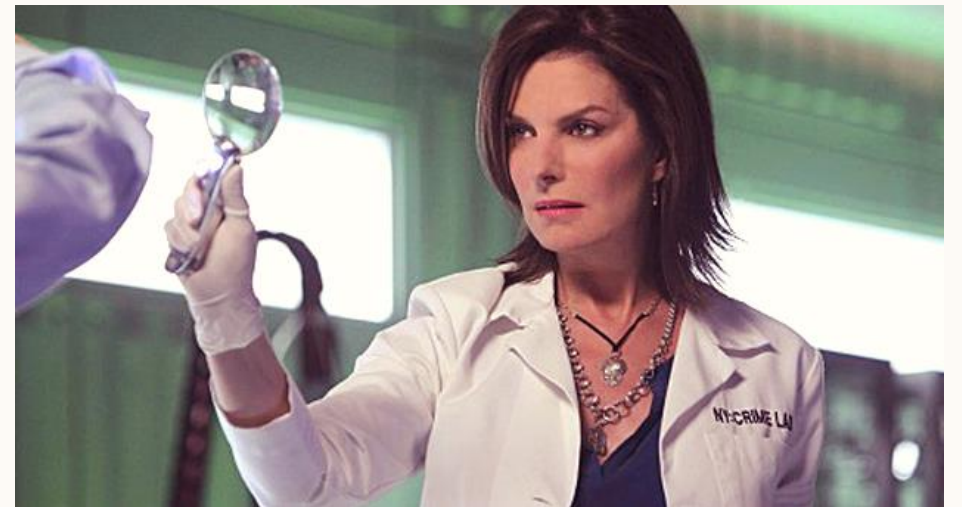
CHILD CUSTODY



In custody cases, the court considers the following statutory **“best interest” factors:**

- **the physical, emotional, mental, religious, and social needs of the child;**
- **the capability and desire of each parent to meet these needs;**
- **the child's preference if the child is of sufficient age and capacity to form a preference;**
- **the love and affection existing between the child and each parent;**
- **the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;**
- **the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, except that the court may not consider this willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in domestic violence against the parent or a child, and that a continuing relationship with the other parent will endanger the health or safety of either the parent or the child;**
- **any evidence of domestic violence, child abuse, or child neglect in the proposed custodial household or a history of violence between the parents;**
- **evidence that substance abuse by either parent or other members of the household directly affects the emotional or physical well-being of the child;**
- **other factors that the court considers pertinent.**

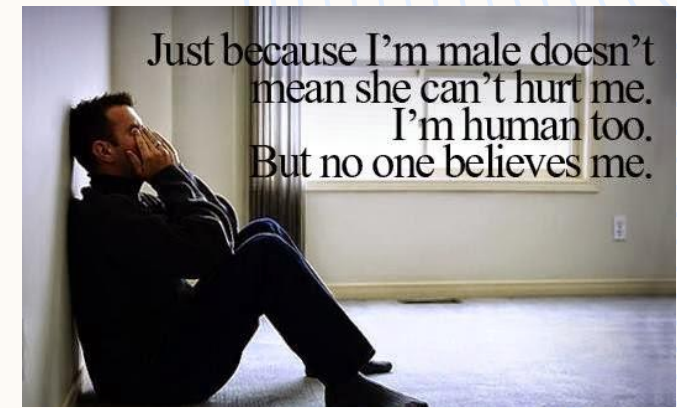
CRIMINAL INVESTIGATIONS INTO SEXUAL ASSAULT





COMMON LEGAL CONCERNS OF SA VICTIMS:

- **DO I HAVE TO REPORT THIS TO LAW ENFORCEMENT?**
- **IF I DO REPORT, WILL I HAVE TO TESTIFY IN COURT?**
- **IF I DO TESTIFY, WILL THE COURTROOM BE OPEN TO THE PUBLIC?**
- **HOW WILL MY TESTIMONY GO? WHAT IS CROSS-EXAMINATION? DOES THE DEFENDANT HAVE TO TESTIFY?**
- **WHAT IF I WAS INTOXICATED / ON DRUGS? WHAT IF I WILLINGLY WENT BACK TO HIS PLACE WITH HIM?**
- **WHAT IF I FEEL THAT I WAS SEXUALLY ASSAULTED, BUT I DIDN'T ACTUALLY SAY THE WORD "NO?"**
- **WHAT IF I HAD A CONSENSUAL SEXUAL RELATIONSHIP WITH THEM IN THE PAST?**
- **WHAT IF WE ARE MARRIED?**
- **WHAT IS A GLASS WARRANT? DO I HAVE TO DO IT?**
- **WHAT HAPPENS TO THE PERPETRATOR IF THEY ARE FOUND GUILTY?**
- **IF I GET PREGNANT, WHAT ARE HIS RIGHTS REGARDING THE CHILD?**



QUESTIONS?





THANK YOU!

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